

**APPROVED
REGULAR COUNCIL MEETING
June 12, 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

COUNCIL MEMBERS ABSENT:

WARD I
WARD IV

Jim Meidinger
George Arnold

Flag salute was led by Council President Charlie Schwarz.

The invocation was led by Rev. Carol Meredith, St. Andrew's Episcopal Church.

**CONSIDERATION OF
MINUTES**

Minutes of the May 22, 2007, Regular Council Meeting.

MOTION: Schwarz moved to approve minutes of May 22, 2007 Regular Council Meeting. Craig seconded.

VOTE: Craig yea, Meidinger absent, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold absent, 6 yea, 0 nay, 2 absent, motion carried.

PUBLIC FORUM

Kathleen Avitt, Director of Programs for Derby Recreation Commission, announced the summer concert series that kicks off this Saturday, June 16th at the High Park Amphitheater at 7:30 p.m. The first night will be bluegrass music by the Jeff and Vida Band from Nashville. On June 23rd there will be a rock and roll evening with a local band from Wichita. On June 30th there will be a blues evening. She encouraged everyone to come out with their lawn chairs and blankets, there will also be vending and a bounce house for the kids.

Council Member Bannon pointed out this is a free event for the public and we are hoping to see everyone out there.

Dallas Love, Chairman of Independence Day Parade and Commander of the VFW. Mr. Love is requesting the monetary support of the council for the parade. This parade will be even better than last year and they will have the 312th Army Reserve Band. Several applications are already rolling in so it is already looking pretty good.

Paul Hawkins, Director of South Central Kansas Library System, 321 N. Main Street, Hutchinson. This organization provides grants, consulting, continuing education and support services to 149 member libraries in a 12 county area; the Derby Public Library is a member of their organization, as is the Derby Public Schools. He encouraged the councils support for a new Derby Public Library. He has worked with the Derby Public Library for the last 20 years as a consultant and an advisor, and most recently during the planning process for the new library. If he needed a text book example of good planning from a library board and a staff assessing state standards for library services and finding out what residents want from a new library, he would cite Derby. But all of the good work that has been done so far cannot go forward without the council's support. In April he was part of a ground breaking at the McPherson Public Library, in June he participated in a groundbreaking at the Andover Public Library and next month he anticipates participating in a groundbreaking at the Haysville Public Library. There are so many library building projects this year that he now carries around a gold spray painted shovel in the back of his work vehicle just for these types of occasions. In the next several years it is likely that Park City will build a new library, as well as Rose Hill and Valley Center. Obviously these examples indicate a trend to expanded library services and building projects in our area. While Derby shares the same need with other communities for a new public library, what is different about Derby is the service population which at nearly 21,000 and growing is approximately more than double McPherson, Andover and Haysville. That is why in comparing the cost and size of the Derby project, Derby needs to double what these other communities are doing since Derby has twice the number of people and needs twice the space to provide these library services. On the basis of the library board's recommendations, the city council's in Andover, Haysville and McPherson allowed the voters in their respective communities to decide whether and how best to pay for these library building projects. He trusts that this evening, you in your capacity as elected officials will allow the citizens of Derby to do the same.

Robert Mendoza, Director of Public Works and Parks, recapped the garden tour held on Saturday. There was on average 560 people at 5 of the gardens, and over 700 at Kevin Payne's garden. That was fantastic for the first year and they can't wait to expand it. He listed the participants, Darrel and Vicky Henwood, Johnny and Maggie Johnson, Kevin and Cindy Payne, Dave and Claudia Peebler, Pam and Phil Schroeder and Chris Selcer, Bill McCabe who sponsored a breakfast, as well as the Park and Urban Forestry Board Members. Bill McCabe and Dave Peebler really worked the hardest with the City of Wichita to get this garden tour going. He was told the Wichita Garden Council was excited to see the numbers because their numbers have been shrinking and they were shocked at how much activity we had.

