

**APPROVED
REGULAR COUNCIL MEETING
September 9, 2008
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
Cheryl Bannon
Mark Staats

COUNCIL MEMBERS ABSENT:

Ward IV

George Arnold

Flag salute was led by Council Member Cheryl Bannon.

The invocation was led by Council Member Jim Craig.

**CONSIDERATION OF
MINUTES**

Minutes of the August 26, 2008, Regular Council Meeting.

MOTION: Bannon moved to approve minutes of August 26, 2008 Regular Council Meeting. Nun seconded.

VOTE: Motion carried 5-0, Arnold absent.

PUBLIC FORUM

Greg Sanders advised he believes the council and the city should be accountable to the people of Derby. Based on a recent communication he now questions the integrity and intent of some who may use their position improperly under the guise of representing the city. He comes before the council tonight to discuss a letter from Charlie Brown to the residents affected by the construction project along Buckner Street. In this letter Mr. Brown sets forward comments that the residents may find informative. Ms. Sexton also stated at the last city council meeting that Mr. Brown's letter was intended to correct inaccuracies in information that his father, Mr. Syd Sanders presented to those same people. He believes Ms. Sexton's perception that the letter was intended to correct inaccuracies is the same perception that the residents that received it would have because Mr. Brown selected no less than nine quotes from Mr. Sander's letter and then followed with his own comments. Also because Mr. Brown did so on city letterhead it's reasonable to assume that it also represents not only his own opinion, but that of the city as well. In the interest of fairness to all concerned he would like to offer his opinion and some information the council may also find informative. In fairness to Mr. Brown, at no point in the

letter that was written on city letterhead and mailed at taxpayers expense does he state the information offered is accurate nor complete nor intended to correct inaccuracies in Mr. Sanders original letter, however he believes that residents that received Mr. Brown's letter would certainly be left with that impression. If you look at the back three pages he asks you to pay special attention to item #9, it starts with a fundamental issue for him and was the basis for his first call of accountability. Mr. Brown takes issue with what Mr. Sanders thinks when he quotes Mr. Sanders in saying; "I think the city could care less about our safety comments". If, as Ms. Sexton stated at the last council meeting, this letter was intended to correct inaccuracies, on what possible authority should a letter representing our city government be allowed to publicly correct or ridicule a man's thoughts, his belief or the free expression thereof. If, however, this letter was not approved or otherwise sanctioned to represent the city then he calls upon the council to take immediate action. If this letter is no more than one person's editorial comments then set the record straight in the interest of accountability to the people. He said at the beginning of this statement he now believes we have reason to question the integrity and intent of a few within our city government and on review of the ten point rebuttal he thinks the council will agree and see how he reached that conclusion. When eight out of nine primary points brought forward in the correspondence to our residents on city letterhead is clearly questionable and others are at a minimum, misleading. For what possible reason would a person or persons employed by the city have to write such a letter? Maybe Ms. Sexton's perception of Mr. Brown's intent was mistaken, given that on close examination, Mr. Brown's letter did not correct the fundamental message then he can only conclude that it was truly intended for some other purpose. Maybe, just maybe it was a veiled attempt to ridicule or discredit Mr. Sanders or otherwise dissuade him from any future communication on the matter. If the city provides facts to our residents related to ongoing issues he thinks it should be done in a manner that is fair, accurate and as complete as possible. He does not think editorial comments should be presented as facts or published at taxpayer's expense and he is particularly offended to think the city would allow an attempt to discredit Mr. Sanders or make him the target of ridicule when the message he attempts to convey is fundamentally true. Despite the recent events his father still maintains a steadfast belief that good people can make honest mistakes, but when they do so they should stand up and apologize and do their best to correct the situation, his father certainly demonstrated that with his statement at the last council meeting and he thinks the city would be well served to follow his example and offer an apology at the very least. He would further ask the members of this council to fairly evaluate if they were given accurate and a complete basis for their original vote to approve the project. This is a second point that he believes the city is obligated to address as a matter of accountability. He doubts if the council was told that when the numbers were taken for traffic were gathered and the design standards applied that maintenance and construction on related roadways like Rock Road and K-15 could skew the numbers that you get on Buckner, at least for a period of time. He thinks it's only reasonable to ask the council to evaluate all information that has been previously provided by Mr. Brown given this letter's example of individual bias. He knows the council is doing their best to act in the public interest, but doesn't it make sense to simply put a counter on the street and see if the original numbers you based your vote on are truly valid? He thinks the people of Derby deserve to know.

Ben Snodderly, Mr. Sander's neighbor, noticed that a year ago the traffic picked up when Rock Road and K-15 were being done. We also have a problem of people not slowing down when they cross the intersection to 30 mph. In other words there is nothing above that stoplight to tell

them that below the stoplight is 30 mph. He thinks they should be given at least a 1/2 block warning of that fact, maybe it would slow them down so they are not trying to speed through the intersection to make the light. He has almost been run into a number of times by people when he was turning into his driveway because they are not looking at the brake lights ahead of them, they are looking above at the stoplight. When he bought his house there was not the traffic that there is now and that was five years ago. There is a lot of traffic there but even now you are working on Rock Road and funneling in on Buckner because there are two lanes shut down from Madison to James and they don't like to be slowed down. If we are a residential street, which as far as he is concerned we are because there are more residential there than there are businesses, why was he told that we were going to be made into light commercial property there? That information came from your engineer. He restated that he agrees with everything that Mr. Sanders said.

Veryl Crittenden, 1454 N. Buckner feels that this is leading to four-lane traffic, two lanes each direction from Meadowlark to K-15 because that is the only section of the Buckner/Oliver corridor that is not four-lane at the present time for anybody to use clear up to the north side of Wichita. His own personal opinion is that we are in the first stages of fixing that right now. He also agrees with what Mr. Sanders has said and he requests that all the council members and anyone in the City of Derby if they have not done so already travel that intersection and look at all the stakes that are in the front yards.

Loy Lombard first addressed the council on the 12th of August. At that time she brought to the attention of the council her concerns of safety with this intersection. She had asked for a circle driveway and barrier wall to be put up to protect her, her property and visitors. She understands in talking with our city engineer on the 29th that neither one of those two proposals were included in your offer. Over the weekend she visited with her 83 year old father who is a farmer and has been on a farm his entire life and when she told him this request had been denied he was able to see from his visit the safety issues and concerns and encouraged her to reapproach and ask that that would be reconsidered. She wants to say that there was an accident that ended up in her driveway in May of this year. She also had an instance where she was the third house from a residential corner in Wichita and at that time she had a semi tractor trailer come off the main arterial road, into her residential street, cross residential yards and strike her home. She believes she has valid reasons to be concerned. As far as the traffic counts that she can recall yes indeed, those traffic counts were up when the city was going through the reconstruction for Rock Road, she had a tremendous amount of traffic through there; dump trucks, construction trucks, flat beds bringing in equipment and taking dirt out. She does not think that the traffic count that we have is true and accurate. Once Rock Road did open we were able to notice an immediate reduction in the traffic volume, her home faces Buckner and she is at the intersection and can tell you without doubt that it did help a lot when Rock Road opened. She is surprised that this intersection, being in this section of the city and as established as it is, that there is nowhere else to build or to grow in any direction. Currently the direction of our city is going to the east; she does not understand why we are looking at making this particular section, the 900-1400 block of Buckner a four lane road. To her, that roadway is sufficiently large and could be resurfaced and striped to make it a three lane roadway with a continuous center turn lane. If that were to be the case the sidewalk could be put at the existing curb and it seems like it would be a much more resolvable situation. As far as the traffic she has noticed that Meadowlark changes to 30 mph at Dry Creek going west

and retains that 30 mph limit all the way to K-15, but Buckner is 40 mph and does not change to 30 mph until you have crossed Meadowlark proceeding south and that puts you into the 1400 block. Only at that point, with those both being arterial roads that is the only small section that is at 30 mph, the other three directions are at 40 mph. She doesn't know if being an arterial street has anything to do with it but if you consider those 900-1400 blocks of Buckner as arterial maybe we should repost those.

Kathy Sexton, City Manager stated there have been some issues raised and she will look into the matter. Mr. Sanders provided a packet and she and Mr. Brown will read that over and see if any other action needs to be taken. Regarding the speed limit issue, this is the first time she has heard of that so we will definitely take a look at the speed limit and see if there is anything that needs to be done. As far as the concern about a three lane versus a four lane, indeed everyone would be glad to hear, if they haven't heard yet, that is the intent for the road. One lane of traffic each direction on Buckner from K-15 to Meadowlark with a continuous left turn lane in the middle, so anyone needing to turn left has a safe place to sit until the one lane of traffic they are crossing has gone by. There will also be a fourth lane on the east side that is not a traffic lane but for parking. As you know we had several community meetings and open houses and that was the preferred choice of the residents as well as a good way to get traffic through and have some parking for the residences.

Council Member Meidinger advised he is a bit confused about exactly what we are doing on Buckner. He thought it was going to be four lanes, two lanes going each way, that was never the intent?

