

**APPROVED
REGULAR COUNCIL MEETING
October 9, 2007
7:00 PM**

Mayor Dion Avello presiding.

ROLL CALL:

WARD I
WARD II
WARD III
WARD IV

COUNCIL MEMBERS PRESENT:

Jim Craig, Jim Meidinger
Chuck Warren
Charlie Schwarz, Cheryl Bannon
Mark Staats, George Arnold

Flag salute was led by Council President Charlie Schwarz.

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

**CONSIDERATION OF
MINUTES**

Minutes of the September 25, 2007, Regular Council Meeting.

MOTION: Bannon moved to approve minutes of September 25, 2007 Regular Council Meeting. Staats seconded.

VOTE: Craig yea, Meidinger yea, Warren yea, Schwarz abstain, Bannon yea, Staats yea, Arnold yea, 6 yea, 0 nay, 1 abstain, 0 absent, motion carried.

PUBLIC FORUM

Eric Tauer, Managing member of Tauer Enterprises, LLC. He stated it has been interesting this last year watching the discussion and debate and the council has been talking about bringing a hotel to Derby. He continues to follow the developments with great interest after having been so intimately involved in the process. The reason he is here this evening is to briefly comment on something he heard at the last council meeting that he found a bit surprising. Mayor Avello commented that he and many of his business associates are loyal Hampton Inn customers and he wondered why Mr. Sheth had not considered Hampton. Mr. Sheth responded that Hampton is reluctant to locate in Derby. This is contrary to the response they received last year when they were proposing their hotel and conference center. Although they had not completed a franchise application they were working with the director of franchise development for this region. He provided us with a letter that was provided to Mrs. Moeding indicating that Hampton was "excited about the opportunity to bring a Hampton Inn brand to the Derby, Kansas area." He received the market information and proposal, the same proposal that the council reviewed and he

was encouraged with the overall economic outlook for the Derby market. Since that time Kohl's has opened, Target has broken ground, Emprise Bank and Boeing Wichita Credit Union are nearly complete, Verus Bank is expanding, Quik Trip announced plans to develop and other major development is likely to occur at Derby Marketplace in the near future. This is important for you to consider as you discuss possible economic incentives for Mr. Sheth's Comfort Inn or Holiday Inn Express. We were able to propose the Hampton Inn Hometown prototype and a 5,000 sq. ft. conference center large enough for wedding receptions and other events located along Rock Road with a golf course view. They requested a 100% property tax abatement and a \$700,000 cash incentive. Another hotel developer recently proposed an economy hotel with a 5 year tax abatement with a sliding scale thereafter and no cash incentive. It seems appropriate that less expensive brands such as Comfort Inn or Holiday Inn Express, with no conference center, would warrant something less than a 100% property tax abatement. The amount of the guest tax rebate is something that the council will need to debate and decide, however he does want to point out that Mr. Sheth's original proposal called for the hotel to be paid off in 15 years. To him it seems that rebating guest taxes for 10 years just to have him pay off the hotel 5 years later seems a bit excessive, particularly since he is not proposing a banquet hall or conference facility, amenities this community needs and that the council has said in the past you would like to have. Last year Councilman Craig talked about wanting to give developers a "hand up" not a "hand out". In his opinion the incentives should be a hand up in the early years when the hotel first opens which is why they requested an upfront cash incentive. Derby has a bright future as evidenced by recent development trends, to approve a prolonged rebate past the first 3-5 years borders on being a hand out. Many hotels operate successfully at less than 70% occupancy as demonstrated in the city's own market study. Tying the rebate to this level of occupancy has the potential to prolong the rebate for a full 10-years under the scenarios proposed by Mr. Sheth. He knows this is an important decision for Derby and knows the council will make the right choice.

Jane Billingsley, advised last time she addressed the council she was very angry at some inconsistencies in the way the city was handling some things regarding her and her husband. Council Member Meidinger has followed up on the weed problem and the inequities in assessing fees and even made some changes. She commented that you hear "don't fight city hall", she had a government minor as an undergraduate and has taught American History in school so she does know a little bit about how government works. She has a problem that she never anticipated having, involving all the government entities that are over it. She read a story titled "The ambitious little gulley", subtitled "who wanted to be like the Grand Canyon".

Council Member Bannon thanked everyone that emailed her about the hotel. She pointed out that a number of the emails alluded to the community room that would be with the hotel. This hotel proposal does not have a community room, however the library proposal that will be coming to a vote for the public on Tuesday does. She reminded everyone that the vote next Tuesday is a public one; go to your normal polling places. There will be early voting on the 11th, 12th and 13th.

Mayor Avello asked Ms. Sexton to explain what we are doing about trains that are stopping in town so the public knows we are doing something.

Ms. Sexton explained it is not appropriate for the trains to stop and stay still while crossing intersections to too long a period of time. When it happens, call City Hall and tell us because we are keeping a log of when it happens so when we call the railroad they don't say that they don't do that. We can give them times and dates and intersections of when it happened.

Dan Squires, City Engineer advised that he does not know what has changed recently, they used to be a lot better about stopping south of town or between Derby and Wichita and weren't as commonly blocking intersections in town. He has a call and e-mail in to Bill Thompson with BNSF railroad to find out what's going on and if they can do something about it. We do get a substantial number of complaints about railroads for various reasons, rough crossings, and noise. He feels that blocking intersections should be easier to address than noise and crossings. He has a log of complaints that we have received so we can pass those on to the railroad. Bill Thompson is out until Thursday and he is hoping to hear back from him there. Staff is aware of the problem and if anybody has any complaints about the railroad it is helpful for us to have those complaints consolidated in one place so we can go through the list with the railroad.

Ms. Sexton encouraged the mayor and council, if they are contacted by constituents, to find out exactly when it was, what day, what time, which intersection and have them call city hall directly. You don't have to talk to Dan, we have alerted everybody who answers the phone out front that people might be calling with this type of information and they just keep that log and that way when Dan gets a hold of the railroad guy he'll be able to tell him that it really is happening, very frequently.

Mr. Squires stressed that you note how long you have waited. There is legislation on how long they can block the intersection.

Council Member Meidinger asked if there is an emergency system that backs up the railroad crossing light at intersections if the power goes out.

Mr. Squires advised he did not know the answer to that. They have their own communication system associated with the railroad. He assumes there is but can't say for sure.

Council Member Craig asked for a projection of engineering and completion of the repair on Brookforest south of James.

Mr. Squires stated that the city is advertising that project for bids right now. It has already been sent to the newspaper for advertisement and believes that advertisement will appear tomorrow in the city's official publication. We will bring it back to the council for action.

Mayor Avello stated he will not be able to make it for his regular office hours tomorrow. If you need to get a hold of him give him a call and we can maybe solve it over the telephone.

OFF AGENDA ITEM

MOTION: Schwarz moved to accept off agenda item. Warren seconded.

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

APPOINTMENT OF COUNCIL MEMBER TO WARD II

Background:

- Mayor Avello proposes appointment of Vaughn G. Nun, 1343 Broadmoor, to complete the unexpired term of Loren Johnson.
- Mr. Nun currently serves on the Planning Commission.
- Mr. Nun's experience in business and community leadership would serve the interests of Ward II and the City at large.

Financial Considerations:

- None

Legal Considerations:

- As a resident of Ward II, Mr. Nun is qualified for appointment as a member of the City Council.
- Appointment of Mr. Johnson's successor is accomplished by nomination, second and majority vote of the Council members present.

Policy Considerations:

- The Mayor has solicited interest in replacement of Mr. Johnson and offers Mr. Nun as the best qualified candidate for the position of Ward II representative.

MOTION: Schwarz moved to appoint Vaughn G. Nun to complete the unexpired term of Loren Johnson as council member from Ward II. Staats seconded.

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

DERBY CHRISTMAS PARADE

Kathy Sexton, City Manager presented the staff report.

Background:

- Derby First Christian Church has again accepted the planning and implementation of the annual Christmas parade and request permission to hold the parade on Saturday, December 8, 2007. The parade is scheduled to begin at 5:30 p.m. and will start at the football stadium parking lot. It will proceed west on Madison to Georgie, south on Georgie to Market, east on Market returning to the football field parking lot.

Financial Considerations:

- The City will have to supply police patrol, barricades and traffic cones, but the costs should be minimal.

Legal Considerations:

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

Policy Considerations:

- None applicable.

