

**APPROVED
REGULAR COUNCIL MEETING
July 24, 2007
7:00 PM**

Mayor Dion Avello presiding.

ROLL CALL:

WARD I
WARD II
WARD III
WARD IV

COUNCIL MEMBERS PRESENT:

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

COUNCIL MEMBERS ABSENT:

WARD I

Jim Meidinger

Flag salute was led by Council Member Cheryl Bannon.

The invocation was led by Rev. Tim Harlan, Woodlawn United Methodist Church.

**CONSIDERATION OF
MINUTES**

Minutes of the July 10, 2007, Regular Council Meeting.

MOTION: Arnold moved to approve minutes of July 10, 2007 Regular Council Meeting. Johnson seconded.

VOTE: Craig yea, Meidinger absent, Johnson yea, Warren yea, Schwarz absent, Bannon yea, Staats yea, Arnold yea, 7 yea, 0 nay, 1 absent, motion carried.

PUBLIC FORUM

Council Member Warren stated that we belong to at least one group that represents the city as a lobbying force in the State of Kansas in Topeka. He asked if that is a Sedgwick County delegation or one that represents cities of our size. If we have something that pertains to Sedgwick County, how do we get our voice heard in Topeka?

Kathy Sexton, City Manager explained the City of Derby is a dues paying member of the League of Kansas Municipalities, it does not include all cities because you have to choose to belong to it. It represents many small cities in the state and we are the 18th largest. We do not have just that only option in terms of representation in Topeka, we can certainly talk to our own legislators and we do. Mandy Wagner is our designated legislative coordinator and we talk to legislators here, mostly those that represent Derby, but if we have issues we communicate with the entire Sedgwick County delegation of legislators, senators and representatives, and occasionally even broaden that out to more legislators.

Council Member Warren explained the reason he asks is that coming up shortly there is going to be an election in regards to casinos. Wichita State has done a study relating to that issue, as well as the Downtown Development Group to look at the impact of that and the concern he has is that Sedgwick County/Wichita is only going to get 2% of the money that comes in as a result of the casinos, while the State of Kansas gets 22% of that money. His fear is that the 2% that Sedgwick County/Wichita gets is not going to be enough to offset some of the expenses that will come about as a result of having that casino. He would like to see, if it passes, our lobbyists see if they can get that figure raised from a 2% number to a 5% number. It sounds to him like this thing was put together pretty hastily at the state legislature as a last minute deal and talking to some lobbyists that have watched this thing go over the years, this is probably one of the least well written legislations that they have actually managed to get passed. His concern is if we don't get something we are actually going to see local taxes go up rather than go down. He would really like to see something take place should that pass. He asked if we would do that on our own or in conjunction with Sedgwick County and the City of Wichita.

Ms. Sexton stated that we would definitely want to talk with them. At this point it is prudent to wait and see if it passes and then we will be in contact with the Sedgwick County and Wichita folks and see what needs to happen. Her guess is that they might even be in contact with us sooner than us calling them. If they feel like they need a change they are going to want as many supporters as they can get.

Mayor Avello commented that he has talked to many mayors both in Sedgwick County and outside the county about that same topic and they are in total agreement. He thinks there will be a big movement for that.

Council Member Craig thanked Public Works for putting up more barricades in some of the areas we are working on. He commented for the public that over the next few weeks a lot of things are going to happen as far as getting prepared for school. There will be folks out on the streets working crosswalks and things like that and he requested everyone be considerate of our employees that are out there working and walking around, they have a lot to do before school starts. He also mentioned there are a lot of projects coming up in the near future and encouraged everyone to keep informed and keep watching Channel 7 to see what is going on.

Jay Reyes, Chief of Police reminded everyone that National Night Out is next Tuesday evening, August 7th. The Derby Police Department will be hosting a block party at Rock River Rapids with free admission for the public from 6:00 p.m. to 9:00 p.m. The SWAT van and members will be on display, the detectives will have their crime scene van and Rael Hodgson from State Farm will be there conducting a bicycle rodeo. He suggested people turn their porch lights on as a symbol to the nation that you are in observance of National Night Out and it is basically our night to say that we report crime, we stand up against crime, that we are aware of drug prevention programs and crime prevention programs and we will be vigilant during the next year.

Lorraine Robles, 312 S. Willow addressed some ordinances that should be put in place for tenants and landlords. She moved to Derby two years ago and currently there are no ordinances in place as far as adequate housing and there are no repercussions for landlords that choose to leave their property in disarray. The house she lives in right now has numerous violations and her landlord does not choose to acknowledge them or fix them. She advised she invited an inspector to her house to inspect it. In the basement inspectors found a water heater that has a gas pipe that is butted up to a hot water pipe with a slat of cardboard in between. That is a serious violation and her house could blow up. She has three children, one who is disabled and there are no repercussions for her, she can't do anything, her hands are tied because there are no ordinances in place. There was a flood in her home and her carpet is soaking wet in her basement and it is unlivable. There is mold growing and she can't do anything, she can't force the

landlord to fix anything so she is in the process of moving. She is worried that the next place she moves into will have the same consequences because there are no ordinances, so there is no adequate housing available to renters in Derby. If these ordinances aren't put in place how can Derby be one of the best places to live. She came to the council in hopes that something will be done. Adequate housing is a basic need, to have windows that open with screens on them. Her air conditioner has not worked for the last three months and her windows have no screens so she can't open them. She is living in a 100° house with mold growing in the basement and her landlord is not willing to do anything to fix it and they own a construction company here in Derby. She asked the council take this into consideration that there are people who may not want to commit to buying a house, they may want to rent but we have to face these issues.

Council Member Warren advised there are laws in place to protect Ms. Robles. Adequate housing and basic housing standards are a right that people should have but he believes that the laws that would offer some help are state laws, it would be a nightmare if every city had their own set of laws and everyone was different. Then it would become very difficult to take a look at. He asked staff to do some research for Ms. Robles; there are a number of laws that address minimum standards that landlords have to maintain. The other aspect is that if there are issues from a safety standpoint, then there are some legal liabilities that a landlord would be crazy not to address. If they put someone at risk from a health standpoint because of neglect then there are some legal liability issues that would come up. He advised Ms. Robles to get with staff tomorrow and they will provide her with the names of the agencies that oversee these kinds of situations and provide her all the help she needs to make sure these things can be taken care of.

Ms. Robles explained that she has been in touch with Kansas Legal Aid and they told her that she has to contact the Derby building inspector to come in and inspect her home, but there are no ordinances in place and the landlord will not allow a Derby inspector into the home.

Council Member Warren explained that Ms. Robles, as the tenant has the right to let whoever she wants into the home. Once the lease is signed basically that is her home and she can let anyone into her home that she wants to let in.

Ms. Robles responded that Dale the inspector told her otherwise.

Council Member Warren again advised Ms. Robles to contact the city tomorrow and they will get her some help. There are remedies out there so these things can be taken care of.

Ms. Robles advised she would greatly appreciate some assistance.

Mayor Avello thanked Ms. Robles for bringing this matter to the attention of the council; he does not believe anyone knew that we didn't have any ordinances regarding that. We do have an ordinance review board and that will be one of the priorities we can put on the list.

Council Member Warren stated that the fear he has is that if every city does their own set of ordinances, there is a very good set of rules, regulations and statutes that dictate this and to come up and have every city have their own set of rules it could become a real problem. He doesn't think it is broken he just thinks we need to get this person to the right people to help take care of those problems. There are plenty of remedies to help her get this taken care of.