Ms. Sexton stated that probably what Mr. Meidinger is thinking about is back when we had those community meetings and the engineers came and showed the options, one option was the four lane and the other option was the three lane with one lane of parking.

Council Member Meidinger advised he would really like the city council to review this project. Buckner street south of Meadowlark wasn't designed to be a commercial street. He is not going to get into the discussion about an arterial street, a feeder street or as Xyz Street, he doesn't understand those terms, he simply knows that it's a residential street and it's a residential street because if you look at the intent of that street you are allowing people to back out on Buckner. North of Meadowlark there are no places to back out on Buckner so that tells him the intent, north on Buckner was for high traffic commercial. South Buckner was never intended that way and should not be changed in the middle of the stream. We have often talked about athletic events and you never change the rules in the middle of the game and that's exactly what we are doing to these people. If Buckner is designed as planned this will have a domino effect on Buckner going to the south. The next big issue we are going to have is James Street, that is going to be a nightmare so we are creating a problem in a residential area that he doesn't think we should do. He is not faulting KDOT or city engineers, they put together a plan but the question that really needs to be addressed is what is the advantage of Buckner being widened for a commercial venture? He is not an engineer but this is his guess, the traffic generated on Buckner comes from the Wichita plants and they come down Oliver and Buckner because they are too lazy to go to Rock Road and K-15. He sees no advantage to inviting those people to come down through Buckner south of Meadowlark. If they want to come that way they are more than

welcome of course, but they can make a turn to Buckner and go to K-15 or Rock Road. Those streets are designed for high volume traffic, there are several streets in Wichita that don't dead end that way but they are for four lane traffic. Woodlawn at Harry is an example, north of Harry it's four lanes and south it's two lanes, those enter residential areas and that is exactly what we are doing here. He doesn't think we are going to stop the traffic but he doesn't think we should encourage commercial traffic south of Meadowlark. He thinks we should design it to invite the traffic to turn to Rock Road or K-15. He didn't realize and perhaps he voted on it and can't remember it's probably a senior moment, but he didn't realize what we were doing to those residents as far as when a quality of life issue comes into effect. He understands that the easements are for streets but he doesn't understand when we start getting to the quality of life issues why we want to invite traffic to come down a residential street because it's all going to end up down at K-15 where the traffic should have been in the first place, but we are going to spend a ton of money south of Buckner and south of James and then be a major intersection at K-15 and Buckner, another major expense because if you funnel that traffic down there and invite people to come down it's going to be a problem. He is simply asking that we reassess this project, perhaps we could look at no commercial trucks. He wasn't aware there were turn lanes in there and he wasn't aware of the one lane traffic north and south, therefore he is not really sure what he understands. Going back to our mission statement, if we take the beautiful green space out of Buckner and turn it into a traffic way we have not lived up to our mission so he would like to have this revisited, how do we do that?

Council Member Craig stated he understands the situation going south 40 mph to the light and after the light you are supposed to be 30 mph. He asked Mr. Brown if it were true that if you have less than a 10 mph change you don't need a reduced speed ahead sign.

Mr. Brown advised it was not required.

Council Member Craig advised it would be at our discretion to put something up there advising of reduced speed before you get to that intersection. He has been caught unaware a couple of times with someone flying through there at 40 mph trying to beat the light. That particular speed going south on Buckner is not compatible with that intersection because its 30 mph the other directions, he thinks we need to look at that.

Mayor Avello advised Mr. Meidinger that he would sit down with Ms. Sexton tomorrow morning and review this and get back to the council on which direction we want to go. He also reminded everyone that he will not be opening his office hours until the first of October.

Council Member Bannon advised that at the last meeting she spoke about the Matt Engles concert and gave the wrong time and date, the correct time is September 28th from 5:00 p.m. to 7:00 p.m. at High Park.

Council Member Staats invited everyone out to the Wanted function that the Derby Community Foundation is having this Saturday, September 13th at 6:00 p.m. at Maddox Arena located on 83rd Street just past the river on the north side. It is a fundraiser for the Community Foundation that used to be held at the round barn but has outgrown that area so it was moved this

year. They will be serving a steak dinner and there will be a lot different activities going on. It is a good way to support Derby and a large portion of the ticket price is tax deductible.

Council Member Craig asked Ms. Sexton if we could have visuals of the intersection of Buckner and Meadowlark the way it is planned to be constructed so that people can see how many lanes are there and which ones are of concern the next time this comes before the council.

Mayor Avello stated he drives around the city quite a bit and he has a pet peeve, if you go to a fast food restaurant don't throw your bags on the street, don't throw sunflower seeds out the window, don't through cigarette butts out the window. It's a beautiful city and it makes it look not nice. If you buy something use the bag in your car to take it home and dispose of it.

PROCLAMATION

Mayor declared September 23, 2008 as Derby Bullying Prevention Awareness Day in the City of Derby.

Vicki Walton, Derby Community Coalition accepted the proclamation and advised they are sponsoring a number of events on September 23rd. She thanked all the children that came from the elementary schools to represent the anti-bullying training that they have received compliments of USD 260. Mr. Randy Wiler is the one who trained all of their teachers and staff in the schools. The event on September 23rd is designed to educate adults in our community so that we can help these fine young people if they have an issue outside of the school environment. The event will be held at the DRC and is called People Power. Pizza will be served and child care will be provided. During the day we will be working with parents and teachers and children in the morning and in the afternoon Mr. Wiler will be talking to the middle school students. Some of the kids will be keeping diaries of some of the bullying behaviors that they witness in their school and in our community and they will have actual factual scenarios to talk about. We really appreciate all of the kids coming out.

Ms. Sexton advised that in front of the council tonight is a revised assessment ordinance for the consent agenda item. Since the agenda was printed on Thursday afternoon two payments were received so the total dollar amount being assessed is \$3,124.51 against 14 properties. That will be the actual ordinance ready for approval on the consent agenda. In addition she suggested adding an item to the consent agenda to approve the use of city streets and public right of way to conduct the annual homecoming parade for Derby High School on September 19th. She suggested a motion be made to add this to the consent agenda.

OFF AGENDA ITEM

MOTION: Bannon moved to add off agenda item to Consent Agenda. Nun seconded.

VOTE: Motion carried 5-0, Arnold absent.

**ZONE CHANGE
REQUEST IN STONE
CREEK 2ND ADDITION
FOR LAKEPOINT
NURSING HOME**

COUNCIL MINUTES

-6-

9/9/08

Bud Newberry, City Planner presented the staff report.

Background:

- This site is located within the Derby city limits and is zoned PUD. The site is generally located on the north side of Patriot Avenue and east of Triple Creek Drive.
- This property was approved as a PUD by the Derby Planning Commission on May 18, 2000 and the City Council on June 20, 2000.
- The approved PUD was never constructed and the land remains vacant at this time.
- This proposed zone change is necessary to allow the owner to construct a new skilled nursing facility at this location.
- The “Notice of Public Hearing” was published in the *Derby Informer* on July 23, 2008, and notices were sent to all owners of property located within 200’ of the subject property inside the city limits and within 1,000’ outside the city limits. The official ownership list is on file at City Hall. The public hearing was conducted during the August 21 Planning Commission meeting with no public comments presented.
- The Planning Commission approved the zone change by a 10-0 vote.

Financial Considerations:

- Approval of the requested zone change will not result in any expenditures by the City.

Legal Considerations:

- All conditions precedent to consideration of this proposed zone change by the Council has been met.

Policy Considerations:

- No protest petitions were filed within the prescribed 14-day protest period.

ORDINANCE NO. 1953

AN ORDINANCE CHANGING THE ZONING DISTRICT CLASSIFICATION OF CERTAIN LANDS LOCATED IN THE CITY OF DERBY, KANSAS, AND AMENDING THE OFFICIAL ZONING MAP OR MAPS OF THE CITY UNDER THE AUTHORITY GRANTED BY THE ZONING REGULATIONS OF THE CITY.

MOTION: Craig moved to approve an ordinance for a Zone Change from PUD “Planned Unit Development” to I-1 “Institutional District” for Lot 1, Block A, Stone Creek 2nd Addition, based on Findings of Fact recommended by the Planning Commission. Staats seconded.

Council Member Meidinger asked how we change a PUD.

Mr. Newberry advised it is changed by changing the zoning. Any change to a PUD whether it be a small change or a large change has to go through a rezoning process.

Council Member Bannon advised that in reading the minutes it appears the ownership list might not have been correct the first time they received it so some of the homeowners might not have received notification. She assumes the notification has now been sent and they have had an open public hearing after that and Mr. Newberry has not received anything.

Mr. Newberry advised that was correct. The city requires a certified list of those property owners and in the past we have just kind of assumed it was correct. In this case they failed to notify the people outside of the city limits and we have changed our procedures in house to check those lists from now on and hopefully we won't have that situation again.

VOTE: Motion carried 5-0, Arnold absent.