MOTION: Warren moved to approve use of city streets and public rights-of-way to conduct the Derby Christmas Parade on Saturday, December 8, 2007. Meidinger seconded.

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

**RESOLUTION OF
INTENT TO ISSUE
INDUSTRIAL REVENUE
BONDS FOR HOTEL**

Kathy Sexton, City Manager presented the staff report.

Background:

- At the August 14 meeting, the City Council directed staff to develop a resolution of intent to issue Industrial Revenue Bonds (IRBs) on behalf of Hotel Enterprise Group (Raju Sheth, principal) and to schedule a public hearing on Tuesday, September 25, 2007.
- The Council convened a public hearing on September 25, 2007, and received and filed comments.
- As the next step of the consideration process for public incentives, a resolution of intent to issue IRBs has been prepared for Council's consideration.

Discussion:

- The Hotel Enterprise Group proposal calls for a 55-60 room hotel. As proposed, incentives would include:
 - A 10-year, 100% property tax abatement.
 - An agreement to promote (refer) the hotel in city marketing efforts.
 - A rebate of the transient guest tax revenues under yet-to-be determined terms.
- Mr. Sheth has put forward two scenarios on the guest tax rebate for the Council's consideration. A rebate of the transient guest tax revenues generated by the hotel to continue under one of the following two scenarios:
 - *Scenario 1*
 - § 55 room hotel (Comfort Inn or Holiday Inn Express)
 - § Whichever of the two happens first...100% guest tax rebate until the hotel achieves 2 consecutive years of 70% occupancy rate at which time the rebate will reduce by 1% each year for five years OR 100% guest tax rebate for 5 years at which time the rebate will reduce by 1% each year for five years.
 - § The estimated minimum value of this option is \$284,406. The estimated maximum value of this option is \$428,486.
 - § The potential drawback of this scenario is that it provides a basic hotel facility for Derby without suites.
 - § The benefit of this option is that it could provide a lower guest tax rebate pay out than Scenario 2.

- *Scenario 2*
 - § 55 or 60 room hotel and suites (Comfort Inn & Suites or Holiday Inn Express & Suites).
 - § 100% guest tax rebate until the facility achieves 2 consecutive years of 70% occupancy rate at which time the rebate would decline by 1% per year, for a maximum total period of 10 years of rebates.
 - § The estimated minimum value of this option is \$284,406. The estimated maximum value of this option is \$549,553.
 - § The potential drawback of this scenario is that it could provide a higher guest tax rebate pay out than Scenario 1.
 - § The benefit of this option is that it's preferred by Mr. Sheth because a hotel facility with suites is distinctive from regional competition and is attractive to corporate and family clientele.
- If the Council has a preference for one of these scenarios, the Council should state such preference at this time. Otherwise, the guest tax rebate agreement will be determined by the franchise determined by Mr. Sheth.

Financial Considerations:

- Staff has worked with bond counsel Gilmore & Bell to develop a non-binding resolution of intent that generally outlines the project and the incentives involved. The resolution of intent is the mechanism that formally initiates the IRB process.
- The resolution of intent commits incentives based on the hotel facility maintaining a "Midscale Chain without food and beverage" category (as defined by Smith Travel Research) or higher, with room rates in the Mid-Price segment. If the hotel facility should fail to maintain a mid-tier franchise, public incentives would cease.
- A separate agreement governing the conditions of the requested transient guest tax rebate would be developed and brought to the council for approval. We would expect this to occur at the same time the IRBs are approved in approximately January 2008.
- In issuing IRBs, the City acts only as a conduit for the project financing.
 - As the financing conduit, the City bears no financial liability in the event the financial obligations of the IRBs are not met.
 - IRBs do not contribute to the City's debt load per state statute.
 - IRBs do not affect the City's bond rating or credit rating.
- The bonds have been pre-sold by Mr. Sheth to The State Bank of Kansas.
- Costs associated with issuing the bonds are paid by the beneficiary (Hotel Enterprise Group).
- Estimated value of the property tax abatement is \$265,821. Estimated value of the guest tax rebate is \$284,406 to \$428,486 or \$549,553 depending on the rebate scenario selected and the point at which 70% occupancy is achieved.
- Sales tax revenue from hotel operations is estimated to be a \$51,000 benefit to the City.
- The City reserves the right to negotiate a payment in lieu of taxes agreement to protect the City against failure to attain the employment, capital investment, or the project's franchise flag goals set forth.

Legal Considerations:

- A public hearing has been conducted per K.S.A. 12-1749c and 12-1749d.
- The issuance of industrial revenue bonds (IRBs) and tax abatement is authorized by Kansas law. In the event the bonds are not ultimately issued due to failure of the developer to meet the conditions of the resolution, the City incurs no liability.
- The tax abatement cannot be granted until approval from the State Board of Tax Appeals is obtained.

Policy Considerations:

- The City's economic development policy is to encourage businesses that will promote, stimulate, or develop the economic welfare of the City. This can occur through capital investment, job creation, increased visitor traffic or diversification of the local economy.
- The recommended proposal meets the requirements set forth in the City Council's Policy Statement on Hotel Development, approved by the Council in October 2006.

RESOLUTION NO. 59-2007

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF DERBY, KANSAS DETERMINING THE ADVISABILITY OF ISSUING THE CITY'S TAXABLE INDUSTRIAL REVENUE BONDS TO PAY THE COSTS OF ACQUIRING, CONSTRUCTING, FURNISHING AND EQUIPPING A HOTEL FACILITY TO BE LOCATED IN THE CITY.

DISCUSSION:

Council Member Craig thanked the people for their input over the last couple of weeks. It was slow to start but then it picked up. He received a lot of comments about this project. Of all those comments it is clear that Derby wants a hotel, it is also clear that some are in agreement that we should give a maximum amount of tax abatements and maximum amount of transient guest tax. There is a measurable difference between wants and needs. Derby deserves a quality hotel from this particular proposed project; there is no doubt about that. He asked if we had something from Smith Travel Research that indicates what those mid-scale chain flags are.

Ms. Sexton stated we do. About two years ago when the city paid for a study by the hospitably industry research group and they made some recommendations in there and at that time listed them. The two being considered tonight are in the mid-tier chain, as well as AmericInn, Hampton and some others.

Council Member Craig pointed out in the resolution that there are a lot of agreements that have to be made during this. One is the satisfactory negotiation of an agreement with the tenant relating to the payment or exemption of all or a portion of property taxes to be assessed against the project after the bond issue, as well as a satisfactory negotiation of an agreement with the tenant relating to the rebate of the transient guest tax. Those two things still have to be negotiated. The satisfactory negotiation of agreement by the tenant for the franchise flag in the category of mid scale chain also needs to be negotiated. The thing he feels that a stake has been driven in is the location of the project. The other three still haven't been decided on. The information he has so far has pointed out the project running through a scheme from WSU qualified for 65% tax abatement for 10 years. We set down guidelines for 5 years and chose to have the option of changing that if the council approved it. He is of the opinion that this council needs to make sure Derby gets something back for this particular project. The proposed recommendation he cannot agree with is that Hotel Enterprises, Inc. decides which rebate scenario is best for them; he thinks the council should decide that. The resolution for intent for IRB's and the transient guest tax percentage to the project should be two separate items. He is saying, in this intent, the only thing we are talking about is the tax abatement.

MOTION: Craig moved to approve the resolution of intent for 5 years, 100% property tax abatement.. Seconded by Bannon.

Council Member Warren asked Mr. Craig to repeat his motion in layman's terms.

Council Member Craig, for clarification, the resolution has four negotiated items; property tax abatement, transient guest tax, franchise flag and the location of the project, those four things are in the resolution as negotiated items. He is saying, the only hard fact that we are agreeing to in this resolution that is pointed out on page 2 is "property tax exemption shall be exempt from ad valorem property taxes for 10-years, commencing with the year following the year in which the bonds are issued." His motion is that 10-years be struck out; 5-years entered, in other words, 5-years, 100%. Derby deserves a quality hotel; they also deserve part of that. He thinks 5 years is a reasonable amount of time for 100% tax abatement for this particular project. Ten years is a long time.