Council Member Bannon explained that she had invited Ms. Robles to come and speak this evening, she called yesterday and she had pointed out to her, as some of this council may or may not be aware that minimum housing standards is something we have had on Ms. Sexton's priority list. She agrees with Mr. Warren that there is a point where the city steps in too far, but she believes in talking to Ms. Sexton, that there are some basic standards county wide that are very bare minimums that we as a city do need to look at having some in place on our own. That

is something that is on, and has been on the priority list. It is something that is being worked towards but will not be an immediate solution for the problem right now, but she wants everyone to know that it is something that is being worked on.

Mayor Avello advised he would not be able to keep his office hours tomorrow. If someone needs to contact him they can do so by e-mail or by calling him.

Council Member Schwarz arrived at 7:20 p.m.

PRESENTATIONS

Dee Williams, Senior Center Administrator recognized Donald Mangold, a 20-year volunteer at the Derby Senior Center.

Mr. Mangold accepted his award.

Mayor Avello recognized Delvin and Becky Yeager for their work on the National Forensic League Tournament.

Mr. Yeager thanked the city and school district for their help in getting this done. The tournament went extremely well and believes we put Derby on the map in terms of this conference.

AUDIT REPORT

Jean Epperson, Director of Finance/Clerk introduced Marvin Nye of Peterson, Peterson and Goss and thanked him for his thorough job.

Marvin Nye, Peterson, Peterson & Goss thanked the council for letting his company do the city's audit. They consider the City of Derby to be one of their highest quality clients. He commented on the city's exceptional accounting records, they are extremely well kept. This includes not only the ledgers and journals but also the monthly and annual financial reports. Exceptional accounting records always start from the top, meaning the council and city manager, and he congratulated them for the work done. The CFO is very informed and diligent in her work and does a wonderful job. There were very few audit adjustments for the whole year and they appreciate the cooperation received from every department they worked with. The city had only one very insignificant statutory violation which is mentioned on page 39 of the audit report. The city is in full compliance with GASB pronouncements and reporting requirements. The report reflects that the city is in very good financial condition. In the expanded fraud assessment and internal control work required by the AICPA this past year revealed no fraud, embezzlement or major deficiencies in internal controls.

Ms. Sexton addressed the minor statutory violation. It had to do with an investment in the checking account, which a lot of cities do and that's what it's for, which technically creates a violation of the statute.

Mr. Nye explained that technically there was a statutory violation however it was not significant, in his view. It had to do with the repurchase agreement investments being unperfected and undelivered for various dates throughout the year. The collateral on the repurchase agreements was held in a custody account at the federal reserve bank, which is good, in the name of the bank from which the city purchased the investment, which is not so good because it should be in the name of the city and the bank instead of being delivered to the city in

the cities name. That has occurred for the last 4-5 years, there has never been a loss and he can't imagine you would ever have a loss from that, but they are required to write it up. In addition, you earn more money on your interest income by doing this.

Council Member Warren commented that he appreciates everything that Mrs. Epperson does. He knows it is not a one person type of situation, everyone works on it, but there is one person he looks to to put the system together and Mrs. Epperson really deserves some credit.

MOTION: Warren moved to receive and file the report. Johnson seconded.

VOTE: Craig yea, Meidinger absent, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 7 yea, 0 nay, 1 absent, motion carried.

MOTION: Schwarz moved to recess to the El Paso Water Company meeting at 7:35 p.m. Arnold seconded.

VOTE: Craig yea, Meidinger absent, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 7 yea, 0 nay, 1 absent, motion carried.

The council reconvened at 7:58 p.m.

PUBLIC HEARING – 2008 OPERATING BUDGET

Kathy Sexton, City Manager reviewed the changes in the updated budget.

Background:

- The Manager's Recommended Budget was presented at the July 10 city council meeting. It is followed up now with a public hearing on the proposed 2008 operating budget and 2007-2012 capital improvement plan.
- The official budget hearing and formal adoption will occur on August 14th.
- The proposed 2008 Operating Budget provides for maximum budgeted expenditures of \$32,644,892. This amount includes the General Fund cash reserve and transfers between all budgeted funds.
- The amount of ad valorem tax projected to be levied for 2007 is \$7,106,241 based upon a mill levy rate of 48.176 (no change from last year).

Financial Considerations:

- Comments received from citizens and the city council concerning the proposed budget have led to the following corrections and clarifications:
 - The total assessed valuation is projected to increase by 7.9% in the 2008 budget (Financial Management section, p. 1). The concern was raised that this might be made up entirely of increased valuation of existing property. It is not. Analysis of the 2007 assessed valuation estimate received from the Sedgwick County Clerk reflects an increase in the valuation of existing properties of approximately 3.4%, slightly above current inflation. The remainder of the increase in valuation (4.5%) is made up of the valuation of new construction, renovations, additions to existing structures, and properties annexed in 2006, but is offset by a decrease in personal property due to the exemption of machinery and equipment.

- The budget book presented on July 10 contained an error in the number of full-time employees, specifically the number of firefighters (Financial Management section, page 3). It was reported that there would be 15 fire personnel with the proposed addition of a lieutenant and three firefighters, however, there will only be 14 as the department currently consists of 10 personnel. More importantly, the dollar amounts are correct in the document. Total full-time staffing is 144 in 2007 and 151 in 2008, plus 7 in the Water Company for grand totals of 151 in 2007 and 158 in 2008.
- The ability to issue debt financing to accomplish the projects in the 2008 Capital Improvements Plan is of the utmost importance (financial Management section, p. 6-10). Staff, in consultation with Greg Vehrenberg of Piper Jaffray, has reviewed the current debt capacity calculations along with the projects in the CIP that are subject to the bonded debt limitation. The sanitary sewer projects as planned in the CIP totaling \$8,693,000 are exempt from the debt limitation calculation by state statute.

If the library project is approved by the voters in October this year, the bonds will be subject to the debt limit calculation, but would be issued as the aquatic park bonds are defeased. The timing of this defeasance will be monitored to ensure that the city remains under the 30% statutory debt limitation. The council has had an unofficial goal in the past that direct debt as a percentage of assessed valuation would not exceed 20% and waived this when the voters approved the issuance of debt related to the aquatic park. If the voters approve the \$9.5 million library, the direct debt as a percentage of assessed valuation will remain above 20%.

Another factor to consider is the addition of infrastructure to new developments within the city and the related debt, a portion of which is subject to the statutory debt limitation and utilizes available debt capacity. Issuance of debt related to the projects contained in the CIP will allow the financing of continued development within the statutory limitation, but the degree to which the 20% target will be exceeded will depend upon the rate of development.

- Staff has learned that the Kansas Department of Wildlife matching grant for the Stone Creek concrete trail is 80% instead of 50% as originally projected (CIP section p.C5). This will free up \$37,800 in the 2007 proposed budget. It is recommended that this money be added to the contractual services line in the City Attorney's budget to cover fees for outside legal counsel, resulting in no change to the 2007 revised budget in total.
- The turn stile installation in the 2008 CIP has been removed which will reduce the Sales Tax Revenue Fund by \$18,295 (CIP section p. C5). After consultation with the Derby Recreation Commission staff, the request for turn stiles has been withdrawn. Although the CIP reflects \$20,000 for turn stile installation, staff discovered a \$1,705 error in the capital outlay line in the fund so the net reduction is \$18,295 (Public Works & Parks section, p. 7).
- The Wastewater Fund will require amendment by the Council to grant authorization to spend money carried over from the 2006 budget. The amendment will increase 2007 budget authority from \$2,287,450 to \$2,424,905 to allow the purchase of a high-pressure cleaning truck which was authorized in the 2006 budget but was not completed until this year.

Legal Considerations:

- The motion will authorize publication of the Notice of Budget Hearing in the August 1st Derby Weekly Informer. Upon adoption of the budget on August 14, the City cannot exceed the maximum expenditure outlined in each fund as certified to the Sedgwick County Clerk.

DISCUSSION:

Council Member Craig questioned if when Ms. Sexton referred to “all the projects” if that included the library.