**RESOLUTIONS FOR
PUBLIC
IMPROVEMENTS TO
SERVE THE OAKS 3RD
ADDITION**

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

Background:

- The Oaks Addition is located between Patriot and Meadowlark, on the west side of Rock Road.
- The Final Plat of The Oaks 3rd Addition was approved by the Council on June 24, 2008. The Oaks 3rd Addition is a replat of a portion of the original Oaks plat, converting 47 lots into 54 new lots, and is located southwest of the existing roundabout at Tall Tree and Triple Creek Drive.
- Along with the Final Plat, the Council also approved the petitions submitted by the developer for sanitary sewers, water lines, streets, sidewalks and incidental drainage.
- The plat has now been recorded and Gilmore & Bell, the City's bond counsel, has prepared the corresponding resolutions for Council consideration.

Financial Considerations:

- In conjunction with the original Final Plat of The Oaks Addition in 2001, the City Council approved the typical infrastructure resolutions. Those resolutions were updated in 2007 to accommodate new phasing requested by the developer. The resolutions approved at that time total \$901,000 for this development area.
- The new resolutions under consideration include the appropriate lots in the benefit district (Oaks 3rd) plus updated cost estimated.
- The infrastructure resolutions now total \$1,076,000 of which \$46,856 will be paid by City-At-Large in accordance with the city's public improvement finance policy for collector streets.
- Special Assessments will be spread against the benefit district properties over a 15-year period.

Legal Considerations:

- The resolutions have 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. 42-2008

SANITARY SEWER IMPROVEMENTS/THE OAKS 3RD.

RESOLUTION NO. 43-2008

WATER LINE IMPROVEMENTS/THE OAKS 3RD.

RESOLUTION NO. 44-2008

STREET IMPROVEMENTS/THE OAKS 3RD.

MOTION: Bannan moved to approve resolutions for public improvements to serve The Oaks 3rd Addition. Craig seconded.

VOTE: Motion carried 5-0, Arnold absent.

REVISION OF FEES AND CHARGES

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

Background:

- Fees and charges by the City of Derby are authorized by resolution and various ordinances.
- Most of the city's fees and charges are accumulated into one resolution, which was comprehensively reviewed in September 2007 and authorized via Resolution 58-2007.
- The proposed resolution primarily clarifies fees previously authorized and incorporates a few new fees, the need for which was discovered this past year.
- Business licenses (Section 1) are not recommended for revision due to a review of the business license structure planned in the future. Sanitary sewer fees are not included in the resolution since they are approved by ordinance and were not included in this review due to a rate study scheduled for later this year.

Financial Considerations:

- Section 2 – A fee of \$20 per entertainer is proposed when an adult entertainment establishment changes the business name, and re-issuance of each entertainer license is required. The fee is set to recover the city's cost to re-issue each license, and the revenue impact should be minimal as the frequency of a name change should be rare.
- Section 4 – Staff proposes the addition of a contractor license for water well drillers of \$25 per year which should generate annual revenue of \$125. This charge will promote consistency of licensure among the other trades currently licensed.
- Section 5 – Staff recommends the addition of a fire sprinkler and alarm plan permit issuance fee of \$25 in addition to the schedule of plan review fees charged by Sedgwick County. Sedgwick County performs this plan review by contract with the City of Derby, so the fee schedule covers the County's costs, and the \$25 permit issuance fee covers the City's administrative costs.
- Section 5 – The recommended changes to building permits are primarily for clarification with the exception of the sanitary sewer tap fee of \$500. The sewer tap fee is only needed when connection to a pre-built tee and riser is not feasible and a separate tap into the sewer main is requested. Occurrence of this tap is not frequent, so the revenue impact will be minimal.
- Section 9 – Recommendations are clarifying only.

- Section 10 – A \$5 docket continuance fee in municipal court is now allowed by the state and will generate approximately \$3,000 per year, which is the largest revenue impact of all of the changes proposed.

Legal Considerations:

- The City Council is empowered to establish, by resolution, fees and charges to be imposed in connection with services provided and programs authorized and implemented by City ordinance.

Policy Considerations

- Section 11 of the resolution provides for the biannual review of the fees and charges of the City of Derby but more frequent revisions are permitted if necessary.

RESOLUTION NO.45-2008

A RESOLUTION AMENDING RESOLUTION NO. 58-2007 OF THE CITY OF DERBY, KANSAS; ESTABLISHING FEES, CHARGES AND TAXES AUTHORIZED PURSUANT TO CITY ORDINANCE FOR SERVICES RELATED TO LAND USE APPLICATIONS; BUSINESS AND CONTRACTOR LICENSING AND BUILDING INSPECTION; ADMINISTRATIVE SERVICES; OPERATION OF THE MUNICIPAL COURT; AND OTHER SERVICES RENDERED BY OR THROUGH CITY FORCES; AND REPEALING ORIGINAL RESOLUTION NO. 58-2007.

DISCUSSION:

Council Member Craig stated that numerous people in his neighborhood have come by selling things door to door. He asked if that person is supposed to have a peddler’s license. Is it an individual or is a company that has to have it?

Phil Alexander, City Attorney advised that he believes that we issue licenses to a business and they may have multiple representatives.

Council Member Craig asked if he should ask a person that comes to the door if they have a license.

Mr. Alexander advised they should have identification identifying themselves as licensed.

MOTION: Staats moved to approve a resolution amending Resolution No. 58-2007 of the City of Derby establishing fees for various services. Nun seconded.

VOTE: Motion carried 5-0, Arnold absent.

**ORDINANCE
REGULATING THE
DISTRIBUTION OF
HANDBILLS**

Stephanie Knebel, Assistant City Manager presented the staff report.

Background:

- At its March 18, 2008 meeting, ORAB initiated discussion concerning the ability of organizations to distribute advertisement and notices.
- The primary concern of ORAB was that these unsolicited publications look bad, and if property owners don't dispose of them in a timely manner, they simply end up as trash in gutters and vacant lots.
- Staff researched how other communities addressed the distribution of handbills, flyers, posters, pictures, samples, pamphlets and other advertising materials.

Financial Considerations:

- There will be minimal impact on Code Enforcement, Police Department and Municipal Court for enforcement. Minimal revenue from license fees is also expected.

Legal Considerations:

- The proposed ordinance has been reviewed and approved by the City Attorney. Key provisions include:
 - a requirement to be licensed (\$40 annually) to distribute materials,
 - materials are not to be placed on vehicles parked on streets, in alleys or parking lots,
 - materials are to be affixed so that wind or water will not carry them away,
 - it will be illegal to cross lawns except on a sidewalk, walk, or driveway leading directly to the front door of any residence, and
 - identification badges will be required for people distributing such items.
- Candidates for public office, religious and charitable organizations will be exempt from paying the license fee, however all other requirements are to be followed.
- The penalty on first conviction will be a fine of not more than \$100, while the penalty for a second and subsequent convictions will be a fine of not less than \$100 or more than \$1,000.

Policy Considerations:

- Advisory boards are an example of an open and transparent government. Such boards improve the programs and services offered by the City by involving residents in policy changes, program updates, and discussions about services offered.
- Advisory boards are encouraged to examine and bring forward new policy ideas for City Council consideration.
- The recommended ordinance supports the community values of healthy living and stewardship of community assets by controlling litter.

ORDINANCE NO.

AN ORDINANCE REGULATING DISTRIBUTION OF HANDBILLS, FLYERS, POSTERS AND OTHER ADVERTISING MATERIALS IN THE CITY; REQUIRING A LICENSE THEREFOR; AND ESTABLISHING EXEMPTIONS FROM SUCH LICENSURE REQUIREMENT.

DISCUSSION:

Council Member Meidinger stated that the original intent of the Ordinance Review Board was to review the current ordinances that we had on our books and bring back to the council any updates that they might have. Probably the most famous one we had was that no table scraps could be fed to family dogs or something like that. We had that on the books for some unknown

reason therefore we thought that we would have some updates on some of these ordinances because over the past 50-75 years ordinances changed, families changed, lifestyles changed. On this board we should have had a sunset clause when these ordinances were reviewed and brought to the council's attention. The board went from viewing old ordinances to reviewing current ordinances and now they are recommending new ordinances. The board has ventured into the community activist group and this wasn't the original intent of this board. The \$40 annual fee, would this include the Derby schools, civic organizations and maybe fraternal groups? As Ms. Knebel just mentioned these people would have to come down and register and list everyone that is going to be delivered, that's a nightmare. The wind problem, now this is interesting. He can hear it now, when I put the flyer on the door the wind wasn't blowing, then the wind came up and blew it away. This is Kansas and that can happen quite often so the next solution is we will be using duct tape. Illegal to cross lawns, how in the world are you going to enforce this? He noticed there were no additional costs to the enforcement of this ordinance, he can see the chief hiring 5-6 police officers to enforce this thing, this is a bad policy. Then we get down to candidates for public office being exempt, this appears to be a conflict of interest because we are the ones running for public office and we are setting laws that we don't have to obey yet other people do. This could be a bit hypocritical. When he thinks about the telephone books that are delivered to the front porches, he doesn't know if these would be under this ordinance or not. The other concern he would have is if this ordinance is about keeping the neighborhoods clean, what would we do when the trash haulers pick up trash, bottles fall out and break on the sidewalk or papers fall out, are these trash haulers going to be subject to these fines? The whole intent of this issue was to prevent litter as he understands it so would they fall under this ordinance? Litter is litter is litter. What about the citizens who go on vacation and forget to tell the newspapers to stop, after all that would be part of the litter he would guess. If this is an anti-litter program he thinks we are missing the boat. The bottom line is he thinks people should police their community and do the public and themselves a big favor by picking up trash if they see it on the sidewalk like Mayor Avello mentioned earlier. He is opposed to this, he doesn't know how we would enforce it and thinks it is a bad policy.