Council Member Warren stated that as you look at the four items that need to be negotiated, his concern with Mr. Craig's motion is that we leave three things that are going to have to come back with separate motions or separate decisions at some point, any one of which could derail this thing. Tonight is the night to take care of all of our issues. We have a location that we can tie our agreement to and get that one taken off the book. We can nail down tonight the length of the tax abatements and the length of the guest tax rebate. We have already discussed, for weeks and weeks the type of hotel that we want and he is comfortable without having to tie that to a specific name as long as it is in the mid-tier that we have talked about in the past, which would be the two that are on top of the list right now. We need in one motion something that says tonight we are going to get past all of those items so we can get on down the road rather than dragging this thing out meeting after meeting. It is going to be difficult for us to find something that everyone is going to be 100% in agreement with, but he is bound and determined to walk away tonight with what we are going to agree with and get them all on there. He appreciated Mr. Tauer's comments and set through that debate and issue on the sidelines, unable to voice an opinion and was frustrated beyond belief with how Mr. Tauer was treated and the comments that were made about him and his family and their ability to run a hotel in their community. That they were undercapitalized and unable, and even since then the attitude that somehow we did them a favor by protecting them from getting in over their head, which are the things that he hears. He appreciates his comments in that aspect, but the bottom line is that that is water under the bridge, we have had that opportunity and that discussion and that opportunity has passed us and now we are dealing with the issue that we have on the table today. We have had hotel after hotel come into our community and all of them have essentially come up and say they think they can make it, but Derby is a risk. It does not sit on I-35 or I-70, it does not get the 25,000 cars going through the community. They think that because that there are no other hotels in the area that it will be successful but they need some assurances they can be profitable and they have all asked for something similar to what we have tonight. This has been to our Economic Development Board, they scrutinized this and asked the questions and they have recommended that this is the way we go. He will vote against anything that is less than the proposal that is before us. His personal preference would be that we go with the suites but either way one of them will cost more money so he is willing to give a bigger rebate. If they go with the other then he is comfortable with the

70%. He will vote against a proposal that limits that, this is a fair proposal and it's time to make something happen.

Council Member Meidinger advised he looked at the Economic Development Board and they only gave us one motel proposal to study. Sedgwick County presented three proposals on the arena. He is not against a hotel/motel development in Derby. A motel would be a nice complimentary business in Derby to our trade area. However he does not think the financial considerations recommended by the Economic Development Board and city staff is a best business practice to finance the motel project. A motel project is a retail venture and shouldn't be financed with government tax abatements, cash incentives or long term marketing programs. The estimated cost for the proposal to the Derby tax base is between \$280,000 and \$500,000. In one our last council meetings we were told the State of Kansas has reduced Derby's funding by nearly \$300,000, so at some point the taxpayers are going to be on the hook for some of these costs. A couple of local examples of government spending in the private sector that was very questionable would be the Park City financing of a Wild West amusement park parking lot. That looked great on paper but cost the city of Park City about \$1 million. The City of Wichita got financing for the Hyatt Hotel on the Arkansas River, he doesn't know what that cost. The headline in the Informer on July 4, "Police Unions to gain \$171,000 in pay raises from the City". He is not questioning the pay raises his point is, this is an increase in cost of government and where is the money going to come from. He hopes at some point we don't have to choose between public safety salaries or a motel in Derby. In one of our recent reports at a city council meeting someone mentioned that our home building has slowed down a little bit in Derby, he questioned if this could be a trend. This is a sky is falling, apprehensive statement, but here are some facts from the Wichita Eagle dated August 12, 2007; at no other time in the state's history have state and local governments imposed such a heavy tax burden on Kansas residents. This year state and local taxes will capture 11.2% of state income, paralleling the increase of the tax burden has been an unprecedented increase in the debt imposed upon our citizens. In 1992 the Kansas debt was around \$424 million dollars, lower than states of comparable size. In 2005 the debt has risen to \$4 billion. At some point all these free rebates are going to come back to haunt us, Derby has increased their load percentage wise. It has been pointed out that Derby is the largest city in Kansas without a motel, that is a fact, but Derby is also the largest city next to the largest city in Kansas. Wichita which has many hotels with choices. He went to Hays, Kansas this past weekend and Hays is similar in population to Derby but probably has 25 or more hotels. Many of the towns along I-70 with populations of 1,000 to 3,000 have 2-3 motels. Again, it's location and vehicle traffic that are a key to the success of a motel. He contacted the manager of the motel complex at McConnell and discussed the occupancy of this facility. There are times the motel is full, however he picked three hypothetical dates and asked if those dates would be available, all three dates were available; this motel in Derby is counting heavily on the McConnell trade. There are also 17 other hotels that will also vie for this. There is no doubt Derby is growing with new retail, expanded building, major construction on the highways to manage the growth. A motel would be a real benefit; however he is opposed to a taxpayer giveaway program. He would favor a tax abatement for 3 years on a graduated scale, 100% for the first year, 50% the second and 25% for the third. Zero dollars for the guest transient tax. The guest transient tax is a new revenue source for Derby, as he just pointed out we have new costs, new obligations for the City of Derby. When he voted on the guest transient tax he was voting for a new revenue source for the City of Derby and not a

giveaway to a motel. He addressed exclusive promotion efforts by the City of Derby; it states that we would not promote any other hotel that comes to Derby. This to him appears to be a little bit of an anti-business statement from the city to other motels that might want to come into Derby. As he mentioned, revenues from the state have declined, debt limits have expanded both for city and state governments. He would like to know what happened to the Occidental Properties proposal. If you recall, there was a large meeting room, restaurant nearby, they identified the location and the selection. He thinks, granted we have waited for years, and simply because we have waited for years is no reason to jump head first into a program that is marginal. It is marginal because the motel operator is asking for tax money, it just doesn't make sense to him to jump into a business that you are going to have to subsidize. A motel would be good for Derby but it is simply a location and a traffic concern and if you don't have either one of those and you have to subsidize the program it is a recipe for disaster.

Council Member Schwarz stated we have had two very good arguments. In his last 3-4 years on the council, one of the first things he and the mayor did was visit the individuals who operated more stay nights in Wichita than anybody else. They form a lot of partnerships but they have more stay nights than all of Wichita. He was pretty frank with them and asked what kind of major highway Derby was by, and we are not. He was pretty frank with incentives that he needed, we never brought up a hotel tax at the time because we didn't have one. They were not among the group of individuals that submitted proposals for Derby. Even though they have a bigger economic base to draw from, the risk for them was palatable for them to make a proposal here in Derby. From that standpoint he is not opposed to giving some sort of incentive to get something like this in the City of Derby. This council together has listed a hotel as an economic development priority. One of the things that that analysis does not provide us is that if there are people that do stay in town undoubtedly they are going to eat somewhere, not all people are going to eat at the hotel, they are going to eat or shop someplace else. That does not discount the sales tax implications that we will have here in the city, certainly as that whole retail base expands those people will spend dollars in Derby. He disagrees that this is revenue that we are going to lose. As that whole corridor expands and grows we will lose some revenue, but its revenue that we are not out, it's not parking like in Park City. We don't make the investment, this is purely an investment that that group makes and we are not on the hook for it, other than a tax that we don't have now. He is not sure he is in favor of the full 10-years worth of hotel tax rebate, certainly some mix of that. One thing he has stated before is that he is concerned about the flag, he wants the flag to be a part of this and he is concerned that we get a decent flag in here. If we can decide on that he is ready to make a proposal on the full 10-year abatement of taxes and some sort of mix on the hotel tax.

Council Member Staats advised he appreciated all of the feedback he has gotten over the last two weeks. Mr. Craig made it well known that we wanted the feedback and he thanks him for that because it has helped quite a bit. He has comments from both sides; people that are dead set against a hotel period in Derby, some people are against any tax incentives and most of the people he has spoken to want a hotel. Some people were very adamant about it, some didn't care what the city gave, didn't take from them to get that hotel. A lot of the conversations were via-email, some on the phone and some in person; he actually tracked people down and got their opinion because he wanted information. He is thinking long term, he has lived here a long time as most

everyone on the council has and for a long time people have wanted a hotel in Derby. He does not think we want a “motel” in Derby where the doors open out to the parking lot. That is what has been proposed by some other developers and that is fine, they are more than welcome to come here but a lot of people won’t stay in that type of facility, he won’t if he doesn’t have to. Ten years will go by in the blink of an eye if we give those tax abatements and at that point in time we will get the full amount from them. The hotel will bring a lot of other businesses, if you look around at any other hotel you very seldom see a hotel just sitting there without a lot of other businesses around it, whether it’s retail or restaurants. People want a hotel and they want a nice hotel. He has a pretty good idea how he is going to vote and he thanked everybody for their feedback on both sides of the fence.