Ms. Sexton advised it does.

Council Member Craig advised that we have to acknowledge to ourselves that we are creeping up from the 20% to a little over 24%, so we have to at least acknowledge that we know what we are doing because that only leaves us a little more than 5% margin there. He asked if that is a safe margin, our rating that we get from other lending organizations when we go out for money pretty much depends upon one of those factors being our debt ratio. He is a little concerned that we are hedging up.

Ms. Sexton responded that the 2008 CIP is big, but looking at the out years in the CIP document, remember how small the 2009 CIP is. We talked about that at our last meeting and there are a lot of things in 2008 and she is not sure if we can accomplish all of those things, whether for technical reasons of the design and getting everything done on time. She does not want to take anything out now because she doesn't know which project to take out. Certainly our financial picture changes if the library is approved or not approved, but the important thing is today that the CIP and the budget we show as a plan because all of those projects will be back to you in the future for real approval, except the library obviously, the people are going to approve the library, but all the other projects are in design or not even in design yet which means we need more detail, we need timelines. We need a sewer rate study, which we plan to do this fall after the engineers get to a point where they can give us real good cost estimates for those two big projects.

Council Member Craig commented that when we come down to the extension of the southeast interceptor sewer he has a real strong inclination that when that is completed and then the next phase is going to happen, it is going to happen rapidly. As we go to the northeast with that southeast interceptor, when we get to where we think we are going to stop it is going to be real quick that people will want us to go beyond that. He thinks we need to at least have that on the radar that that might happen and that will cost a considerable amount of money also. Once we start approaching 25% our margin starts to decrease.

Mrs. Epperson explained that what Moody's would look at, especially with the library is that would be a voter referendum and you would have a dedicated revenue stream. The bonds would be issued as sales tax revenue bonds; they are considered double barrel and are also backed by the taxing authority of the city. It's like with the aquatic park, they look at that as the voters authorized it and they authorized a revenue stream. The percentage is increasing, and the way the sales tax has performed is another issue.

Council Member Craig added that it would pretty well neutralize that percentage that project would take up then, even though it's real as a debt, it is somewhat neutralized as far as a player because there is a guaranteed revenue stream.

Ms. Sexton stated that what those rating agencies are looking for is either a city council out of control or a city management out of control that doesn't know what they are doing or are selling a bill of goods. When they see that the voters have approved not only a project but a stable funding source in a community that is as rapidly growing and has such good numbers as we do,

whether it's assessed valuation, sales tax, housing growth, there are no bad numbers in this city that is their comfort level. They see that growth is supporting this and the people support it, it's not like somebody is messing with financial numbers to get their project done without telling the truth.

Council Member Johnson asked if the figure of 4.5% was a correct number for the amount of new property included in our assessed valuation.

Ms. Sexton advised it was correct.

Council Member Johnson went on to say that 3.4% is the amount of increase in established property, which is before you take off some inventory for personal property, would that be correct.

Ms. Sexton stated those total numbers include personal and real property, they came right from the county appraiser's office. They already took out the personal property exempted for machinery and equipment this past year.

Council Member Johnson pointed out that the total increase in assessed valuation is up 7.9%. He understands he probably stands a better chance of being the next American Idol than he does in winning this battle, but, a 7.9% total increased valuation, 4.5% of that is new property which is pretty good growth, leaves us with only 3.4% increase in the difference. He specifically knows his assessed valuation on his house is up 10%. Aren't they increasing all the total assessed valuations, they used to do a percentage of homes one year and another percentage the next year and so forth and probably hit everybody about once every three years. He asked if that has been changed now to factor in everybody's appraisal.

Ms. Sexton explained that it is her understanding that state law requires county appraiser's to run their computer program for everybody, so everybody is going to see an increase, decrease or some assessment through the program and every so many years they actually send physical people on site to view the status of the property as well. They don't get to every property every year with people, but they do have their computer programs running them and those are based on the comps in the system and market of what has sold that is comparable to your house.

Council Member Johnson agreed, but stated that would probably only increase a property more if it were an existing house because it probably sold for more than what the appraised value was. He asked if Ms. Sexton is saying that everyone's property value was not increased like his was this year.

Ms. Sexton responded that everybody's is a different percentage. Mr. Johnson's home has 7-10 comparable homes to his house in the computer system. Their computer will run through how much those comps sold for in the last couple of years and that is how the computer program calculates your increased or decreased value. Obviously most of the homes in Derby are appreciating.

Council Member Johnson asked if they appreciated at the same rate.

Ms. Sexton advised they did not.

Council Member Johnson commented that he would think a 4.5% growth in a city's assessed valuation is really plenty to keep a city alive. It distresses him that we can't keep taxes the same, or even decrease them with that kind of significant growth because that is very significant for the average city in America, he is disappointed.

Council Member Bannon asked if the total debt service that we currently have includes the bonds and debt that is out for Rock River Rapids.

Inaudible response of yes.

Council Member Bannon continued, in 2010, or possibly a little earlier, we will actually have the money set aside to pay that off, so our percentage is actually really not 24. whatever, if we do all of those projects because we are not calculating in the money we have set aside to defease Rock River Rapids, is that correct?

Ms. Sexton stated that this calculation accounts for that, we accounted for that \$3.7 million we have in the bank right now for the current 22%.

Mrs. Epperson further explained that we are projecting, in 2008, to have \$3.7 million.

Ms. Sexton advised we are not projecting out, but we are taking credit for what we have now.

Council Member Bannon added that it is quite feasible that our projections are on the conservative side going forward with all the growth coming on. As our valuation goes up each year, which it has been known to do, the percentage of that would go down, our total debt service, because it is based upon a percentage of our total valuation.

Ms. Sexton agreed, that is why the percentages don't change as much as you might think because every year we are making a payment against the principal and every year we get more capacity in this ratio calculation by adding the assessed valuation.

Council Member Bannon stated that with the continued growth to the north we are going to continue to see more assessed valuation along with residential and commercial.

Ms. Sexton explained that this projection was for a 5% a year increase in valuation, which as you say, is conservative.

Council Member Warren commented that he is a little bit careful in trying to look beyond 2008 because nobody's crystal ball is totally clear on that. We know that 2008 is going to be a big year for our CIP program. We also anticipate that 2009-2010 will not be as large. He asked if it would be reasonable to assume, if we didn't have anything unusual come up in 2009-2010 that we would see that ratio drop back down into the 21-22% category, or once we hit 24% are we going to be stuck there for 4-5 years or longer.

Ms. Sexton advised we could project it out for a couple more years and present that at the next meeting. She will have to give it some more thought in terms of how much is being paid off because as we get closer to 2010 more Rock River Rapids gets in there. Everything we have in here is included but only if the numbers are included. Because we don't have firm numbers on some of these projects yet, the numbers could change, specifically the public works facility which is at \$2.5 million. Somebody made that number up about 3 years ago, we have not done a design, we just started doing the master plan so we do not have a cost estimate. We will get one and it may very well be more than \$2.5 million depending on what we come up with or it could be less. There are a lot of needs that we are starting to hear about from our master planning so it could be more. With the library we have a decent cost estimate but there is no design, there are no bids. Decent meaning an architect was hired and did some standard calculations with the A-K form and we looked at that and inflated it a little so you want to feel confident in it but nobody knows what prices are going to do in a year and a half from now. The wastewater projects are in design right now so those are the ones that she thinks we will have some numbers on in pretty short order, but not before this budget and CIP are approved in a couple of weeks.

Council Member Schwarz stated that in the total mix of revenues only 25% come from property taxes, is that right?

Inaudible reply of yes.

Council Member Schwarz added that 25% come from sales, gasoline and vehicle tax. He assumes that as we grow our commercial side we will get more revenue from Target, Kohl's, etc., so this mix will change dramatically in the next several years.