Council Member Bannon advised that boards are an important process to city government. They serve a purpose, however the council doesn't always agree or take the recommendations of all of our boards. She thanked ORAB for their efforts but she too has issues with this particular ordinance. She believes it is unenforceable and the tracking would be a huge nightmare. The idea of handbills is that you can find a whole lot of cars in one place in a parking lot. School organizations and church organizations have used this type of advertising material for a very long time and she doesn't know that it's our job to try to fix that. She thinks that needs to be as Mr. Meidinger said, self done. She thanked ORAB very much but she would not be willing to pass this type of an ordinance.

Council Member Staats asked Mr. Alexander about walking through the yards. If he is sitting in his living room and someone is dropping off a phone book and sees them walk through his yard or even three feet of his yard and he decides he is going to be a pest and calls the police and they drop what they are doing and come to talk to this guy, are the police going to sign those complaints or is that going to be up to each individual person, him as the complainant to sign that complaint? What would be the process on that? A lot of times the police do not sign

complaints, such as noise complaints, it's the neighbor of the person having the party that has to sign the complaint because their peace is being disturbed. He can see this as a potential mess.

Mr. Alexander suggested that this would fall under the category of ordinance that is typically going to be enforced by requiring the aggrieved person to sign the complaint. That's a practical means that prosecutors and officers use, not really a legal requirement but a practical means to assure that you will have a witness when it comes time to go to trial. Often times if folks are unwilling to sign a complaint they would also be unwilling to appear at trial and without a witness the case won't go very far. He would speculate that that would be the primary means of enforcement.

Council Member Craig advised that obviously this might scratch somebody's itch, but not his. He sees that if a policeman was called out because somebody walked across a yard that this would be a tremendous waste of time and resources for some people that have other business that needs to be taken care of and he is not in favor of approving this.

MOTION: Craig moved to disapprove. Motion died for lack of a second.

Ms. Sexton suggested a motion to table or no motion at all. It does require unanimous approval of the five members that are here to approve an ordinance so no motion at all is fine.

Mayor Avello stated that if he made the motion and we had no 2nd it dies automatically anyway.

UPDATE COUNCIL PRIORITIES

Kathy Sexton, City Manager presented the staff report.

Background:

- On April 8, 2008, the Council last updated its priority list.
- Today, an updated priority list is provided for Council consideration. Three new projects have been added to the list since April: creation of a noise ordinance, updating the fireworks ordinance, and city-initiated unilateral annexations.
- Four projects have been completed since April and moved to the "Achieved" list, including the Park master plan update, the planning/design phase of the new library project, and two Water Company priorities to update job descriptions and enhance water conservation efforts with the passage and partial implementation of a rain sensor ordinance.
- Work is underway on most of the 18 priorities on the city list, as well as the 3 priorities on the Water Company's list.

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 agree on a set of priorities to guide the productive use of staff time. The list does not represent everything the Council has directed staff to accomplish, rather it includes projects and programs to enhance the city to be worked on as time allows amid other routine responsibilities.

DISCUSSION:

Council Member Bannon asked about item #4, it states they will meet with the builders regarding the future special assessments and questioned if she meant the developers or the actual builders. The developers are the ones that typically notify, builders just build the houses.

Ms. Sexton advised it would be the ones in charge of the housing developments.

Council Member Bannon stated she knows that more than one of these items are being worked on at a time; there are a number of them that are concurrently worked on. The one that she would like to see moved up would probably be #10, especially after reading the parks and open space plan, she thinks we have had a number of subdivisions come in that haven't done a park nor have they given any money so the sooner we could get something like that implemented the better. She doesn't know that we have any coming down the pipeline but if we don't have it in the works we can't deal with it. The parks and open space plan that will be presented next has some big dollar figures in it that we have to figure out some funding for.

Council Member Craig asked about the equity buy-in for sewer and water, as we move forward in our development of future home sites and businesses he thinks it is in our best interest to move in this direction because that is going to sustain us for those developments paying for the infrastructure that it will take to build the services that they need. Obviously these two are linked together and as long as we are moving that direction they have to be in place before we can ask the people to contribute as an equity to the buy. That has to be in place and he doesn't want to get behind on that, especially since we will be expanding out.

Council Member Meidinger asked about #10 and #13, are these the same or would the land acquisition plan be for other city entities.

Ms. Sexton advised the land acquisition is land in general for whatever needs the city has and that is truly acquiring the land. Item 10 is about instituting a new fee for either a home buyer or home development manager; they would say here is a fee you need to pay because you are not providing a city park plan.

Council Member Meidinger suggested moving the land acquisition plan up for parks because he hasn't looked at the plan yet but without land acquisition plans, all the studies in the world are nice but unless we have a plan it's not going to get anywhere.

MOTION: Bannon moved to approve the Council's updated list of priorities. Staats seconded.

VOTE: Motion carried 5-0, Arnold absent.

PARK & OPEN SPACE PLAN UPDATE

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

Leon Younger, Pros Consulting presented the Parks and Open Space Plan to the council.

Background:

- The 1999 Master Parks and Open Space plan has been diligently worked over the past nine years and is nearing completion.
- In November 2007, the City contracted with PROS Consulting to provide an in-depth review of our existing plan, recreational amenities, programming and service standards and to make recommendations for the future planning of our parks system.
- A Steering Committee was created including the following individuals: City Council members Vaughn Nun and Mark Staats, Derby Recreation Commission representatives Frank Seitz and Elizabeth Kinch, Derby Public Schools representative Tom Snodgrass, Park and Urban Forestry Board members Chris Gadd and David Peebler, and Planning Commission members Keith Volz and Larry Gould. City staff included City Manager Kathy Sexton, City Planner Bud Newberry, Park Superintendent Darrell Zimmerman, and Director of Public Works & Parks Robert Mendoza. The Steering committee met a number of times and participated in on-site park inspection tours.
- PROS Consultant Leon Younger will present the plan as approved by the Steering Committee. His report will include an overview of the process, an explanation of key issues, comparative community information and a summary of findings, including facility and amenity standards, an estimated Capital Improvement structure and recommendations for implementation.

Financial Considerations:

- Implementation of the recommendations included in the plan is anticipated over the next 10 years. Although PROS Consulting provides some cost estimates in the report, financial considerations can be better determined as decisions are made about when to implement which recommendations. Such decisions will be largely a part of the CIP and budget preparation processes each year.

Legal Considerations:

- The purpose of Chapter 7 of the report is to explore financing options used across the country. Some options mentioned may not be available to cities in Kansas. No legal analysis has occurred yet.

Policy Considerations:

- A high-quality system of parks, open space, fitness, and recreational options is an expectation of many residents of cities. Such quality community amenities are often key factors in individual and family decision making about which cities and which neighborhoods they choose to live.
- As people increasingly seek work-life balance and strive to improve physical health, more people nationwide seek parks, open space and recreational opportunities to enhance their quality of life.
- As part of the built environment, a well-designed park system is also a basic ingredient in public safety, providing pathways, areas of activity, and lighting, which can all contribute to an area's sense of safety.
- Key recommendations in the plan (full document available at www.derbyweb.com) include enhancements to existing parks, land acquisition and development of new parks, creation of specific recreational facilities (like baseball fields, volleyball courts, and a

large picnic pavilion) to meet the needs of a growing population, enhanced facility maintenance, and consideration of enhanced revenue sources.

DISCUSSION:

Mayor Avello indicated he did not see mention of doing something along the west side of Derby along the river.

Mr. Younger advised it really was not brought forward as a priority with our steering committee. Nobody really brought it up as something we really need to look at, he thinks there was a minor discussion about it. Anything you do along the river, people are attracted to water so consequently water is a major component. The big issue is how you want to manage it and river parks are one of the strongest types of amenities that make people feel and appreciate the value of water. It really wasn't brought out as a priority in any of our real discussions but it certainly could be added in.

Mr. Mendoza added that there are two things that are happening with river front property because it was already in the midst of discussion. Number one was the ARCAP plan that we spent almost a year on that project talking about how we could incorporate the river into a recreational system with other communities as a regional draw. Also, the moving of the public works facility and the redevelopment of that property so with that being already in the works we didn't really focus on that issue.