Council Member Warren indicated that Mr. Meidinger brought up a lot of things that he would like to talk about but they are things we have talked about a dozen times before. He called for the question.

MOTION: Council Member Warren called for the question. Seconded by Arnold.

VOTE: Craig nay, Meidinger nay Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 5 yea, 2 nay, 0 absent, motion carried.

Ms. Sexton clarified that was a motion to end debate and vote on the motion. The motion on the floor is to approve the resolution of intent to issue industrial revenue bonds, changing the abatement from 10-years to 5-years.

Council Member Warren requested a roll call vote.

VOTE ON ORIGINAL MOTION: Schwarz nay, Bannon yea, Staats nay Arnold nay
Craig yea, Meidinger nay, Warren nay, 5 nay, 2 yea,
0 absent, motion failed.

Council Member Bannon asked if Hampton Inn was completely off the table, at the last meeting that understood they were going to get back with Mr. Sheth.

Raju Sheth, applicant indicated he got a call from the area manager a few days ago and he indicated that in 2-3 years there may be a potential for a Hampton.

Council Member Bannon stated that at the last meeting Mr. Sheth indicated that suites would not cost more but Ms. Sexton indicated in her presentation that they do, which is it?

Mr. Sheth advised they are about \$10.00 more normally, but a lot of the suites you give out as comp to attract more business. They are leaning towards the suites concept because it helps in getting business from the corporate side. He stated that the Comfort Inn required that 20% of the rooms be suites and requires a 20-year agreement and Holiday Inn requires 15% and a 10-year agreement.

Council Member Bannon indicated she deals in reality. The reality is that she feels the council has a fiduciary responsibility and by allowing the developer to choose which incentive program on the transient guest tax he wants we are not being responsible. If someone were to say to her “do you want 100% for 10-years, or do you only want it for 5-years” obviously she would pick the 10-years. It is the council’s job to make those choices and trying to get us on all on the same page on all of these items is going to be difficult. She is not hearing anything from anybody other than a hotel is a desire in the community, she has heard that from the community, but she has also heard they don’t want us to give away everything. She asked Ms. Sexton if it is stipulated in the resolution that regardless of whether this property is sold or not that the hotel level will remain the same as long as we are paying any incentives.

Ms. Sexton indicated it is, at the bottom of the first page.

Council Member Bannon clarified that it will remain that way whether this property is sold as long as we have incentives on it.

Ms. Sexton advised that would be in the agreement that would be negotiated. That goes back to the first night we talked about this when we talked about it being a 3-stage process for the council. The council approved first the Economic Development Boards recommendation of this one developer over the other two to do business with and we negotiated with him. This is the 2nd stage, to approve the intent to issue IRB’s and those stipulations about satisfactory negotiation of agreements are in this document and we need a decision on that now because we are going to spend a lot of money and the developer is going to spend a lot of money on lawyers writing up all of these agreements and going back and fourth so we need to know the councils intent for what you want to say in to tonight, then we write the agreements.

Council Member Bannon, anyway you put a pencil to this, we are looking at about \$75,000 per year for 10-years. That would be $\frac{3}{4}$ of a million dollars, or approximately $\frac{1}{4}$ of the project cost, that is pretty hefty. Personally she has always wanted to do tax abatements for 5-years, declining the whole way. She does not feel it is fair to the person owning the property to all of a sudden, in that 11th year they are getting hit with taxes, loss of transient guest tax, a number of issues. What she is trying to do is listen to what she has heard from the other council members and she is going to run a new one up the flag pole because this is what she thinks may be viable and a workable solution to all on the council. She suggested a tax abatement for 10-years and a transient guest tax until 70% occupancy is reached for two consecutive years or a grand total of 5 years. That 70% is a moving target. Not that Mr. Sheth would not turn over correct books, but you never know who your manager might be and we don’t need to get in the hotel business of having to look at their books all the time. This way they know what they are planning on and whether or not they will or won’t get the rebate money next year.

MOTION: Bannon moved to do 100% tax abatements for 10-years and a transient guest tax until 70% occupancy is reached for two consecutive years, or a grand total of 5-years. Seconded by Craig.

Council Member Warren pointed out that is not what our Economic Development Board has put forward, that has not been the gist of discussion we have to this point.

VOTE: Bannon yea, Staats nay, Arnold nay, Craig yea, Meidinger nay, Schwarz nay, Warren nay, 5 nay, 2 yea, 0 absent, motion failed.

MOTION: Warren moved to approve the resolution, leaving to Hotel Enterprises, Inc the option to determine the guest tax rebate scenario; option a: 100% rebate until they reach 2 consecutive years of 70% occupancy with a regular hotel, option b: if they go with the suites, the guest rebate for the 10-year period. That it be contingent upon the location that has been presented to the council that the applicant has a letter of intent for. The flag be one of the four flags listed in the proposal; Hampton, Comfort Inn, Holiday Inn or AmericInn. Seconded by Arnold.

Ms. Sexton asked if Mr. Warren intended that the transient guest tax rebate were to be as written in the staff report.

Council Member Warren stated that the staff report indicates an either/or on scenario 1, and he can't figure that out. Either it is a full rebate until they reach the 70% for 2-years and then it drops or it's for 5-years.

Ms. Sexton explained the 100% at 5-years is a protection for the city. It limits it so it wouldn't for the full 10-years at the full 6%.

Council Member Warren stated that is his motion.

Council Member Bannon stated that the Economic Development Board was not given these scenarios when they brought it to us so we are not approving or disapproving their recommendation, they recommended the hotel developer, they recommended tax abatements and guest tax rebate, but there were no dollar figures. She believes it is our duty, as council, to make decisions, not to say that is what Eco Devo recommended, because that is not what they recommended. She very strongly is against the 6% for 10-years; she thinks we need to come off that. There has not been any negotiation on this, we have said this is the developer and let's just give him everything and he has taken it, although you can't fault him for that. We need to have some control on this.

Council Member Schwarz agrees partially with Mr. Warrens' motion. He is hesitant to give the 6% for the entire 10-year period and the reason he says that is a point the city manager put out as far as what the uses of what that guest tax is used for in other communities. What he would like to see is scenario #1, part 2 that has 6% for 5 years and then declining after that. A scenario he would rather see is a declining after the 5th year and that money put into some sort of program to promote this community. With that the hotel benefits and everyone in the community benefits. He is a little reticent about giving the 6% for the entire 10-years and would like to see some sort of compromise there.

Council Member Warren stated that he thinks that what Mr. Schwarz just said is in the motion. If he understands the first scenario right and the way the motion went forward is that it will be a full rebate until they reach 70% for 2-years, but not past 5-years. Once they reach 5-years it is declining. He cannot with that scenario get the full rebate for the 10-year period under scenario #1 with a standard hotel. For clarification, it will be 6% until they reach 70% for two consecutive years, but in no case, once you hit the 5th year it declines and that is the motion that is before us now.

Ms. Sexton asked if Mr. Warren's motion is for either scenario.

Council Member Warren stated his personal preference is suites but he knows there are people that don't want suites. If we can get the suites, because of the additional cost and the additional risk involved with that, he would be willing to give the full 10% rebate on the suites, but if he cannot get that then we go with the other.

Mr. Sheth explained that the suite concept also drops the taxes if the hotel hits 70% occupancy. With a suite you have a better chance of hitting 70% faster because people are more attracted to the rooms. That does drop at 5-4-3-2-1, the only thing is if the suites never hit 70% occupancy he expects the city to help him, not just make him pay more and more money.

Ms. Sexton put the scenario from the power point back up on the screen.

Council Member Craig advised if he remembered right on the transient guest tax, when we first visited that and we authorized it and were going to use it for marketing of Derby, is this particular money earmarked for marketing only? It seems like it falls in the category that the project cannot use it for electrical bills or payroll, in other words it can't be used for anything other than what it was designed for which is economic development and the other has to do with operations and maintenance of the business. It is not subjected to being able to go into a general account and he would think it would be earmarked for something specific such as marketing Derby and the hotel.