Ms. Sexton asked if he meant more property taxes because of the valuations of the buildings.

Council Member Schwarz advised that, but we will have more sales tax.

Ms. Sexton explained that won't affect our sales tax for the general budget that much because that sales tax comes from the whole county. Any retailer that builds in the whole county is going to help us all.

Council Member Schwarz stated they will share in our revenue stream.

Ms. Sexton agreed, just like we share when New Market Square opened, Bradley Fair and The Waterfront are doing great and downtown is doing well. We benefit from that as well because businesses send the money into the state, state sends it to the county treasurer and the county treasurer sends a check to every city and to everybody else that levies sales tax. At the county's agreement, when they levied the 1% sales tax back in the mid 80's was to share that with all the cities and they keep some as well. Our portion of that goes up whenever the general Sedgwick County economy goes up. Businesses opening in Derby affect our designated tax which now just goes to Rock River Rapids and is proposed to go for the library.

Council Member Schwarz stated, with that being said, our best hook to capture that revenue is through dedicated revenue streams or propositions like the library or Rock River Rapids that is our best hook to capture some of that sales tax revenue.

Ms. Sexton advised we could levy a local city sales tax for other purposes as well if we want to. At this point the only one under consideration is for the library. The point is very good about all this commercial construction because that will help our property tax revenues quite a bit. Commercial property is valued higher as a ratio than residential property. We like any new building because it all means a better tax base but commercial is better, unless it is exempted obviously and retail is not exempted in Derby.

Council Member Johnson stated that this sales tax is allocated back to us on a population basis, is that correct?

Ms. Sexton advised it is based on population and taxes levied.

Council Member Johnson asked if the amount of money we get in sales tax from the county was based on population.

Ms. Sexton explained it is population and taxes levied, it is a formula that includes both. If we lower our mill levy for example, we will get less sales tax, if we raise our mill levy we will get more sales tax. If we grow, in terms of population we will get more sales tax which has been a reason why our sales tax numbers have been good and some of the other cities in the county haven't been.

Council Member Johnson asked which was the overriding factor, if there is one.

Mrs. Epperson advised it is a formula where they are both weighted equally.

Ms. Sexton stated the amount of sales tax we get as a city is affected if, Goddard for example, reduces their mill levy or the amount of money they are spending, then we could get more of their sales tax as would everybody else. If Sedgwick County increases their amount levied then all the cities get less. Sales tax is kind of hard to predict that way until every city passes their budget in August, then the county clerk gets to figure that all up and figure who gets how much.

Council Member Craig commented that what the audience is hearing tonight is a dual edged sword. The city benefits from the increased evaluation and he grimaces every time they send him his appraisal because he knows it is going to cost him more as a taxpayer. However, it does benefit the city as his evaluation goes up, when they skip a year they make up for it by sending you one for 9-12%, it is a dual edged sword. What he wants the people to understand is that the city does not raise your taxes when it comes to the valuation on your homes; we are trying to make the best use of the dollars that come in. Even though we don't like to see the taxes on our homes and businesses go up it does benefit the city to provide more services. If we lower it you are not going to get as much as you did before. It is almost an evil that cannot be avoided to stay exactly where you are at. Our budget is exactly the same as it was in 2007, plus or minus a few thousand dollars. We are expecting more money but we are still trying to hold the reigns tight. He is concerned about the creeping debt because he knows we have some major things in this city that within the next five years are going to have to be tended to in a major way. If Robert Mendoza were here he would agree that our streets are going to be one of the major issues that we are going to have to deal with in the next 5 years. We are all very sensitive to the fact that it is starting to creep up on us and the debt ratio and we want to watch it very close.

Council Member Warren stated that when home owners receive their assessments the county is betting on the majority of people to complain and then pay their bill. He encourages people to fight their taxes, if you don't think your assessment is a fair one, if the value of what they are putting on your home is higher than what you actually believe the value of your home is, fight it. It is worth the fight, he does it every year on a number of properties, he wins some and loses some but he knows that by in large they are betting you are not going to fight it and he has seen a lot of people walk away surprised with a reduction simply because they came prepared to fight. Don't just give them a free ride, if you don't think that its right you can fight and sometimes you win.

Council Member Johnson pointed out that the government is out to screw you and city government can too so you should distrust all government and protest, right?

Council Member Warren stated it's the American way.

Council Member Johnson stated it's a sad deal.

Mayor Avello added that he owns commercial property in Wichita and he complained two years ago and it went down this year, not a lot, but it went down. On another note, with building comes stress and headaches and we are very fortunate that we have 135 employees working and doing a tremendous job with little money. We are growing and we are going to have to bite the bullet some times, we will watch it and be careful with it and watch the percentages.

Mayor Avello opened the public hearing.

PUBLIC HEARING:

Steve Spaulding, 1027 El Paso asked about the \$37,800 that was freed up and Ms. Sexton suggested it be applied to outside attorney fees that we might use, is that a future thing? A lot of times if we budget the money and stick it somewhere more than likely we are going to use that money. He suggested to take that money and pay off some debt and give us a little better debt ratio.

With no further comments Mayor Avello closed the public hearing.

MOTION: Schwarz moved to authorize publication of the Notice of Hearing on Amending the 2007 Budget, as presented, in the August 1st issue of the Derby Weekly Informer. Johnson seconded.

Council Member Craig pointed out that an official public hearing will be held on August 14th, that is the evening the council will be prepared to approve the budget. If there are any other concerns or thoughts that want to be presented to this council the official public hearing will be announced in the August 1st issue of the Informer.

VOTE: Craig yea, Meidinger absent, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 7 yea, 0 nay, 1 absent, motion carried.

EXECUTIVE SESSION:

MOTION: Schwarz moved to recess to executive session at 8:40 p.m. for a period of 20 minutes to be followed by a 10 minute break to consider matters privileged under the attorney/client relationship and personnel matters of non-elected personnel. Craig seconded.

VOTE: Craig yea, Meidinger absent, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 7 yea, 0 nay, 1 absent, motion carried.

The council returned at 9:09 p.m. with no binding action taken.

Ms. Sexton requested to go back to the previous agenda item for a correction motion.

AMENDED MOTION: Schwarz moved to authorize publication of the Notice of Hearing and Notice of Hearing on Amending the 2008 Budget, as presented, in the August 1st issue of the Derby Weekly Informer. Johnson seconded.

VOTE: Craig yea, Meidinger absent, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 7 yea, 0 nay, 1 absent, motion carried.

PUBLIC HEARING – ADA SELF-EVALUATION AND TRANSITION PLAN

Jenny Thrush, Human Resources Manager presented the staff report.

Background:

- The Americans with Disabilities Act (ADA) was enacted on July 26, 1990 and provides comprehensive civil rights protections to individuals with disabilities in the area of public accommodations, state and local government services, employment, and telecommunications.
- One of the requirements of Title II of the ADA is that the City meets a standard known as “program accessibility” which applies to all existing facilities and essentially requires that all programs and services are readily accessible and usable by individuals with disabilities.
- To ensure that the standard of “program accessibility” is met, the Disability Management Consulting Group, LLC (DMCG) worked with the City on drafting the self-evaluation and transition plan.
- The City’s ADA Advisory Board has reviewed both the self-evaluation and transition plan which identify improvements needed to make ADA-accessible all City programs and facilities open to the public. The transition plan also establishes a reasonable timeline for completing any necessary structural modifications.
- Public entities are required to accept comments from the public on the self-evaluation and transition plan.
- Both the self-evaluation and transition plan documents were placed on the City’s website, and a press release was sent July 11, 2007. Citizens were provided an opportunity to comment through e-mail, by calling the ADA Coordinator, or at this Council meeting.
- The process used by City of Derby staff and the ADA Advisory Board is similar to that used by the City of Wichita and the City of Winfield, both of which DMCG has worked with in response to ADA lawsuits.