Council Member Bannon stated that in looking at the fold out chart it looks like we have about twice the number of connectivity trails which is basically our hike and bike path. It was mentioned that trails are the most popular things that people like to use to roller blade, bike and hike, doesn't that really roll over and wouldn't that give us credit for more trail mileage?

Mr. Younger advised we do, right now you have 15.42 miles of connectivity trails which is a really strong standard. We really aren't making any recommendations to add anything to that.

Council Member Bannon stated that the plan indicates adding trails at an estimate of \$400,000 per mile, not including land cost that is pretty hefty when we already have 15 miles of other trails. Can't you kind of swap one for the other?

Mr. Younger advised that there are some people who love to go on a trail and connect to something; some people don't like to go up and go back. When he talks about loop trails he is talking about trails in High Park where people will walk 1/2 mile or a mile and it's more like a circle. The intent is that you have people who like to walk on loop trails because they see their neighbors and they know who is there and they are safe and there are other people who don't feel as safe on a river trail as what you would think. We had a discussion about if they should back down on the trail commitment based on the three different types of trails you had and the committee felt like that we should recognize all three and that all three have a stake and an importance in this community. He thinks it will always be important to have those river connection trails and to link attractions and access to other amenities in the community but he wouldn't move away from the loop trails. From a funding perspective, there are safe routes to

school money that's basically 100% funded by the feds and other trail dollars. Depending on your match the majority of those dollars could be funded by federal dollars at 80% with the city's 20%. We put the full amount in there depending on how you want to approach it.

Council Member Bannon stated that this is an overall view where we kind of see where we are at and where we need to go and it's given her a good idea on a lot of things. Honestly she does not have kids in the ball system anymore so she doesn't have a good feel on ball stuff. The money in the CIP scares her, \$25,000 an acre which is not currently what you would have to pay to buy land for park land but she thinks it's something we need to get ahead of the ball and she would rather see us find land earlier, or if anyone out there would like to donate, that has been done before in this city and it's not a bad idea.

Mr. Younger commented that they also talked about the city considering buying land outside of city boundaries to grow into, and then you are buying land at a lot less. He encouraged the city to think about that.

Council Member Bannon stated that the ball field costs are pretty much what it cost on the last few ball fields; those are not inflated figures for time or anything. The land acquisition costs, the price to develop park space, the price to build the trails, she just got back from Colorado and she can guarantee they did not spend \$400,000 a mile to build their trails.

Mr. Younger advised it goes back to what level you want to create them at. You can put stuff on the ground and just take it. This is a freeze/thaw area, you get really strong freezes and you get strong thaws and it breaks up very quickly. When he estimates something he wants to do it where it's going to last a long time

Council Member Bannon advised she understands that, this is on the high side and gives us something to plan. There are some things like the indoor aquatics; she is not sure given the fact that it's the school system using the indoor aquatic facility that tying it up. If we took the high school swim team out of it then we probably have enough aquatic system, correct?

Mr. Younger agreed, but based on the growth and of course when you have the Olympics on it becomes more popular and everyone wants their kids swimming and it puts a lot more pressure on. Your swim teams, either club or school swim at 6:00 a.m. and from 3:30 p.m. to 6:00 p.m. and there is only so much space.

Council Member Bannon stated that back in the old days schools used to build pools. She is not necessarily advocating that but this would definitely be an area to look at a more cooperative nature than the city taking on something of that cost just for that purpose. As far as the funding sources, she likes the idea of the grants and thinks those are very good for us to look at but she does want put out there, she keeps hearing the word equity fees and impact fees tonight, we have to watch it because if you keep putting all those fees on new growth you're going to stop it and then you won't need any of this. We have to be very careful what and where we get our funding sources for everything from. We need to not only look at the cost but be cognizant of the fact of what we need. She liked the idea of simple things that can be done such as putting lights on the tennis courts. This is the plan and a direction of where we need to go but we don't have to sign

off on the whole thing all at once or in this fashion, it is a guideline. Please do be careful and keep in mind you cannot put impact and equity fees all on the brand new home owners or you won't have any brand new homeowners.

Mr. Younger advised that they did the Olathe plan twice in ten years and their impact fee is \$500 per house. We had recommended that they go to \$900 and in five years they missed \$14 million if they had gone from \$500 to \$900. You can demonstrate easily to a developer the value of having access to a good park and the value of selling land.

Council Member Bannon indicated that if we were only looking at park impact fees it would be one thing but so far this evening we have been discussing park impact fees, water equity buy in fees and sewer buy in fees. By the time you start adding all those things up we start to get a little healthy and that is what she wants to caution everyone on as far as costs in doing everything.

Mr. Younger stated that the most popular one that people are using right now is real estate transfer fees so it's not on the homeowner and it's not on the developer.

Council Member Bannon advised that was a new one to her, are there any communities locally that are doing that?

Mr. Younger stated it is really a new funding source that states are developing. It's really strong in Texas, Ohio, Indiana and Michigan. It's their way of helping fund the system. The real estate market is really pretty flat across the country so the developers are pushing back but property is still turning over to a certain extent, although maybe not new property.

Council Member Bannon pointed out that would put more across the board instead of just new construction.

Mr. Younger agreed, it's on the buyer; it's not on anyone else.

Council Member Craig thanked Mr. Younger for a concise and informative presentation. We've been anxiously awaiting this just to see a different point of view. He is encouraged by the way it is laid out but he thinks the emphasis is that we have three entities in this city and if they cooperate we can make this happen for the benefit of everyone. He asked for an example where Mr. Younger has seen a real strong demonstration of city and maybe school district working together to make it better.

Mr. Younger advised that Olathe does a pretty good job. Their school district recognizes the responsibility they have. A lot of times schools will say that when school is over with they are done but they have built recreational facilities on school sites that are shared by the recreation department and the school district on a joint use agreement. Overland Park has done the same thing. A lot of the Johnson County, Shawnee Mission school district works with Johnson County parks and recreation system to do that as well. Hutchinson has done a good job. They got four people involved with the school district and community college, the city and recreation commission all working collectively together in really recognizing the need and what each other has and planning jointly together. If you look outside of Kansas, Frisco, Texas it is unbelievable

how well the school district and city work jointly to create fantastic attractions that serve the whole community and really create a very livable community.

Council Member Meidinger stated that the advantage Johnson County has is that they have one person in charge of all their parks. They don't have the individual cities in charge as he understands it.

Mr. Younger advised it is a park authority. Overland Park, Shawnee, Olathe and Blue Valley all have separate recreation commissions. Not much is done differently here except the county isn't involved here; you're acting like the county. The intent is that you are balancing those two together. The biggest thing is in a town like this you need each other. The school district needs great public space and the city needs great public space and the DRC needs great public space and the intent is working jointly together and planning together maximizes the value of the tax dollar.

Council Member Meidinger asked if there was any consideration for a hike and bike trail to Boeing. With \$4.00 a gallon gas it's a real issue that we need more bike trails.

Mr. Mendoza stated that Sedgwick County and the City of Wichita has looked at what is called a Pathways Plan, which is looking at the connectivity of all of our pathway systems. Not only from our hike and bike to what the City of Wichita has but how we would connect with Mulvane and potentially Haysville. That plan currently exists and it lives, it's a matter of how we would incorporate that document. Because that plan is very extensive and a multiple year study we did not really go into that because we would use that as another tool in the tool box as we move forward and push out into our community.

Council Member Meidinger asked how Derby compares with open space and population compared with some other Kansas cities.

Mr. Younger advised that Derby is right in the middle with 13 acres (per 1,000); it's not over the top. What's interesting, if you look at Johnson County for example between the cities and the county they have 24 acres per 1,000 in all of Johnson County between the cities and the county. On a population base that's pretty strong but when you're just looking at the city and here it's a nice balance. He just thinks you would be happier and the community would be happier if you did two things; stronger master plans that make the existing space stronger and more productive and to fill in the gaps where parks are missing. It would be really powerful to demonstrate that equity because equity is a value that people look at in fairness all the time.

MOTION: Craig moved to receive and file the 2008 Parks and Open Space Master Plan Update. Staats seconded.

VOTE: Motion carried 5-0, Arnold absent.

CONSENT AGENDA

Consulting Engineer for Oak Ridge Estates Drainage Project Background:

- The Capital Improvement Plan (CIP) includes several drainage projects to be designed in 2008.
- City staff sent Requests for Statements of Qualification to qualified consulting engineering firms soliciting their interest in designing this project. Statements of Qualifications from two firms were received.
- The consultants' proposals were evaluated and rated on the firm's overall experience, experience with similar projects, schedule, fee range, and evidence of their familiarity with the project site and potential design issues.
- Ruggles & Bohm, P.A. was chosen as the recommended engineering firm to design the project.

Financial Considerations:

- The approved 2008 budget includes \$100,000 in the General Fund for design of several drainage improvements; one of which is the Oak Ridge Estates Drainage Improvement.
- Staff has reviewed the proposed design fee of \$33,500 and believes it is appropriate for the scope of the project.
- Execution of the agreement with Ruggles & Bohm will leave \$66,500 available in the budget for design of the remaining drainage improvements.