Ms. Sexton advised that part of this proposal is that they would have a marketing director for this hotel. This money would go toward that type of expenditure and in many ways we would prefer that a private business pay for their own marketing, in this case through the rebate but we are helping with that versus using the same tax money and having staff do that effort. The idea of this is that the first few years of the hotel that they do their own with the same money and later that would revert back to the city as Mr. Schwarz said, more of a community marketing. Obviously some of the community marketing goes with the marketing of the hotel.

Council Member Craig asked how that was going to be accounted for.

Ms. Sexton advised we could put that in the agreement that it be specifically used that way, that's not a detail that has been hammered out but if it's a concern we can do that.

Council Member Craig stated that he still believes that Derby deserves a quality hotel; they want one and the need there. There is some payback to Derby other than just collateral taxes they get

from business and he is all for that. In the case of letting the developer decide what he wants is going a little bit too far for him. He would support Mrs. Bannon in the 5% at the end of 5-years. He does not believe in either case that it should go beyond 5-years and it is pretty conclusive that Derby will benefit from a source of revenue that it doesn't have even though it's for economic development. We would be able to decide how we want to use it rather than the marketing director of the hotel deciding how he wants to use it.

Ms. Sexton went over the scenarios with the council again. Scenario #1 is for the hotel without suites and is the simplest one to understand. If it reaches 70% occupancy for 2 years then the rebate would start reducing down, or 100% for 5 years. Scenario 1(b) says that after 5years if they still are not at 70% it will start going down anyway. The indication is that the developer prefers suites and we prefer suites as well. The motion says that Mr. Sheth would be able to decide on the suites and the rebate would be 100% until the 70% occupancy is achieved for two consecutive years and then it would start reducing 1% for a maximum of 10-years. The 2(b) option is 100% abatement for 10-years, it is a worse case scenario and it is possible and we wanted to show it is possible. Obviously everyone would like to cut that off at any year before that but Mr. Sheth told us that these are the two options that he can make work financially and still provide the higher cost of building the suites and the operational cost of having the suites there. The motion includes all of this, scenario 1 or 2, which ever comes out to be the best financially.

Council Member Craig asked Mr. Sheth if he had narrowed it down to two choices, Comfort Inn and Holiday Inn.

Mr. Sheth advised that was correct right now.

Council Member Craig clarified that the others in the mid-scale list were out.

Mr. Sheth stated he did not know where AmericInn came from, he never considered that one.

Council Member Craig wants to make sure Mr. Sheth has narrowed it down to two flags and that's what we are dealing with tonight is two flags.

Mr. Sheth agreed.

Council Member Craig indicated it is his understanding that the letter of intent that Mr. Sheth has for the property, he has to deal with those property owners on the flag as well, is that correct?

Mr. Sheth advised that was correct, they are already aware he is was looking at Comfort Inn, Holiday Inn or Hampton Inn and they agreed with all three.

Council Member Warren asked Mr. Schwarz what the difference is between regular and suites; they look the same to him.

Council Member Schwarz advised there is an investment decision that has to be made, but as a compromise one of the things he could favor is a full 6% for 5-years for a regular hotel and

reaching the 70%, that criteria on both of these scenarios. On one that includes suites, do 6% for the first 5-years and then decline after that, still tied to the 70% scenario.

Mr. Sheth explained that once the hotel reaches 70%, whether it's a suites or not, even in the first 2 years, it drops the 6-5-4-3-2-1.

Council Member Schwarz agreed, but under this scenario, assuming the 70% level isn't reached until the 5th or 6th year it's a guaranteed 6% for the first 5-years and then declining after that.

Mr. Sheth agreed, on the first one, 1(a) and 1(b) with the simple hotel.

Council Member Schwarz agreed he is really in favor of this partnership with the city. A lot of people are interested in us going out and really promoting this city. One of the scenario's he looked at, on a regular, non-suite hotel, still contingent on the 70% doing the 5-year declining basis, but then on scenario b if it's a suite we'll go with the 6% for the first 6-years and then declining after that. He further explained the scenario; under a regular hotel with no suites it would be 6% for the first 5-years, nothing after that contingent on the 70%. On the suites we would go under scenario 1(b).

Ms. Sexton reminded the council there is a motion on floor. She is not sure if the council is thinking about changing that motion or whether or not a 5-minute recess is warranted or if the council is going to vote on the motion.

Mayor Avello stated he wanted to put Mr. Warren's motion up for a vote and go from there. We could be here all night long and he suggests if Mr. Warren's motion fails he doesn't think we are going to come to a solution tonight and he would call for a special meeting.

Council Member Warren indicated they would come to a decision tonight.

Ms. Sexton suggested a recess if the council needed a little time to get comfortable with the motion.

Council Member Warren stated he thought they were close and would be willing to take a 10-minute break to clarify. He thinks there is some confusion among the council and thinks they need to clarify what they are doing. He indicated they would make a decision tonight.

The council recessed at 8:25 and returned at 8:35 p.m.

Council Member Warren withdrew his motion.

Council Member Arnold withdrew his second.

Council Member Warren indicated they would be removing incentives for a regular hotel and would only be offering incentives for a hotel that includes suites.

MOTION: Warren moved to approve the resolution with scenario #2, the hotels in consideration being Hampton Inn, Comfort Inn and Suites and Holiday Inn

Express and Suites. The location of the hotel be the one indicated in the proposal, the tax abatements for 10-years. The guest tax will reduce upon 2-years of 70% occupancy, and then reduce 1% per year after that. Seconded by Arnold.

AMENDED MOTION: Craig moved to approve the resolution with scenario #2, the hotels in consideration being Hampton Inn, Comfort Inn and Suites and Holiday Inn Express and Suites. The location of the hotel to be the one indicated in the proposal, the tax abatements for 10-years. The guest tax will reduce upon 2-years of 70% occupancy or 5-years therefore declining at 1% for remainder of 5-years. Seconded by Bannon.

Ms. Sexton clarified the vote is for the amendment to change the transient guest tax rebate, different from what it is on screen. It is a new proposal to be 5-years then declining.

Council Member Craig stated the first motion had 70% for 2-years consecutive, all he did was amend it to say that can happen, or at the end of 5-years decreasing 1% per year. Just like it was in scenario #1.

VOTE ON AMENDED MOTION: Staats nay, Arnold nay, Craig yea, Meidinger yea, Warren nay, Schwarz nay, Bannon yea. Vote 3 yea, 4 nay, 0 absent, motion failed.

Ms. Sexton reread the 1st motion, to approve the resolution of intent to issue IRB's for scenario #2 suites with tax rebate and tax abatement listed in staff report, 100% property tax for 10-years plus the guest tax rebate of 100% until 70% occupancy reached for 2 consecutive years, then going down 1% each year. It is the original recommendation in the report. That would also be limited to this one location and the three franchises noted. If any of that changes the developer has to come back to the city for a new approval.

VOTE ON ORIGINAL MOTION: Arnold yea, Craig nay, Meidinger nay, Warren yea, Schwarz yea, Bannon nay, Staats yea. 4 yea, 3 nay, 0 absent, motion carried.

Mayor Avello requested that Ms. Sexton clarify what was voted on tonight so the whole city will understand it.

Ms. Sexton explained this is step two of three steps. What the council has authorized tonight is to execute the intent to issue IRB's. What that means is our attorney, Joe Norton will write up the IRB documents at present them, we hope, at the first council meeting in January. We will also be working with Mr. Sheth and Mr. Norton to write up the transient guest tax agreement and all the particulars that we have talked about tonight. What the council has done tonight is authorize Mr. Sheth to go ahead and execute agreements with the franchise, pay his upfront fees for that

and start paying his engineers and get a contract for the land. There is a lot of work to be done to make this a reality but the steps the council has taken have been what he needed to proceed.

**MODIFICATIONS TO
TALL TREE ADDITION
FINAL PLAT**

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

Background:

- The Final Plat of Tall Tree Addition was originally approved by the Derby Planning Commission on April 19, 2007.
- The City Council also approved the Final Plat on July 24, 2007, but with the stipulation that Tall Tree Road/Walnut Creek/Birchwood east of the future apartment entrances be designated a local street in lieu of a collector.
- The original Final Plat indicated 70 feet of street right-of-way which exceeds the standard 60 feet required for a local street.
- The developer desires to modify the plat to the standard 60 foot street right-of-way and incorporated the additional 10' into the adjacent lots.