Notable Changes:

In addition to requiring structural changes in and around our buildings and parks, other changes also are required. These changes include, but are not limited to the following:

- Determine and implement some changes to make the City of Derby’s website fully accessible to people with disabilities.
- Require a Contractor Assurance of Compliance Form to be completed and signed by all contractors working for or on behalf of the City, stating that they will comply with the ADA.
- Create a 20-year curb-cut transition plan for adding curb cuts to all City sidewalks.
- Provide all supervisors with ADA training and the City’s reasonable accommodation policy.
- Publish contact information for the City’s ADA Coordinator, as well as a statement of accessibility in the local newspaper at least twice a year for the next two years.
- Provide written materials related to programs and services in alternative formats when requested, subject to applicable waiting periods.

Financial Considerations:

- The total cost for making all of the City’s programs accessible is estimated to be approximately \$210,000. This cost is spread out over a ten-year period. In addition, the cost of the sidewalk curb-cut replacement plan will be developed in the future.

Legal Considerations:

- The City and its operations and programs are subject to the ADA.
- Remedies for failure to comply with the ADA include injunction and monetary damages, either based on institutional enforcement action or privately initiated litigation.

Policy Considerations:

- The City of Derby is required to maintain an updated Self-Evaluation and Transition Plan.

- Both documents provide for specific actions that need to be taken to ensure accessibility.

DISCUSSION:

Council Member Craig asked for elaboration on making the City of Derby's website accessible to everyone.

Ms. Thrush explained there are some very lengthy requirements for what needs to be done with the web design. A lot of that has already been done with the new website, some of that is captioning so when you click on a picture it provides words and someone who has a special device on their computer would have those words read to them, so instead of seeing a picture, if they are blind it would tell them what the picture is. It means we have to do a little more with our web design to make sure people with visual impairments can utilize the website.

Council Member Craig asked if most of the requirements are included in the \$210,000 except for the curbs.

Ms. Thrush advised that was correct.

Council Member Craig clarified that the curbs were spread out over 20 years.

Ms. Thrush stated that was correct.

Council Member Craig asked if there were a cost estimate on that project, or how much we have to do.

Ms. Thrush explained that we are currently making improvements to curbs every year, that is something that Robert Mendoza has been making sure is put into the budget every year. We have made a lot of improvements just over the last 5 years and this will just help us detail a plan for how we are going to finish it out over the next 20 years.

Council Member Warren asked if we know how many people within our city have disability issues and what types of disabilities they are.

Ms. Thrush advised she does not have any idea what the estimates are.

Council Member Warren asked if that is something that would be available through the census bureau.

Ms. Sexton advised we could check but she has never seen stats on something like that. We do know that the numbers are increasing and that is simply a factor of demographics as far as the aging population. We will have to look for some data for an average; certainly we don't have it for anything in Derby.

Mayor Avello asked if the Senior Center would have any kind of record on that.

Ms. Sexton stated she would have to check on that, she did not know.

Council Member Bannon commented that due to the privacy on that she doubts there is a lot of information out there, plus there are a lot of people that may or may not want to acknowledge

disabilities. As far as the \$210,000, if curb cuts are not included in that, what is the majority of that for?

Ms. Thrush explained a lot of it is structural improvements to existing buildings. The parks make up a very large chunk of that as well. Even though High Park is fairly new there are issues and pretty much all the park facilities have a lot of issues with bathrooms. A lot of times in order to make the stalls wide enough and the doorways wide enough there are walls that have to be altered and that gets very expensive.

MOTION: Bannon moved to receive and file the ADA Self-Evaluation and Transition Plan. Schwarz seconded

Council Member Arnold commended Ms. Thrush and Ms. Sexton on their proactive status with this. He can speak from first hand knowledge when the ADA law was passed he was one of the first cases in Kansas. He is glad to see the city taking this action, because as Jenny indicated we have no idea how many people are handicapped, that figure can change from day to day. Handicapped is not just wheelchairs and crutches, it is people who can't see, can't hear, loss of use of extremities, etc. There are a lot of accommodations that have to be made for them and the city taking a proactive stance on this is a credit to the city and he appreciates that.

Council Member Craig asked if the signage in the city, for example the autistic and deaf children signs come under this also.

Ms. Thrush responded that she believes someone has to make a request and indicate that they have a child that has special needs to receive one of those signs. She has a child that lives in her neighborhood that has special needs and the parents had to go to the city in order to get signage.

Council Member Craig requested we look into that a little more and make sure we make that more knowledgeable to those that might have a request for those types of signs.

Mayor Avello asked how much of a drain this is going to put on our city inspector.

Ms. Sexton advised our city inspector, who inspects new construction already enforces the ADA on people building projects. This mostly affects the buildings the city owns already and the programs and services that we offer. It is making sure the staff know how to deal with and serve a person who may come to the counter, for example, or if they come here and can't hear to make sure we have assistive devices ready to hand to them so they can hear what is going on a little better. There is a lot of staff training and planning of what we are going to do when, we sort of threw numbers in the budget to have some money to work with in '08 but we don't know exactly which projects we are going to do. We don't know which bathrooms we are going to fix or which are going to be better to just start over and build a single unit for ADA compliance and leave the old bathrooms as they are, sometimes that is better. We have a lot to figure out but Dale has been involved with Jenny in reviewing some of the structures and such but it doesn't affect his day to day business as such.

VOTE: Craig yea, Meidinger absent, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 7 yea, 0 nay, 1 absent, motion carried.

FINAL PLAT OF TALL TREE ADDITION

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

Background:

- At the July 10th Council meeting, the City Council tabled action on this final plat, pending additional information concerning the proposed collector street system.
- Staff has met with 3 Council members regarding the collector streets and has discussed possible options.

DISCUSSION:

Council Member Craig stated that Mr. Brown was very well prepared when they met with him last week. As he looks at the Tall Tree Addition as it has been platted, as Tall Tree comes in to that area it is 80-foot wide and as depicted on the drawing it tapers down to what we agreed to was a 70-foot collector as it proceeds around through the area. He noticed at the bottom where the road comes through Amber Ridge the road is also 80-foot and then tapers down. He asked about the statement made by Mr. Brown that collector streets will now be 70-foot wide.

Mr. Brown explained that at this point the subdivision regulations still call for 80-foot. It is one of our items on our to do list to update our subdivision regulations and the staff proposal will be to go from 80-foot to 70-foot for a collector street, for right-of-way. The paving within that right-of-way will remain at 41-foot.

Council Member Craig responded that what we have now is that the standard was set at 80-foot, what is proposed through this housing area is 70-foot, which really doesn't meet the standard. He still is of the opinion that that is not a collector street that goes through there, it is just a regular neighborhood street. He is comfortable with the fact of calling that a collector street until it intercepts a certain part of the housing area on the north and also from the south. Where you have those two connected in the hash area is where he would end the designation of a collector street at Tall Tree to the north and Amber Ridge Street to the south. It would end as it turns and comes into that area, indicated by the hash intercepts two lots, one on the north side and one on the south side and the rest of that is a residential street, in his opinion. He does not see any reason for us to absorb the cost of a street that goes all the way through a development area, it is really a residential street and doesn't meet our established criteria of 80-foot because it has been reduced to 70-foot at this time.

Council Member Bannon stated she met with Mr. Brown last week as well. To her a collector does just that, it moves people through the city. This isn't a collector. She believes that both lot 1's in parcel 2, the entrance on the north and south, she believes we should continue the Amber Ridge and Tall Tree collectors to the east side of those entrances and the rest of the horseshoe would be just a normal neighborhood street.