Legal Considerations:

- This solicitation and selection of consultants was accomplished in accordance with relevant City policies and procedures.

Recommended Action:

- Authorize the City Manager to enter into an agreement in the amount of \$33,500 with Ruggles & Bohm, P.A. for the design of drainage improvements to serve Oak Ridge Estates.

McIntosh Road Sanitary Sewer Crossing Improvements to serve Easton Sod

Background:

- A bid opening for the construction of McIntosh Road Sanitary Sewer Crossing improvements to serve Easton Sod was conducted on Tuesday, July 1, 2008 at 2 p.m.
- Bids were submitted by contractors after advertisement in the appropriate publications.
- The following bids were received by the City Engineer's office and witnessed by the City Clerk:

Nowak Construction Co.	\$26,057
Mies Construction, Inc.	\$23,500
Engineer's Estimate*	\$19,030

*Engineers estimate prepared by Young & Associates, P.A.

- Since receiving bids, it was determined that the project can be constructed more cost effectively than originally designed by boring under McIntosh Road in lieu of open cut construction.
- The low bid contractor (Mies Construction, Inc.) has agreed to revise its bid to \$19,660 if the proposed line is installed by boring.

Financial Considerations:

- Funds for construction were included in the 2008-1 temporary note issue. Costs for the improvements will be paid 100% by the benefit district, and special assessments will be spread against the benefit district, and special assessments will be spread against the benefit district properties over a 15-year period.

Legal Considerations:

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

Policy Considerations:

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

Recommendation:

- Accept the revised bid of Mies Construction in the amount of \$19,660 and authorize execution of a contract for construction of McIntosh Road Sanitary Sewer Crossing Improvements to serve Easton Sod.

Assessment Ordinance – Mowing, Trash Removal

Background:

- The City of Derby has incurred costs in abating nuisances found to exist upon certain properties located within the City.
- The costs are the charges the City incurred in the contracting with vendors for the mowing and trash removal service, plus a \$50 administrative fee.
- Each owner of record has been sent notification that Council will consider assessment by ordinance of the charges.

Financial Considerations:

- The costs incurred in connection with the parcels to be assessed total \$3,434.96.

Legal Considerations:

- City ordinance authorizes staff to mow properties with excessively tall vegetation and remove trash when owners fail to do so.
- City staff seeks to collect mowing charges through informal efforts so as to avoid the need for formal remedies.
- Charges not timely paid may be assessed against the properties on which the work was performed.

Recommendation:

- Adopt an ordinance levying a special assessment upon certain properties the costs incurred by the City of Derby in cutting weeds and otherwise abating nuisances found to exist thereon.

ORDINANCE NO. 1954

AN ORDINANCE LEVYING A SPECIAL ASSESSMENT UPON CERTAIN REAL PROPERTY HEREINAFTER DESCRIBED AS THE COSTS INCURRED BY THE CITY IN CUTTING WEEDS, REMOVING DEBRIS AND OTHERWISE ABATING NUISANCES FOUND TO EXIST THEREON.

Appointment of voting and alternate voting delegates to LKM

Background:

- The annual League of Kansas Municipalities meeting is scheduled for October 11-14 in Wichita. The meeting includes a session to review and approve policy positions of the League. Delegates from all member cities vote on the official policy statement. The policy statement is the basis for League lobbying efforts with the Legislature and other branches of state government.
- Member cities are given a weighted voting system based on population. Based upon population estimates, the City of Derby is entitled to four official voting delegates and four alternate delegates in case the voting delegates are unable to fulfill their duties.
- Elected officials and staff can serve as delegates and alternates. Those planning to attend the conference and available to serve as voting delegates are:
 - Dion Avello, Mayor
 - Cheryl Bannon, Council Member
 - Kathy Sexton, City Manager
 - Stephanie Knebel, Assistant City Manager
 - Phil Alexander, City Attorney (alternate delegate)
 - Jean Epperson, Director of Finance/City Clerk (alternate delegate)

Policy Considerations:

- League bylaws provide for the election of delegates and alternates by the governing body to represent the city in any meeting of voting delegates. Delegates serve until a successor is appointed.

Recommendation:

- Appoint voting delegates and alternates to the 2008 League meeting as presented.

Update to A/V Equipment in Council Room

Background:

- All TV signals are required to be sent in digital format as of February 09.
- In preparation for that event and to improve operations an update to Council Room A.V equipment was added to the 2008 revised budget.
- This equipment will remove the momentary black screen when switching between cameras.
- This equipment will also enhance the capability associated with recorded items to be shown on channel 7 and positions us for web streaming or other output needs.
- Aging major components of the current equipment will be replaced.
- Wichita Audio Visual is our vendor for A/V needs. They have worked with us to make the equipment user friendly through programming. Several hours have been spent fine-tuning the room and coordinating equipment. To use any other vendor would require starting from scratch on the programming (time and money) and the possibility exists that current equipment would not mesh seamlessly with proposed equipment.
- Due to this special situation bids were solicited from a sole source.

Financial Considerations:

- The Council has approved funding for this item through the revised 2008 budget.

Legal Considerations:

- The City has followed all applicable statutory and procurement procedures in financing, planning and soliciting bids for this project.

Recommendation:

- Approve the bid from Wichita Audio Visual to update the A/V equipment in the Council Room for \$39,449.

Request for Use of Street Rights-of-way (off agenda item)

Background:

- The Derby High School has requested the use of city streets and rights-of-way to conduct the annual Homecoming Parade. The parade is scheduled for Friday, September 19, 2008 at 2 p.m. The route selected for the parade would start at the bus barn located at Market and Westview. The parade is then scheduled to go west on Market to Georgie, Georgie north to Madison, and then east on Madison to the football stadium.

Financial Considerations:

- The City will have to supply police patrol and 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:

- The Police Department has reviewed the route, and recommends approval.

Recommendation:

- Approve use of city streets and public rights of way to conduct the annual Homecoming Parade on September 19, 2008.

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

VOTE: Motion carried 5-0, Arnold absent.

Mayor Avello reminded everyone that the applications for Ward II close on Friday, September 12, 2008 at 5:00 p.m.

ADJOURNMENT

MOTION: Meidinger moved to adjourn at 8:31 p.m. Nun seconded.

VOTE: Motion carried 5-0, Arnold absent.

Dion P. Avello, Mayor

ATTEST:

Jean Epperson, City Clerk

CITY COUNCIL ACTION REPORT

To: Mayor and City Council
From: Mayor Dion Avello
Subject: Fill Vacancies on City Council

Proposed Agenda Date: Sept. 23, 2008

Background:

- A City Council position in Ward III has been vacant since Charlie Schwarz's resignation on August 13. Mayor Dion Avello received four applications to fill the vacant seat. Applicants include Joseph Dinino, Terry J. Taylor, Vicki R. Walton, and Chuck Warren. Mr. Taylor subsequently withdrew his application.
- A City Council position in Ward II has been vacant since Chuck Warren's resignation on August 22. Mayor Dion Avello received four applications to fill the vacant seat. Applicants include Heath Horyna, Heather McCreight, Brad Ward, and Van Willis. Ms. McCreight subsequently withdrew her application.

Financial Considerations:

- None.

Legal Considerations:

- Charter Ordinance 43 governs the filling of vacancies on the Council.
 - Vacancies are to be filled within 60 days by appointment by majority vote of the Council, following a nomination made by the Mayor.
 - If the mayoral nominee does not receive a majority vote, then the vacancy shall be filled by appointment made by the remaining Council members.
 - Appointments shall be for the unexpired term of the vacant office.
 - Any person is eligible to hold office if he or she is an actual resident of the ward for which he or she is elected or appointed at the time of the election or appointment.

Policy Considerations:

- None.

Recommendation:

- Approve the Mayor's nomination of _____ for the Ward III Council position.
- Approve the Mayor's nomination of _____ for the Ward II Council position.

CITY COUNCIL ACTION REPORT

To: Mayor and City Council
From: Jean Epperson, City Clerk/Director of Finance
Subject: 2008-B G.O. Bonds Public Hearing & Ordinance Levying Special Assessments

Guests: Charley Young, Public Finance Group

Proposed Agenda Date: September 23, 2008

Background:

- At the August 26th Council meeting, the assessment roll was approved, calling for specific special assessment amounts to be spread against properties in several subdivisions in the City.
- The Public Hearing presents the opportunity for affected property owners to appear before the Council, in order to clarify any uncertainties regarding the assessments.
- All of the affected property owners have been notified by mail as to the nature and amounts of the assessments, as per state law.
- The project costs to be assessed consist of infrastructure improvements in The Oaks Addition, Derby Marketplace Addition, Mac's Corner Commercial 2nd Addition, Kwik Shop 2nd Addition, Derby Downs Addition, Stone Creek Addition, Tall Tree Addition and Spring Ridge Addition.
- The property owners will have until noon on October 23rd to pay the assessment in full with no interest and eliminate the need for the specials to go on the tax roll. If the property owner chooses not to pay the assessment prior to the pay-in deadline, the special assessments will appear on the tax statements mailed to property owners by the County in November 2009 and will be due in tax year 2010 (½ due on or before December 20, 2009; ½ due on or before May 10, 2010).
- The source of permanent financing for these projects, General Obligation Bond Issue 2008 B, is scheduled to close December 1, 2008.