Financial Considerations:

- No impact on City finances, infrastructure costs, etc.
- Larger lots may be more marketable by the developer.

Legal Considerations:

- The City Attorney requested that the plat modifications be reviewed by both the Planning Commission and the City Council. The Planning Commission approved this modification by a 9-0 vote on September 20, 2007.

Policy Considerations:

- All plat requirements established by the Planning Commission have been met and already approved by the City Council.

MOTION: Bannan moved to approve the modifications to street right-of-way on Final Plat of Tall Tree Addition. Staats seconded.

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

**RESOLUTIONS TO
SERVE TALL TREE
ADDITION**

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

Background:

- Tall Tree Addition is located east of Rock Road on Tall Tree Road, east of the Derby Marketplace 2nd Addition.
- The plat was approved on July 24, 2007, along with the petitions for sanitary sewers, water lines, storm water sewers and sanitary sewer pump station improvements.
- The paving petitions have now been prepared and submitted, based on the Council's previous action to designate a portion of Tall Tree/Walnut Creek/Birchwood as a local street in lieu of the platted collector.
- Gilmore & Bell has now prepared the corresponding resolutions for Council consideration.

Financial Considerations:

- Funds for the construction work will be included in the 2007-2 Temporary Note issue.
- Costs for the sanitary sewer, water, storm water sewer and pump station improvements are approximately \$1,267,000 and will be paid 100% by the benefit district and none by the City-at-Large. Costs for the street improvements totaling an additional \$846,000 will be paid 90.4% by the benefit district and 9.6% by the City-at-Large for Phase I, and 93.3% by the benefit district and 6.7% by the City-at-Large for Phase II. The total City contribution is estimated at \$69,088.
- Special Assessments will be spread against the benefit district properties over a 15-year period.

Legal Considerations:

- These are valid petitions in accordance with Section 126a 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. 61-2007

STORM WATER SEWER IMPROVEMENTS-PHASE 1/TALL TREE ADDITION.

RESOLUTION NO. 62-2007

WATER IMPROVEMENTS-PHASE 1/TALL TREE ADDITION.

RESOLUTION NO. 63-2007

WATER IMPROVEMENTS-PHASE 1/TALL TREE ADDITION.

RESOLUTION NO. 64-2007

PUMP STATION IMPROVEMENTS/TALL TREE ADDITION.

RESOLUTION NO. 65-2007

STREET IMPROVEMENTS-PHASE 2/TALL TREE ADDITION.

RESOLUTION NO. 66-2007

STREET IMPROVEMENTS-PHASE 1/TALL TREE ADDITION.

RESOLUTION NO. 67-2007

SANITARY SEWER IMPROVEMENTS-PHASE 2/TALL TREE ADDITION.

RESOLUTION NO. 68-2007

STORM WATER SEWER IMPROVEMENTS-PHASE 2/TALL TREE ADDITION.

DISCUSSION:

Council Member Craig asked if there was a map of this area.

Mr. Brown explained it is the same subdivision that we just talked about. It is east of the Target location, north of Amber Ridge.

MOTION: Craig moved to approve the resolutions for sanitary sewers, water lines, street paving, storm water sewers and sanitary sewer pump station improvements to serve Tall Tree Addition. Schwarz seconded.

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

**PROPOSED ORDINANCE
AMENDING MUNICIPAL
CODE REGULATING
ENVIRONMENTAL
HEALTH AND
NUISANCES**

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

Background:

- The City of Derby has always prided itself as a well-kept attractive city.
- Proper lawn and property maintenance is necessary to maintain property values.
- Section 8.08 of the Municipal Code addresses the issues associated with environmental health, such as waste storage, bulky waste, nuisances, abandoned and inoperable vehicles, tall grass and weeds, etc.
- Over the past several months, Community Development personnel, specifically those involved with code enforcement, have been reviewing our codes for possible updates and modifications.
- The extremely wet weather this past Spring resulted in an excessive number of tall grass and weed violations, difficulties working with our contractors to abate in a timely manner, which highlighted the need for amendments.

Proposed Amendments:

- Provide for exceptions to the Ordinance. It is proposed that the following areas be allowed to have vegetative growth in excess of 10 inches (Section 8.08.120):
 - a) Parcels used for agriculture
 - b) Golf courses
 - c) Riparian buffer
 - d) Wildlife refuge
- Repeal Section 8.08.130. Presently, the code requires that adjacent property owners trim trees over roadways and sidewalks. This may jeopardize the safety of our residents, and such work is more suited for our Public Works Department.
- Revise timeframe for owner abatement. Presently, the code requires “that the owner, occupant or agent in charge of the property is ordered to abate such violation within ten days of the mailing of such notice.” The proposal is to reduce the abatement deadline to five days.
- Revise provisions for hearing. The existing code allows the property owner to have a “protest hearing” with the Code Enforcement officer. It does not make sense to have a hearing with the same staff person who has written the original citation. It is proposed that the hearing be conducted by the Director of Community Development or his designee.
- Clarify Abatement Process. Based on the existing format of this Chapter of the Municipal Code, it appears that the abatement procedure only pertains to the “weeds or other vegetation nuisances” section, when in fact the abatement process applies to all sections of Chapter 8.08.

Financial Considerations:

- None

Legal Considerations:

- The Council has authority to amend Municipal Code.
- The proposed amendments will be valid upon publication of the Ordinance in the official City newspaper.

Policy Considerations:

- To date in 2007, staff has initiated 574 environmental health cases (combination of tall grass and weeds & bulky waste). Approximately 98% of the cases are voluntarily abated by the property owner. (Of the 222 cases in August, only 4 areas had to be mowed by the City’s contractor.)
- The proposed amendments to Chapter 8.08 are the first of several code amendments that the Council will consider in the near future. Future amendments include fencing, signs, building codes, and minimum housing standards.
- The Ordinance Review Advisory Board unanimously approved the recommended amendments on September 18, 2007.

ORDINANCE NO. 1903

AN ORDINANCE AMENDING SECTIONS 8.04.010 AND 8.08.120 OF THE DERBY MUNICIPAL CODE, PERTAINING TO CONDITIONS AFFECTING THE ENVIRONMENT OF THE COMMUNITY; ADDING THERETO NEW SECTION 8.08.120, PERTAINING TO ABATEMENT OF VIOLATIONS OF CHAPTER 8.08 OF SUCH CODE, AND REPEALING ORIGINAL SECTIONS 8.04.010, 8.08.120 AND 8.08.130 OF SUCH CODE.

DISCUSSION:

Council Member Craig advised he hoped there could be some interdepartmental communication. He is very interested in a community policing policy and requested cooperation between code enforcement and the police department. Regarding section providing exceptions and the golf course, he asked if the large area adjacent to the golf course along Meadowlark is going to be allowed to grow.

Mr. Brown explained the attempt is to exempt those areas that the golf course people would consider the “rough” of the golf course.

Council Member Craig clarified that the “rough” would be acceptable but growth all the way down to 71st Street would not be acceptable.

Council Member Meidinger pointed out that what isn’t the golf course is owned by the Lusk Company isn’t it?

Mr. Brown advised that was correct.

Council Member Meidinger asked if property that is brought into the city comes in as “R-1”, and if so can it still be used for agriculture?

Mr. Brown advised it could. Some of the properties that are zoned B-2, B-3, B-5, etc., also can be used for agriculture, it is an acceptable use in our zoning ordinance.

Council Member Meidinger asked where the wildlife refuges were located and who designates those?

Mr. Brown explained they are properties in the south end of town that were designated and deeded to the Kansas Department of Wildlife and Parks as part of the interceptor sewer project around 1990. There are some that by law we can’t touch so we are exempting those from the ordinance.

Council Member Warren pointed out there is some land just to the east of Derby Hills Elementary that is kind of a nature reserve.

Mr. Brown advised that is called the “Charlie Hubbard Environmental Laboratory” and has been designated by the school as an environmental outdoor classroom. It is not designated by Wildlife and Parks at the state level as a refuge.

Council Member Warren asked if that would qualify for an exemption or are we going to have to go out and mow it.

Mr. Brown stated that in his opinion he would exempt that.

Council Member Warren asked what the ordinance says.

Mr. Brown advised it falls under another exemption since it is next to the creek.