MOTION: Bannon moved to (1) approve the plat of Tall Tree Addition, designating the 70-foot right-of-way on Tall Tree Road, Walnut Creek and Birchwood Road from the west line of Lot 2, Block 2 to the west line of Lot 26, Block 2 as a local street in lieu of a collector street; and authorize the Mayor to sign the Plat and Developer's Agreement; (2) require developer to submit revised petition for street paving; (3) approve all other petitions submitted as guarantee that certain required improvements will be installed; and (4) instruct staff to record the Restrictive Covenant, Developer's Agreement, Certificate of Petitions, and Plat. Schwarz seconded.

Council Member Warren advised that he understands the argument of not requiring the balance of that area to be a collector street and the way that it lays out now that makes perfect sense. The question he has is whether or not we are going to have development that is going to put a reasonable amount of traffic onto this street from the east. Basically that is land that is

currently owned by the Knights of Columbus, if you were to ask them today what is going to go in that area and it will probably be some sort of senior housing in that area. The question would be how much traffic would that generate and would that traffic come into this subdivision via Tall Tree Circle. If that traffic would come into this area and generate additional traffic then he thinks this road does justify a collector street status. If it doesn't generate a lot of traffic then a regular residential street is sufficient. That is the question before the council, is how much development do we see occurring to the east of this area and how much traffic will that generate. If the traffic will be increased we are just creating a problem for the residents in that area by putting in a residential street. We did that on Brookforest; it acts as a collector but is designed as a normal residential street.

Mr. Brown pointed out that within the yellow section of the map, the crosshatched area is an area of R-3 zoning that the council has approved for multi-family apartment units, which is obviously a high trip generator, more so than a normal single family residential zoning. The idea that we have discussed and the motion made to extend those collectors to the entrances to those apartments, he thinks is a very valid argument. Mr. Warren's argument is also valid, with the property to the east and not knowing how it's going to be developed, our Planning Commission indicated that maybe it will generate enough traffic that this will be a collector. On the other hand, you can see in the future there is probably going to be another collector somewhere in the general location and that perhaps this development then could hook in to the east. All of us wish we had a crystal ball, it would make our jobs a lot easier and there are valid points on both sides.

Council Member Arnold stated that he believes this should be a collector street. He lives in Oak Valley, when he first moved there 20 years ago everyone parked their cars in the driveway and now everyone seems to park their cars on the street and two cars cannot pass each other, one has to pull over all the time. The question as far as the Knights of Columbus property is concerned, there are no plans at this time to divide the property up into some type of commercial or privately developed property. The only thing he knows of is that in the future after the school and the church have been finished they have a design of allowing a certain amount of land for a nursing home. He went on to address Hamilton Field, as most people know that is going to be divided up into a private development and senior citizen housing so you will have a lot of traffic going to that particular property. Going back to the argument, if you put a bunch of apartments in the middle of a lot of private housing it will increase traffic on that road tremendously. Those people have a tendency to come and go a lot more frequently than private home owners; he thinks it should be a collector street.

Council Member Craig advised that is exactly why the collector street will basically terminate at the entrance of the area that is hatch marked there that will have multiple family housing. With that situation there, when you go to the east in the yellow shaded area, St. Mary's owns all of that, is that correct?

Mr. Brown explained that St. Mary's owns the southern half and the Knights of Columbus owns the other part.

Council Member Craig stated that in that you can see the future as far as collector streets go all the way around that, he does not see that those folks in that neighborhood would appreciate a collector street going all the way to almost the center of their housing development to exit into another area to the east. It looks to him like there would be more opportunity to develop entries from those proposed collector streets that are going to be to the east of that area. The developer has the option of reducing that to a regular residential street or maintaining the same drawing that he has as a wide street, but he doesn't think the other residents of this city should pay for a street that goes through a residential area that only benefits those folks.

Council Member Bannon commented that as far as the apartments, the entrances to and out of the apartments would be included in the collector street area. There used to be a standard of two car garages, pretty much standard now is three car garages and there is a lot more parking in people's homes. To the east, part of that is in the flood zone, so the development there, there is a very small piece west of the flood zone area that could conceivably hook in. The majority of it, if it were to be developed in the future would be on the west of it that, to her makes more sense to run it to the north to collect.

Council Member Warren asked if it would be advisable to allow the developer to redo Reserve C at the east end of Tall Tree Circle to a residential lot to block future traffic into this subdivision from the east. That would eliminate the question about whether or not you would be adding additional traffic into this area and you would know then that you are in fact dealing just with a residential street. You take out the possibility of opening this up to the east then this makes perfect sense. In his mind he would have to vote against the motion if the day is coming that that could open up because he thinks we are going to have traffic into that area. The only way he could go with the narrower street is if we eliminated additional traffic into this area from the east.

Council Member Bannon advised she had no problem with that but she doesn't know whether Reserve C is wide enough. She would hate to see people build in that area and then have a street go in next door and they won't know it for 5-10 years. She would definitely leave that up to the designer if they wanted to take that to a residential lot.

Council Member Craig agreed it is a valid position to change that. He is not sure who would make the request to change it.

Mr. Brown explained that if that is the desire of the council it really needs to be sent back to the Planning Commission. With this particular piece of land, there was a lot of discussion about connecting back into that area west of the flood plain. The smaller, developable portion of the Knights of Columbus property and getting access to it, there is currently a cul-de-sac that provides access to that.

Council Member Craig asked how big that piece is.

Mr. Brown advised it is an 8 or 9 acre piece of land. By eliminating that connection all together then that property is totally landlocked with floodplain and/or property with no access. There was a lot of discussion at the Planning Commission level about access to this point and the negotiated solution was to put the cul-de-sac in and provide some type of contingent dedication in case this develops. By eliminating that all together you really eliminate some planning issues that the Planning Commission looked at very thoroughly and in that case it should be sent back to the Planning Commission, in his opinion.

Council Member Craig advised he would like to approve it the way it is now and let that be. You are talking about 9 acres in a 40-acre square. That is less than 25% of that area in a flood plain, he doesn't see how many houses would go in there and it is still basically a residential area because there is not that much room in there. He will stick with the motion the way it is now.

VOTE: Craig yea, Meidinger absent, Johnson yea, Warren nay, Schwarz yea, Bannon yea, Staats yea, Arnold nay, 5 yea, 2 nay, 1 absent, motion carried.

**ZONE CHANGE
REQUEST FOR AN**

UNPLATTED TRACT AT ROCK & TALL TREE

Don Losew, City Planner presented the staff report.

Background:

- This zone change request to the “B-3” General Business District, is for a 10.2 acre tract on the east side of Rock Road, north of the yet to be constructed Tall Tree Road on the north sides of the Derby Market Place 2nd Addition.
- This property is presently in the County but is adjacent to Derby’s City Limits. As a condition of the zone change, this site will need to be annexed to Derby and subsequently platted as a Derby subdivision.
- During the public hearing, no citizen opposition was expressed toward the zone change.

Financial Considerations:

- This site will need to be platted and financial guarantees will be obtained at that time for all needed public improvements.

Legal Considerations:

- On June 21, 2007 the required Public Hearing before the Planning Commission was held. The Commission approved the zone change by a vote of 8 to 0. Following are the findings of fact adopted by the Commission for the requested zone change.