Financial Considerations:

- The total project costs to be assessed within the 2008-B Bond issue are \$6,503,124. City-at-large costs of approximately \$185,000 are included in this amount for the extension of Tall Tree Road (a collector street) in the Derby Marketplace, a traffic signal at Rock Road and Tall Tree and a portion of the sidewalks along Rock Road.
- In addition, city-at-large costs of \$2,123,525 will be included in this bond issue for the reconstruction of Rock Road.

Legal Considerations:

- The legal work for this process is being performed by the City's bond counsel, Joe L. Norton of Gilmore & Bell. Mr. Norton and his staff worked with City staff to determine the timeframes and are preparing all of the necessary legal paperwork, in strict adherence to state law, which, ultimately, governs the special assessment process.
- The job of calculating the final costs, notifying and mailing notices to property owners and the "spreading" of specials is a combined effort of City Engineering staff and the City's Financial Advisor, Greg Vahrenberg of Piper Jaffrey Company and Charley Young of the Public Finance Group.

Policy Considerations:

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

Recommendation:

- Conduct the public hearing to receive affected property owners' comments and questions.
- Approve an Ordinance levying special assessments on certain property to pay the costs of internal improvements as authorized by the resolutions noted in the ordinance, and providing for collection of such special assessments.

(Published in *The Derby Weekly Informer*, on October 1, 2008)

ORDINANCE NO. ____

AN ORDINANCE LEVYING SPECIAL ASSESSMENTS ON CERTAIN PROPERTY TO PAY THE COSTS OF INTERNAL IMPROVEMENTS IN THE CITY OF DERBY, KANSAS, AS HERETOFORE AUTHORIZED BY RESOLUTION NOS. 27-2007, AS AMENDED BY 46-2007; 31-2007, AS AMENDED BY 03-2008; 32-2007, AS AMENDED BY 02-2008; 28-2007, AS AMENDED BY 04-2008; 25-2007, AS AMENDED BY 09-2008; 24-2007, AS AMENDED BY 06-2008; 64-2003; 67-2003; 71-2003; 30-2007, AS AMENDED BY 07-2008; 52-2002; 53-2002; 35-2004; 2-1998; 38-2002; 39-2002; 40-2002; 41-2002; 60-2007; 63-2007; 66-2007; 61-2007; 49-2007; 55-2007; 52-2007; 77-2000, AS AMENDED BY 27-2006; 78-2000, AS AMENDED BY 29-2006; 79-2000, AS AMENDED BY 26-2006, AS AMENDED BY 39-2007; AND 80-2000, AS AMENDED BY 28-2006; AND PROVIDING FOR THE COLLECTION OF SUCH SPECIAL ASSESSMENTS.

WHEREAS, the City Council of the City of Derby, Kansas (the "City") has heretofore authorized certain internal improvements (the "Improvements") to be constructed pursuant to K.S.A. 12-6a01 *et seq.* (the "Act"); and

WHEREAS, the City Council has heretofore conducted a public hearing in accordance with the Act and desires to levy assessments on certain property benefited by the construction of the Improvements.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DERBY, KANSAS:

SECTION 1. Levy of Assessments. For the purpose of paying the costs of the following described Improvements:

Project No. 1 – Derby Marketplace Second and Derby Marketplace Third Addition – Sanitary Sewer Improvements

Resolution No. 27-2007, as amended by Resolution No. 46-2007

Construct eight inch (8") sanitary sewer improvements along the east side of Lot 6 Derby Downs Addition; along the east side of Lot 1, Block 1 Derby Marketplace Addition and also along the east side of Lots 2 through 5, Block 1, Derby Marketplace Addition, to serve Lots 1 through 5, Block 1, Derby Marketplace Addition and Lot 6 Derby Downs Addition to the City of Derby, Sedgwick County, Kansas, in accordance with the City of Derby Standard Specifications;

Project No. 2 – Derby Marketplace Second Addition - Water Line Improvements

Resolution No. 31-2007, as amended by Resolution No. 03-2008

Construct eight inch (8”) water main extensions along the east side of all lots and also within Lots 5-7, Block 1, Derby Marketplace Second Addition, to serve Lots 1 through 7, Block 1, Derby Marketplace Second Addition to the City of Derby, Sedgwick County, Kansas, in accordance with the City of Derby Standards;

Project No. 3 – Derby Marketplace Second Addition – Water Main Improvements

Resolution No. 32-2007, as amended by Resolution No. 02-2008

Construct twelve inch (12”) water main in Tall Tree from Rock Road to the east line of Derby Marketplace Second Addition to the City of Derby, Sedgwick County, Kansas, in accordance with the City of Derby Standards;

Project No. 4 – Derby Marketplace Second and Tall Tree Additions – Street Improvements

Resolution No. 28-2007, as amended by Resolution No. 04-2008

Construct 41' back-to-back pavement and a 10' wide sidewalk on Tall Tree from the east line of Rock Road to the east line of Derby Marketplace Addition, in accordance with the City of Derby Standard Specifications;

Project No. 5 – Derby Marketplace Second and Tall Tree Additions – Drainage Improvements

Resolution No. 25-2007, as amended by Resolution No. 09-2008

Construct drainage detention ponds, pond water level elevation and outflow control structures, outfall piping and associated grading improvements to serve Lots 1 through 7, Block 1, Derby Marketplace Second Addition and Lots 1 through 47, Block 1 and Lots 1 through 30, Block 2, Tall Tree Addition to the City of Derby, Sedgwick County, Kansas, in accordance with the City of Derby Standard Specifications;

Project No. 6 – Derby Marketplace Second Addition – Accel/Decel Lane (Rock Road) Improvements

Resolution No. 24-2007, as amended by Resolution No. 06-2008

Construct an accel/decel lane and a 10' wide sidewalk on the east side of Rock Road, from the south line of Derby Marketplace Second Addition to the south line of Tall Tree, and a major entrance into Derby Marketplace Second Addition between Lots 2 and 3, Block 1, in accordance with the City of Derby Standard Specifications;

Project No. 7 – The Oaks Addition and Unplatted Tract ‘A’ – Sidewalk Improvements-Rock Road, Phase XV

Resolution No. 64-2003

Construct eight foot (8') wide concrete sidewalk on the west side of Rock Road beginning at the south side of Lot 1, Block E and running north to the north line of Lot 5, Block A, to serve The Oaks and Unplatted Tract 'A' to the City of Derby, Sedgwick County, Kansas, in accordance with City of Derby Standards;

Project No. 8 – The Oaks Addition – Street Improvements-Accel/Decel Lane-Rock Road, Phase XV

Resolution No. 67-2003

Construct a southbound accel/decel lane on Rock Road from the north line of Lot 5, Block A to the south line of Lot 1, Block D, to serve The Oaks Addition to the City of Derby, Sedgwick County, Kansas, in accordance with City of Derby Standards;

Project No. 9 – The Oaks Addition – Street Improvements-Center Left Turn-Rock Road, Phase XV

Resolution No. 71-2003

Construct a center left turn lane on Rock Road to serve Cambridge and Tall Tree Road from 63rd Street South to the south line of Lot 1, Block D, in accordance with City of Derby Standards;

Project No. 10 – Derby Marketplace Second and The Oaks Additions – Traffic Signalization-Tall Tree and Rock Road

Resolution No. 30-2007, as amended by Resolution No. 07-2008

Construct traffic signalization at the intersection of Rock Road and Tall Tree, in accordance with plans and specifications furnished by the City Engineer for the City of Derby, Kansas, in accordance with the City of Derby Standards;

Project No. 11 – Mac’s Corner Commercial 2nd Addition – Accel/Decel Lane Improvements

Resolution No. 52-2002

Construct an accel/decel lane on the north side of Meadowlark from a point west of the west line of Lot 5, Block A, to Rock Road and an accel/decel lane on the west side of Rock Road from Meadowlark to a point north of the north line of Lot 2, Block A, in accordance with City of Derby Standards, with drainage included as necessary;

Project No. 12 – Mac’s Corner Commercial 2nd Addition – Sidewalk Improvements-Rock Road

Resolution No. 53-2002

Construct five foot (5') wide concrete pedestrian sidewalk along the west side of Rock Road adjacent to Lots 1 through 3, Block A, Mac's Corner Commercial 2nd Addition, to the City of Derby, Sedgwick County, Kansas, in accordance with City of Derby Standards;

Project No. 13 – Kwik Shop 2nd Addition – Street Improvements-Accel/Decel Lane

Resolution No. 35-2004

Construct accel/decel lane improvements on the south side of Meadowlark and the west side of Rock Road from the west line of Kwik Shop 2nd Addition to the south line of Kwik Shop 2nd Addition; said pavement between aforesaid limits to be constructed with plans and specifications to be furnished by the City Engineer of the City of Derby, Kansas, with drainage to be installed where necessary;