Council Member Warren indicated he appreciates the efforts to do the things we need to do to keep our city clean and looking good. He has a real nervous spot for changing the 10 days down to 5 days. He could be on vacation for 2 weeks, get a notice, and if the guy that is doing the mowing isn't far behind and gets the notice he could run out and mow the yard and it has been all of 7 days that this has come up and he hasn't even had a chance to open his mail yet. Hopefully we are not so desperate for days that we can't allow a 10-day notification period before that would come through. There are too many scenarios where 5 days would be very short. It's not going to get that much longer in 5 days; he would hope that we would have enough grace, even for some of our messy citizens, to allow them that extra time period. He doesn't want it to go for weeks or months, but the difference between 5 days and 10 days is not a lot for us but it could be huge to one of our citizens. He asked the council consider leaving that 10 day period as it stands.

Council Member Bannon pointed out that we have those in the community that routinely, every year, year in and year out, put it right to the limit. She thinks we need to rely on staff to use good judgment and she believes the 5 days is necessary. She asked if the 5 days is business days or just 5 days.

Mr. Brown advised it is calendar days.

MOTION: Bannon moved to approve Ordinance amending Chapters 8.04 and 8.08 of the Municipal Code. Staats seconded.

Council Member Craig stated that he empathizes with Mr. Warren's comments but knowing there is a piece of property that we have been working very hard at to get their attention and we have been up there 4 times now. Mrs. Bannon is right on target, repeat offenders seem to be the key to this and we can use good judgment. First timers will probably get the benefit of the doubt but some of the repeat ones he doesn't think will get the benefit of the doubt.

Council Member Warren advised the concern he has is that either we write rules that apply to everybody or they don't. He has a real problem deciding that we are going to let staff decide who the good guy is. Either we apply the laws and they apply to everybody or they don't apply to anybody. He learned that a long time ago from Vern Miller, the law is the law and either you apply it or you don't.

Council Member Meidinger commented that is the message he has been trying to get across to council and staff for several years, do it on a consistent basis, yet nobody ever said he was right. They went ahead and let some people consistently abuse this ordinance. He agrees they should be on a consistent and fair basis and he hopes that is what this will do and he hopes the code enforcement officer will do due diligence. He agrees with Mr. Craig when we talk about community policing. If a police officer or someone goes by a lot that needs to be taken care of they should report that.

Council Member Staats agreed with Mrs. Bannon that it is probably the repeat offenders that are causing this problem. It is the people that own vacant lots that don't take care of them. If

you live next door to one of these problem areas 5 days is a long time to have grass that is over 10 inches. Once it gets over 10 inches they have had quite a bit of time, a normal yard that somebody maintains is not going to grow to 10 inches. He does not think 5 days is a problem.

Council Member Warren pointed out that with false fire alarms the fine goes up for repeat offenders. If our action is aimed at repeat offenders then we write our ordinance to deal with repeat offenders. We either increase the fines or we shorten the notification time but it sounds like we want to make separate rules for repeat offenders, which is fine. If they are not going to do their part then we have the right to get tougher on them.

Mr. Brown explained that they worked very hard trying to be consistent and sometimes it's hard to do. Our guys are softhearted folks; they call the offenders and sometimes get talked into some situations where there are some circumstances. He preaches to them often that they have to file their paperwork and get that citation written regardless of what is said on the telephone. Whether it's a repeat offender or a first time offender those notices are to go out in accordance with our policies. If those people that get a violation and have been on vacation, if they are sick and in the hospital, we do have the right to use a little common sense and work with folks the best we can and we do but we try to be consistent.

VOTE: Craig yea, Meidinger yea Warren nay, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 6 yea, 1 nay, 0 absent, motion carried.

EASEMENT MACHINE PURCHASE

Dan Squires, City Engineer presented the staff report.

Background:

- An easement machine extends the sewer cleaning capabilities of the City's pressure cleaning truck to back yard easements and other locations that would otherwise be inaccessible.
- In 2004 the City's easement machine was irreparably damaged. The City received an insurance settlement of \$15,800 at that time.
- The City issued a request for proposals for a new easement machine, the following proposals were received:

<u>Vendor</u>	<u>Machine</u>	<u>Price</u>
Key Equipment	SECA JAJ-600R	\$22,896
Utility Maintenance	3T Prowler	\$23,000

Financial Considerations:

- The revised 2007 budget includes \$10,200 for this project to be used in conjunction with the \$15,800 insurance settlement previously received.

Legal Considerations:

- The City followed all applicable procedures in soliciting and evaluating proposals.

MOTION: Arnold moved to approve the expenditure of \$22,896 for the purchase of a SECA JAJ-600R easement machine from Key Equipment and Supply Company. Staats seconded.

Council Member Bannon asked what we have been doing since 2004.

Mr. Squires advised we have a 1978 model. The one we lost in 2004 was purchased in 2001 but we retained the 1978 model. It is an old chain driven model and not very reliable, we have had to do numerous repairs. This is a piece of equipment that we also use in emergency situations when we have line blockages and ugly things are happening in people's basements and we are really more comfortable having something a lot more reliable.

Council Member Craig asked if there was any difference between the two pieces of equipment in the bids.

Mr. Squires advised they both met the minimum specifications put out; we provided very specific criteria and would have been happy with either piece of equipment.

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

**BIDS FOR THE OAKS
ADDITION, PHASE 7A –
SANITARY SEWER &
WATER LINE
IMPROVEMENTS**

Dan Squires, City Engineer presented the staff report.

Background:

- A bid opening for the construction of Sanitary Sewer and Water Line Improvements to serve The Oaks Addition, Phase 7A was conducted on Tuesday, October 2, 2007 at 2:00 p.m.
- Requests for quotations were submitted to contractors after advertisement in the appropriate publications.
- The following bids were received by the City Engineer's office and witnessed by the City Clerk:

Dondlinger Construction	\$ 307,267.00
Utility Contractors	295,178.00
Nowak Construction	287,532.36
McCullough Excavating	278,700.00
Mies Construction	258,270.00

Financial Considerations:

- Funds for the construction work will be included in the 2007-2 temporary note issue.
- Costs for the Sanitary Sewer and Water Line Improvements will be paid 100% by the benefit district and none by the City-at-Large.
- Special Assessments will be spread against the benefit district properties over a 15-year period.

Legal Considerations:

- The City has followed all statutory procedures in securing financing and in planning the project.

Policy Considerations:

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

MOTION: Staats moved to approve the bid of Mies Construction in the total amount of \$258,270 for the construction of The Oaks Addition, Phase 7A Sanitary Sewer and Water Line Improvements. Arnold seconded.

Council Member Craig asked for a general idea in The Oaks where this is located.

Mr. Squires explained it is just to the east side of the roundabout off of Tall Tree and south of Tall Tree road. It is being marketed as Waters Edge.

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

**DECLARATION OF
SURPLUS CITY-OWNED
PROPERTY FOR
AUCTION**

Doug Chambers, Deputy Chief of Police presented the staff report.

Background:

- From time to time, the City of Derby holds a public auction to dispose of abandoned vehicles and other personal property, and to dispose of city-owned property that is no longer of useful service.
- The Police Department is working to hold such a public auction on or about December 1, 2007. The actual date will be set pending required publications and auctioneer availability.

Financial Considerations:

- City-owned personal property is sold at public auction to the highest bidder for cash.
- Proceeds from the sale of this property are credited to the general fund.
- Proceeds from the sale of impounded vehicles are used to pay towing and advertising fees.
- By state statute, any remaining proceeds from the sale of impounded vehicles are credited to street maintenance and improvements.

Legal Considerations:

- Section 3.12.010(A) of the Derby Municipal Code requires the governing body to declare that certain property is no longer of any use or service to the city and that in order to prevent further depreciation or maintenance, the property should be sold.
- Sale will take place at public auction.

Policy Considerations:

- Directors have approved the list of surplus property submitted by their department or division. The list of surplus property has been reviewed by the Director of Finance.

DISCUSSION:

Council Member Bannon asked what the 2003 Crown Vic was.

Mr. Chambers explained it has in the neighborhood of 75,000 miles on it. About 4-5 months ago we discovered it had a problem where the piston had separated and it would take about \$4,500 to repair it and was more than it is worth.

MOTION: Bannon moved to declare that certain property, per the itemized list, is no longer of any use or service to the city and authorize its sale at public auction. Craig seconded.

Council Member Craig asked if that vehicle has any value if it costs \$4,300 to repair.