The following is a copy of the Findings of Fact that were determined based on discussion by the Planning Commission and Staff and that was approved on June 21, 2007:

1. Commissioners determined the zoning fits the character of the neighborhood, in that “B-3” and other non-residential types of zoning are adjacent to or are in the immediate vicinity. Vote 8 yes, 1 abstention, Commissioner Pelley, 1 absent.
2. Commissioners determined existing or planned uses nearby are similar or the same as to what is being requested by the zone change, although the property is somewhat suitable for residential use, there are additional problems that would negatively impact existing or future residential use, this property is not suitable with the current zoning. Vote 8 yes, 1 abstention, Commissioner Pelley, 1 absent.
3. Commissioners determined that “B-3” zoning will not have a detrimental affect on nearby property based on no disagreement by the public being indicated during the public hearing and much of the area’s present or planned development or zoning is going in the direction of the type of zoning being requested. Vote 8 yes, 1 abstention, Commissioner Pelley, 1 absent.
4. The Commission determined although the property has somewhat remained vacant as zoned they were in agreement that this finding was non applicable. Vote 8 yes, 1 abstention, Commissioner Pelley, 1 absent.
5. The Commission determined although there are arguments on both sides of whether there is too much Commercial or not enough, it was agreed that this zone change should have no negative impacts on the public’s welfare or health. Vote 8 yes, 1 abstention, Commissioner Pelley, 1 absent.
6. The Commission determined that mixed commercial, that includes some residential uses being mixed in with it, conforms to the adopted Comprehensive Plan. That is, that the Comprehensive Plan supports such uses in this area of Rock Road. Vote 8 yes, 1 abstention, Commissioner Pelley, 1 absent.
7. The Commission determined that there are sufficient municipal facilities to support this zoning, therefore it would not be a negative impact on community facilities. Vote 8 yes, 1 abstention, Commissioner Pelley, 1 absent.

8. The Commission noted no opposition was raised at the public hearing and, although there is the potential to file protest petitions, all agreed that there is no apparent opposition by other residents or other parties. Vote 8 yes, 1 abstention, Commissioner Pelley, 1 absent.
9. The Commission determined Staff does not support the need for the requested zoning at this time.
 - If approved by the City Council, prior to this zone change being completed, the site will need to be first annexed to Derby and a plat of the site approved and recorded.

ORDINANCE NO. 1897

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.

DISCUSSION:

Council Member Bannon advised when she ran the totals she came up with 236.96 acres and suggested Mr. Losew check his figures.

Mr. Losew explained there are two areas and he is fairly certain his numbers are correct.

Council Member Bannon stated we have a lot of developable raw land in town that has been zoned and is owned by a couple of people. She does not know that they should or should not have a lock on it. The council has had this discussion before and B-3 makes the most sense along Rock Road. If you look at our comp plan and growth patterns B-3 is the only way to go up there although she has some concerns as far as what will happen to the house there. It will be a nonconforming use after re-zoning; she asked if it could be re-sold as a single family residence.

Mr. Losew stated that as long as it continues to be used for the single-family use it could be re-sold.

Council Member Bannon advised her concern is that she doesn't want to see our growth go so fast that we see empty buildings sitting around, but she doesn't think it's correct that we hamstring individuals from developing commercial land. There is one individual who has owned a lot of developable land who has not made great end roads into that. It is not up to us as a city to say "yes you can or no you can't".

Mr. Losew pointed out that there are some significant power lines across the front of that property that could hinder the ability for that to be developed for single family purposes.

Council Member Bannon stated there is 100-foot easement for Westar across that as well as a large gas line easement through it, making it very difficult to cut it into pieces.

MOTION: Warren moved to approve the zone change from "R-1" to "B-3" for the zone change application area subject to the site requesting annexation and the site being platted within one year of the City Council's approval of this zone change, withholding publication of the zone change ordinance until such time as the plat is recorded. Johnson seconded.

Council Member Warren stated that the question of whether or not we have enough or not enough B-3 will be determined by the market in the future. We have got a fair amount of B-3

that has been sitting for quite a while, but it has taken a while for the market to catch up to Derby and for people to believe in Derby. We have had a hard time for a lot of years getting commercial businesses to understand the dynamics of what Derby was like and what they could draw from. They are starting to see that now and we are starting to grow and we are becoming what he considers to be the third leg of a commercial hub. There is a lot of growth in the far northeast area of Wichita as well as the far northwest part of Wichita and he thinks Derby is becoming the third leg of that triangle and we are going to have a need for a fairly significant amount of B-3. He appreciates the applicant putting this forward because it is always better as Derby grows, and a residential area will ultimately grow out in this area, to know well in advance what the zoning is will be a real benefit to those areas. If we hit the saturation point for commercial development those developers may decide to put apartments, duplexes, single-family in. The market ultimately will dictate that but if the possibility exists that it's B-3 we should do it now so people know well in advance what the possibility is. You can always down zone, but it is much more difficult to go to a more intense zoning at a later date.

VOTE: Craig yea, Meidinger absent, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 7 yea, 0 nay, 1 absent, motion carried.

**INSTALLATION OF
CONDUIT AND STREET
LIGHTS – PATRIOT AVE.
FROM BUCKNER AVE.
EAST TO ROCK RD.**

Dan Squires, City Engineer presented the staff report.

Background:

- Sedgwick County and the City of Derby recently completed the improvements on Patriot Avenue (63rd Street) between Buckner and Rock Road.
- Normal practice is to install street lights after the paving project is completed.
- The City requested that Westar Energy prepare the street light plan based on typical spacing requirements, steel poles and underground wiring, and submit a proposal for installation of the lights.
- The City used Westar’s lighting plan to solicit proposals for required trenching and conduit for the underground wiring.
- Four trenching contractors competed for the work necessary in order for Westar to install the street lights.
- Westar’s proposal for installation of lighting is \$74,783.
- Four trenching proposals were received:

Allen Trenching, Inc.	\$ 87,518.50
Betzen Trenching, Inc.	67,552.12
Utilities Plus	57,518.00
Phillips Southern Electric Co., Inc.	52,780.00

Financial Considerations:

- Based on staff’s recommendation of Phillips Southern’s trenching proposal, the total cost of the street lighting project is \$127,563.
- Bond proceeds in the amount of \$87, 249 are still available from the Patriot Avenue project. An additional \$40,500 is programmed in the revised 2007 CIP included in the 2008 budget document.

- Additional monthly energy charges will be experienced by the City based on the number of new poles included in the project (43).

Legal Considerations:

- Competitive bidding is not required for installation of street lighting.
- All Westar-approved trenching contractors were solicited and all submitted bids for the trenching and conduit, assuring the lowest price to the City.
- The solicitation of contractors for the trenching work substantially complied with the City's purchasing procedures; all bids were reviewed by the Bid Board.

Policy Considerations:

- It is the City's policy to award contracts to the lowest responsible, responsive contractor.
- The Bid Board recommends that the trenching contract be awarded to Phillip's Southern Electric in the amount of \$52,780.

DISCUSSION:

Council Member Schwarz asked if there were any type of lower, ambient lighting that could be put up or does it have to be the big, light the night type lights.

Mr. Squires stated it is his understanding that you can go to something else, the problem with that is, in our per pole price that we pay to Westar monthly for our street lighting, they come out and do all of the maintenance. If we have a light that goes out all we have to do is call them and they will come out. They are not going to stock a bunch of different fixture and things to maintain those other poles. Typically we have used their standard because we can get them to maintain it. If you don't do that then they make you put it on a separate circuit, it is metered electricity and you do your own maintenance.

Council Member Schwarz asked if there were more directional lighting that could direct it more down to the ground.

Mr. Squires advised he does not have a good answer other than Westar typically limits us to their standards.

Ms. Sexton added that they already do that to the extent that the light is not going up. Street lights don't go up, they only go down. They are bright and tall and the taller they are the bigger area they cover. That major street that was put in as Patriot to be a commercial corridor is probably worthy of bright lights. What Mr. Schwarz is talking about could maybe be future street lighting for smaller streets and we could research that.

Council Member Schwarz stated that street is in the future going to be county to county and maybe we are a victim of our own success.

MOTION: Warren moved to approve the proposals of Westar Energy for installation of street lights in Patriot Avenue between Buckner and Rock Road in the amount of \$74,783, and Phillips Southern Electric for trenching and conduit in the amount of \$52,780, and authorize the City Manager to execute the necessary contracts. Staats seconded.