Project No. 14 – Derby Downs Addition – 71st Street South and Rock Road Street Improvements

Resolution No. 2-1998

Construct an **Acceleration-Deceleration Lane** along the north side on 71st Street South from Rock Road to the East Line of Derby Downs Addition, and along the east line of Rock Road from 71st Street South to the North Line of Derby Downs Addition; **Left Turn Lanes** along 71st Street South and Rock Road to serve the major entrances; **Major Entrance Drives** to serve Lot 6 on both 71st Street South and Rock Road; **Six Foot Concrete Sidewalk** along the north side of 71st Street South from Rock Road to the East Line of the plat and along the east side of Rock Road from 71st Street South to the North Line of the plat; and Storm Sewers where necessary, according to City of Derby standards;

Project No. 15 – Stone Creek Addition – Sanitary Sewer Improvements, Phase 6A

Resolution No. 38-2002

Construct eight inch (8") and twelve inch (12") sanitary sewer improvements in accordance with City of Derby Standards;

Project No. 16 – Stone Creek Addition – Water Main Improvements, Phase 6A

Resolution No. 39-2002

Construct eight inch (8") water main extension in accordance with City of Derby Standards;

Project No. 17 – Stone Creek Addition – Street Improvements, Phase 6A

Resolution No. 40-2002

Construct 31' back to back residential standard pavement on Ramblewood from the north line of Lot 11, Block S, north to the south line of Winding Lane; on Winding Lane from the east line of Woodlawn, east to the northwesterly line of Lot 10, Block Q; on Winding Lane Court from the north line of Winding Lane, north to and including the cul-de-sac; on Splitwood Way and Lost Hills from the north line of Winding Lane, north, east, south and southwesterly back to the north line of Winding Lane; and on Splitwood Way Court from the easterly line of Splitwood Way, east to and including the cul-de-sac in accordance with City of Derby Standards;

Project No. 18 – Stone Creek Addition – Storm Water Sewer Improvements, Phase 6A

Resolution No. 41-2002

Construct storm water sewer system per the drainage plan approved by the City Engineer in accordance with City of Derby Standards;

Project No. 19 – Tall Tree Addition – Sanitary Sewer Improvements, Phase 1

Resolution No. 60-2007

Construct eight inch (8") sanitary sewer improvements to serve Lots 1 through 27, 31, 32, 35 and 36, Block 1; and Lots 1 through 14, Block 2, Tall Tree Addition to the City of Derby, Sedgwick County, Kansas, in accordance with the City of Derby Standards;

Project No. 20 – Tall Tree Addition – Water Improvements, Phase 1

Resolution No. 63-2007

Construct water distribution system improvements to serve Lots 1 through 22, Block 1; and Lots 1 through 14, Block 2, Tall Tree Addition to the City of Derby, Sedgwick County, Kansas, in accordance with the City of Derby Standards;

Project No. 21 – Tall Tree Addition – Street Improvements, Phase 1

Resolution No. 66-2007

Construct 7” pavement on Tall Tree Road/Walnut Creek, from the west line of Tall Tree Addition to the south line of Lot 14, Block 2; and Paving Tall Tree Circle, from the east line of Walnut Creek to and including the cul-de-sac, all in accordance with City of Derby Standards;

Project No. 22 – Tall Tree Addition – Storm Water Sewer Improvements, Phase 1

Resolution No. 61-2007

Construct storm water sewer improvements to serve Lots 1 through 22, Block 1 and Lots 1 through 14, Block 2, Tall Tree Addition to the City of Derby, Sedgwick County, Kansas, in accordance with the City of Derby Standards;

Project No. 23 – The Oaks Addition – Sanitary Sewer Improvements, Phase 7A

Resolution No. 49-2007

Construct eight inch (8") sanitary sewer improvements to serve Lots 16 and 17, Block O; Lots 26 through 37, Block P; Lots 1 through 12, Block Q; Lots 1 through 14, Block R; and Lots 1 and 2, Block S, The Oaks Addition to the City of Derby, Sedgwick County, Kansas, in accordance with the City of Derby Standards;

Project No. 24 – The Oaks Addition – Water Line Improvements, Phase 7A

Resolution No. 55-2007

Construct eight inch (8") water main extension to serve Lots 1 through 12, Block Q; Lots 1 through 14, Block R; and Lots 1 and 2, Block S, The Oaks Addition to the City of Derby, Sedgwick County, Kansas, in accordance with the City of Derby Standards;

Project No. 25 – The Oaks Addition – Street Improvements, Phase 7A

Resolution No. 52-2007

Construct 31’ back to back residential standard pavement on **Waters Edge** from the east line of Triple Creek Road, east and north to the south line of Tall Tree Road; **Waters Edge Court** from the east line of Waters Edge, east to and including the cul-de-sac; **Waters Edge Circle** from the north line of Waters Edge, north to and including the cul-de-sac, in accordance with City of Derby Standards;

Project No. 26 – Spring Ridge Addition – Sanitary Sewer Improvements, Phase II

Resolution No. 77-2000, as amended by Resolution No. 27-2006

Install 8" sanitary sewer improvements to serve Spring Ridge Addition to the City of Derby, Sedgwick County, Kansas, in accordance with City of Derby Standard Specifications;

Project No. 27 – Spring Ridge Addition – 12" and 8" Water Main Improvements, Phase II

Resolution No. 78-2000, as amended by Resolution No. 29-2006

Install 12" and 8" water main improvements along **Spring Ridge Dr.**, from the south line of Keys Dr. to the south line of Glen Hills Dr.; **Mason Ridge Dr.**, from the east line of Lot 16, Block 8, east to the east line of Spring Ridge Addition, **High Park Dr.**, **Lake Ridge Dr.**, from the west line of Spring Ridge Dr. to the south line of Lot 28, Block 3, Spring Ridge Addition and **Lake Ridge Cir.** in the Spring Ridge Addition to the City of Derby, Sedgwick County, Kansas, in accordance with City of Derby Standard Specifications;

Project No. 28 – Spring Ridge Addition – Detention Pond Improvements, Phase II

Resolution No. 79-2000, as amended by Resolution No. 26-2006, as amended by Resolution No. 39-2007

Construct stormwater detention pond improvements in Reserve A, Spring Ridge Addition to the City of Derby, Sedgwick County, Kansas, in accordance with City of Derby Standard Specifications; and

Project No. 29 – Spring Ridge Addition – Street Improvements, Phase II

Resolution No. 80-2000, as amended by Resolution No. 28-2006

Grade, pave, curb and gutter and otherwise improve Spring Ridge Dr. from the south line of Keys Dr. to the south line of Glen Hills Dr.; Mason Ridge Dr., from the east line of Lot 16, Block 8, east to the east line of Spring Ridge Addition, High Park Dr., Lake Ridge Dr., from the west line of Spring Ridge Dr. to the south line of Lot 28, Block 3, Spring Ridge Addition, and Lake Ridge Cir. along with storm water sewer and appurtenances, in accordance with City of Derby Standard Specifications;

there are hereby levied and assessed the amounts (with such clerical or administrative amendments thereto as may be approved by the City Attorney) against the property described on ***Exhibits A-1 through A-29*** attached hereto.

SECTION 2. Payment of Assessments. The amounts so levied and assessed in *Section 1* of this Ordinance shall be due and payable from and after the date of publication of this Ordinance. Such amounts may be paid in whole or in part on or before **12:00 noon on October 23, 2008.**

SECTION 3. Notification. The City Clerk shall notify the owners of the properties described in ***Exhibits A-1 through A-29*** attached hereto insofar as known to said City Clerk, of the amounts of their respective assessments; and, said notice shall further state that unless such assessments are paid on or before **12:00 noon on October 23, 2008**, bonds will be issued therefor, and the amount of such assessment will be collected in installments with interest.

SECTION 4. Certification. Any amount of special assessments not paid within the time prescribed in *Section 2* hereof shall be certified by the City Clerk to the Clerk of Sedgwick County, Kansas, in the same manner and at the same time as other taxes are certified and will be collected over a period of 15 years, together with interest on such amounts at a rate not exceeding the maximum rate therefor as prescribed by the Act. Interest on the assessed amount remaining unpaid between the effective date of this Ordinance and the date the first installment is payable, but not less than the amount of interest due during the coming year on any outstanding bonds issued to finance the Improvements, shall be added to the first installment. The interest for one year on all unpaid installments shall be added to each subsequent installment until paid.

SECTION 5. Effective Date. This Ordinance shall take effect and be in force from and after its passage, approval and publication once in the official City newspaper.

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PASSED by the governing body of the City on September 23, 2008 and signed and **APPROVED** by the Mayor.

(SEAL)

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM ONLY.

City Attorney

CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of the original ordinance; that said Ordinance was passed on September 23, 2008; that the record of the final vote on its passage is found on page ____ of journal ____; and that it was published in *The Derby Weekly Informer* on October 1, 2008.

DATED: October 1, 2008.

City Clerk