Mr. Chambers stated it would have some value; it tends to vary depending on who attends the auction obviously. For us, for a trade in value and we are very close to replacing that vehicle anyway we just swapped it with another vehicle we were going to replace and the auction seemed the best alternative.

Council Member Staats asked who performed the auction.

Mr. Chambers advised they hire a professional auctioneer. It is done through a proposal process. We have just recently received those submissions and there were two auctioneers that sent in proposals and we are looking at those at this point in time to see which one is the best proposal.

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

**INITIATION OF
CODIFICATION
PROCESS**

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

Background:

- State law authorizes publication of ordinances of general application as a municipal code.
- Derby updates its City code periodically, and the last codification was November 1, 2006.
- It is necessary to update the City Code to include ordinances passed since that time.
- Staff proposes to use the services of Lexis-Nexis of Charlottesville, VA, the City's current code publisher.

Financial Considerations:

- Recodification costs, which are based on the number of pages to be added or amended, are estimated to be approximately \$4,500.
- Improved utility of the new code results in time saved for both City staff and the public.

Legal Considerations:

- The City's code should be kept current to provide easy access to all ordinances.
- Adoption of an updated City Code must comply with K.S.A. 12-3014 and 3015.
- Upon completion of the supplement, the Council will re-adopt the entire City Code, as supplemented.

Policy Considerations:

- The new city code will be easier to use for both staff and the public.

ORDINANCE NO. 1904

AN ORDINANCE AUTHORIZING AND DIRECTING THE SUPPLEMENTATION AND RECODIFICATION OF THE DERBY MUNICIPAL CODE.

DISCUSSION:

Council Member Craig asked if there were any way to make this happen automatically without having to come before the council. He understands it's an ordinance but it happens every year and it seems to be a normal part of our business, is there any way to let it happen without having to bring it to the council.

Phil Alexander, City Attorney advised the short answer to that is "no". Statutes require this process in order to update our code annually.

MOTION: Craig moved to adopt an ordinance authorizing and directing the supplementation and recodification of the Derby Municipal Code. Arnold seconded.

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

**PAY MATRIX
ADJUSTMENT FOR
CITY PLANNER**

Kathy Sexton, City Manager presented the staff report.

Background:

- At the September 26, 2006 City Council meeting, the City Council approved a new pay plan that provided market competitive pay ranges for all City positions.
- The City Planner position is currently vacant, which has created an opportunity to restructure the duties for this position as well as reorganizing the Community Development Department.
- The City Planner position will remain responsible for all City planning and zoning activities, and will take on the additional responsibilities for supervising the Wastewater division and Code Enforcement.
- In order to ensure that the compensation for the City Planner position is appropriate given the changes in duties, a new salary survey was conducted for this position.
- The salary survey indicated that an adjustment in the pay plan for this position was appropriate.
- Below is the current pay matrix for the City Planner position (\$44,948-\$67,454), as well as the proposed pay matrix (\$53,643-\$80,454), which incorporates the salary survey information.

Current 2007 Pay Matrix for City Planner

Position	Department	Current 2007 Min	Current 2007 Max
City Planner	Community Development	\$21.61	\$32.43

Proposed 2007 Pay Matrix for City Planner

Position	Department	Revised 2007 Min	Revised 2007 Max
City Planner	Community Development	\$25.79	\$38.68

Financial Considerations:

- The adjustments to the minimum and maximum ranges will result in the ability to hire a City Planner in at a higher wage. The exact financial impact is unknown as the compensation provided will be based on the experience of the person hired to fill this position.

Legal Considerations:

- Pursuant to Charter Ordinance No. 38, responsibility for setting salary scales for City employees rests with the City Council.
- The City Council may establish those pay ranges for specific positions or classes of positions which, in its judgment and after consultation with the City Manager, will enable the City to attract and retain qualified employees.

Policy Considerations:

- The need for an organization-wide pay study can be avoided in the future if the matrix continues to be updated as needs arise.

MOTION: Arnold moved to adopt the new matrix as presented. Schwarz seconded.

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

**UPDATE COUNCIL
PRIORITIES**

COUNCIL MINUTES

-29-

10/09/07

Kathy Sexton, City Manager presented the staff report.

Background:

- On June 26, 2007, the Council adopted six strategic priorities and added them to the top of the priority list, indicating their level of importance to the Council.
- Today, an updated priority list is provided for Council consideration. No new projects have been added to the list since June, and five projects have been completed since then.

Financial Considerations:

- None at this time. Implementation of the priorities will necessarily involve staff time and various expenses that will be determined at a future date and budgeted for as appropriate.

Legal Considerations:

- None

Policy Considerations:

- It is important for a governing body to set for strategic priorities to lead the community and guide staff efforts. Efforts to develop a new mission statement for the City are ongoing and will be presented for Council consideration at a future meeting.

DISCUSSION:

Council Member Bannon asked about #17, notification of future special assessments, that is an issue that this council and prior councils have had numerous problems with and looking for some solutions. She pointed out it's not in italics yet, indicating we are not yet working on it. What do we need to do to move it up the list or is it on a first come, first serve?

Ms. Sexton advised it is kind of like the one below it, recycling and trash franchising. They are going to take significant staff time and we have got to get some of the projects off people's plates. You don't want to start something and not have time to really devote to it and get it completed. There are no easy answers to that one and that is why it is going to take time for several people. The council can move it to a higher priority; you could take something else off the list, that would help us. Some of these are in process already and that is part of the strategy right now.

Council Member Bannon asked about #20, she was hopeful that we could do that sometime over the winter so that come spring we could have something in place. Is that viable?

Ms. Sexton advised it might be, it's a matter of where it's at and priority #20 is not something that we are working on yet, nor does she have a plan to assign it in the next couple of months because of all the other things that are more important. If the council decides that one is more important we can defiantly move that up the list. Some people want that but she hasn't had a sense from the majority of the council that that should be moved up. Now is the time to do it.

Council Member Bannon stated she believes there are people in the community that felt that was in process but because we were going into the off time for summer activities the push wasn't there. She would hate to see that creep up on us next spring.

Council Member Meidinger suggested we take #23, wireless Derby off the list. He has read several articles about the wireless process and it is a very costly event and many cities are just quitting that program. He does not think that is a priority staff would pursue based on the cost.

Council Member Craig stated that #23 is a reality at the DRC at this time, they have gone wireless.

Ms. Sexton advised that is great, but it's not the same thing.

Council Member Craig commented regarding item #20. He advised there are some organizations that are concerned about that even being on our priority list because it is somewhat opposed to some of the initiatives going on in our city as far as underage drinking and aspects of that source. He suggested that be considered pretty closely as far as how we are going to address that particular item because it will become a divisive subject as we approach it.

Mayor Avello asked about the transient guest tax, would the aquatic park be a marketing tool for Derby and could that tax be used for that?

Ms. Sexton advised you couldn't use it for capital improvements to the water park but you could use it for marketing. She went on to clarify that there was a suggestion to remove one item from the list that will need to be included in the motion if the council wants it removed.

MOTION: Schwarz moved to approve the Council's new list of priorities. Craig seconded.

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

FURTHER DISCUSSION:

Council Member Craig asked for an explanation of #2, he is not sure he understands why it is at #2. It seems like something nice to have but staff time is valuable.

Ms. Sexton explained that essentially what you do is work in various programs in the community and because we are working with several things with the school system; the art project and the new youth advisory council and those kinds of things. Those are the kinds of things you have to have figured out, designed, in place and show they are working before you can even apply for that all American City award. That is why we say it's in process because all those new initiatives and innovative things happening in the community are the things you have to not only do, but document and show that they are working so you can be eligible for the award.

GENERAL DISCUSSION:

Mayor Avello asked if there were any news on the Tokyo Steakhouse.

Ms. Sexton advised she was told today that they were opening this evening.

Mayor Avello stated we have had a big week with Kohl's opening, WSU's announcement and what Mr. Arnold reported about last week regarding retiring in the City of Derby. He advised there will be an article in the Wichita Eagle tomorrow about retiring in Derby.

Ms. Sexton also mentioned the donut shop, it opened last Tuesday and is doing very well.

ADJOURNMENT

MOTION: Meidinger moved to adjourn at 9:30 p.m. Warren seconded.

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

Dion P. Avello, Mayor

ATTEST:

Jean Epperson, City Clerk