VOTE: Craig yea, Meidinger absent, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 7 yea, 0 nay, 1 absent, motion carried.

**BIDS FOR TALL TREE
ROAD PAVING AND
SIDEWALK
IMPROVEMENTS TO
SERVE DERBY
MARKETPLACE
ADDITION**

Dan Squires, City Engineer presented the staff report.

Background:

- A bid opening for the construction of Tall Tree Road Street Paving and Sidewalk Improvements to serve Derby Marketplace Addition was conducted on Tuesday, July 17, 2007, at 2:00 p.m.
- A solicitation for bids was submitted to contractors after advertisement in the appropriate publication.
- The following bids were received by the City Engineer's office and witnessed by the City Clerk:

APAC-Kansas, Inc.	\$347,860.00
Lafarge North America	\$319,893.15
Cornejo & Sons, Inc.	\$280,005.00
Engineer's Estimate	\$305,406.00

Financial Considerations:

- Funds for the construction work are included in the 2007-1 temporary note issue.
- Costs for the Street Paving and Sidewalk Improvements will be paid 85.2% (\$238,564.26) by the benefit district and 14.8% (\$41,440.74) by the City-at-Large, in accordance with the City's policy on financing of public improvements.
- Special Assessments will be spread against the benefit district properties over a 15-year period.

Legal Considerations:

- The City followed all applicable procedures in soliciting and evaluating bids for the project.

Policy Considerations:

- Cornejo & Sons, Inc. 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.

DISCUSSTION:

Council Member Warren clarified this is going to be along Tall Tree, east of Rock Road.

Mr. Squires advised that was correct.

Council Member Warren asked if the sidewalks will be going in at a time there will still be more development and construction going on that would require heavy trucks to be driving over the sidewalks.

Mr. Squires stated he did not believe so. The curbs will be constructed to provide internal access and they will be working internally out of the commercial development, not hopping the curb off of Tall Tree.

Council Member Warren asked who would be responsible if they bust up a sidewalk.

Mr. Squires explained if they break it we will make them replace it.

Council Member Schwarz asked if this project will be done prior to Rock Road being completed.

Mr. Squires advised it would. It will tie to Rock Road; we have Cornejo & Sons on both projects which will be convenient. There will have to be a connection made, especially since that side of Rock Road will be built afterward. He anticipates some type of temporary connection until such time as Rock Road is complete. However, most of the development that is going to occur that will create the traffic will not occur until after Rock Road is complete so the only traffic we should see is some of the construction traffic for that commercial development.

Council Member Schwarz asked how long the Rock Road project is going to take.

Mr. Squires advised about 1 year.

Council Member Schwarz asked if that road will become the main entrance to the Derby Marketplace.

Mr. Squires advised it probably will but it will be mostly construction traffic until Rock Road is done because it will take them a while to build whatever building they are going to put in there. There may be a short time they are using a temporary connection but he doesn't see it as being very long. He expects that most of Rock Road would be complete before there is much traffic generated on Tall Tree Road.

MOTION: Johnson moved to approve the bid of Cornejo & Sons, Inc. in the total amount of \$280,005 for the construction of Tall Tree Road Street Paving and Sidewalk Improvements to serve Derby Marketplace Addition. Staats seconded.

Council Member Craig suggested annotation of where the new entrances are going to be along Rock Road to help the council better understand that particular area in the future.

VOTE: Craig yea, Meidinger absent, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 7 yea, 0 nay, 1 absent, motion carried.

**AGREEMENT TO TRADE
LAND TO ACQUIRE
SITE FOR PROPOSED
NEW LIBRARY**

Phil Alexander, City Attorney presented the staff report.

Background:

- The Library Board requested that the City construct a new library facility to accommodate recent and anticipated increases in patronage and enhanced services.
- The 9.84 acre site for the new library, currently owned by Unified School District No. 260 of Derby (the “District”), is located on the southeast corner of the intersection of Market Street and Woodlawn.
- Staff expects the Board of Education to review the proposed agreement on July 23 and approve it at its next meeting on August 13.

Financial Considerations:

- There will be no direct financial impact because the transaction involves no cash.
- Development of the library would be funded by a sales tax that will be considered by voters at the October 16 special election.
- Because it is already owned by a governmental entity, the library site is and would remain exempt from *ad valorem* tax.

Legal Considerations:

- The proposed agreement was prepared by City staff and reviewed by the District’s staff and legal counsel.
- Development of the property acquired by the City is limited to library and related facilities.
- Development of the property acquired by the District is limited to school and related facilities.
- Title to each property would revert to the original owner after 5 years unless construction of a library facility has been commenced.

Policy Considerations:

- The library site is well situated for its intended use; the property is currently served by all necessary utility and infrastructure improvements.
- The property to be conveyed to the District will improve the utility of other adjacent property already owned by the District.

DISCUSSION:

Council Member Bannon thanked the school board for doing this and looking at it, as well as the council. It has been a long way getting here and having the piece of land traded and the deal done puts our voters in a better position to try and make a decision that they will be making in October.

MOTION: Bannon moved to approve and authorize the Mayor to execute the proposed Agreement to Exchange Real Property between the City of Derby and USD 260. Craig seconded.

Council Member Warren commented that he never was happy with the exchange that took place 9-10 years ago when the park land was given for the little piece of land along Woodlawn. This brings about what he considers to be a fair trade and he appreciates the school board and their willingness to do this. In looking over the contracts it is a 2-way street that both the city has to use the land for the intended use of the library within a 5-year period. The school district also has to use the land for school purposes. He asked if there is a time limit on the school’s property.

Mr. Alexander advised it is also 5 years.

Council Member Warren asked what happens if the library is approved and built but the school district doesn't do anything with their land, what happens at that point.

Mr. Alexander explained that assuming that construction commences on the library facility then the reversion clause on both properties will become null and void. It will be a done deal when construction begins on the library.

VOTE: Craig yea, Meidinger absent, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 7 yea, 0 nay, 1 absent, motion carried.

GENERAL DISCUSSION:

Council Member Bannon stated that Westar is talking about taking out every tree, shrub, everything in a 100-foot easement from the north to south parts of town. She knows it is not the city's job, nor can we tell Westar what to do but she believes it is in our best interests to have a sit down meeting with Westar to see if maybe we can look at some height requirements. Shrubs that are only going to get 10-foot tall are not a problem to a 50-foot high line. She has spoken with Mr. Brown who has indicated a willingness to do that but she wanted the rest of the council to know because this does run through the entire city, it is the large line that runs south, all the way up Rock Road. If everyone is in agreement she would like to sit down with Westar to try to make some type of equitable arrangement.

The council agreed.

Council Member Johnson pointed out all the trees we planted along Patriot Avenue for the golf course are right under a low line coming across. Are these trees a limited size or did we give that any thought?

Ms. Sexton explained the people involved in planting new trees in city right-of-ways consider that, they look at what the growth of mature trees is and put ornamentals under power lines and that kind of thing.

Council Member Warren commented that it looks like a pretty good chance the Derby Twins are going to finish the season in the Jayhawk League and the NBC Tournament will start in early August. The men are great young men and have been great ambassadors for the city, getting the word of Derby out all across the state and even into Missouri. He encouraged everyone to go out and watch them at the tournament. He also suggested we put the NBC schedule on our website.

ADJOURNMENT

MOTION: Warren moved to adjourn. At 10:17 p.m. Schwarz seconded.

VOTE: Craig yea, Meidinger absent, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 7 yea, 0 nay, 1 absent, motion carried.

Dion P. Avello, Mayor

ATTEST:

Jean Epperson, City Clerk

[Return to agenda](#)