PROCLAMATION

Mayor Avello declared Wednesday, June 13, 2007 as Woody Austin Day in the City of Derby.

Council Member Schwarz asked Ms. Sexton when the NFL (National Forensic League) tournament was, is it next week?

Ms. Sexton advised it was.

Council Member Schwarz stated we need to give residents fair warning.

Ms. Sexton explained that the national speech and debate tournament for the National Forensic League is hosted here in Derby and in Wichita. It is her understanding that students start arriving Thursday and Friday of this week, they will mostly be in Wichita the first few days as they bunk down in hotels there.

Mandy Wagner, Assistant to the City Manager, advised there will be 5,000 people coming to this, 3,000 of whom are student participants and 2,000 being coaches, parents, and other sponsors. For the Wichita area, they have 12,000 room nights booked in hotels and just the hotel fees alone pull in \$4.5 million into the region. That does not include food, fuel, shopping or entertainment, so Derby is having a major impact on this area and we are pleased to have them.

Council Member Schwarz advised he understood one night is an open night at Rock River Rapids for the kids, is that correct?

Ms. Wagner stated that was correct, she believes it is Tuesday.

Council Member Schwarz added it is a great day for Derby and the Wichita area and it showcases Derby at the same time.

Ms. Wagner agreed and stated it is also a great day to go out to the High Park Amphitheater and hear the Jeff and Vida Band on Saturday night.

Council Member Bannon stated she had seen on the news this last week about Wichita having the forensic event, so she hopes they figure out it is actually Derby that won the hosting of the tournament, we are just having to use space in Wichita. She also thanked all of the volunteers for Derby Days, they worked very hard, with the rain there were a lot of things that could have gone wrong, but Derby Days came off very well, turnout was great and she learned two things. Public officials need to have candy to throw because they are disappointing all of the children and never ride with the mayor; he is way too popular of a gentleman. It was a great event and she hoped everyone enjoyed it.

Mayor Avello advised that he spoke at the Downtown Lions Club in Wichita last Wednesday and he was told he would probably get about 5 questions and it would last about 10-15 minutes. He got about 25 questions and he was up there for about 35-40 minutes. These are people who live in Wichita that are very much interested in what we are doing in Derby and want to know what we are doing to be so successful. He told them they would have to come down and spend some money so we could collect the .5 cent sales tax and then we would tell them.

SPECIAL ELECTION FOR A LIBRARY

Kathy Sexton, City Manager presented the staff report.

Background:

- On March 27, the Council heard a presentation about the design concept for building a new library (36,620 square-feet), and on May 8, the Council got its first look at draft ballot language to call a special election to authorize the \$10.5 million project (\$9 million

building). The Council tabled the item for 30 days, directed staff to remove the renovation of the old library building from the project, and asked the Library Board to take another look at the size of the project.

- Since then, staff removed \$500,000 from the project for the renovation project, and the Library Board considered the Council's request and voted to remove another \$500,000 from the budget for the new library.
- The project architects worked with the Library Director and City Manager to adjust the project budget downward. Reductions were made in the budget for fixtures, furniture, equipment, site acquisition, administrative costs, and contingency. With these reductions, the project budget now totals \$9,435,000.
- The project architects also developed a new rendering, taking into consideration the comments received about design, curb appeal, and cost. The coffee bar was removed, the exterior concrete wall was lowered, the main interior wall was lowered to be below the roofline, and the covered walkway was sloped.
- After hearing some concern about confusion regarding when the tax would begin, the ballot question was reworded to ensure clarity that the tax begins after the aquatic park tax ends. No increase in the current level of sales tax will be imposed as a result of this election.

Financial Considerations:

- The project budget of \$9.435 million includes \$8.5 million for design, construction, site improvements, project management, and contingency; \$768,477 for interim financing costs; and \$166,523 for issuance expenses of attorney fees, underwriting fees, and the like.
- Funding for the library project would come from a half-cent sales tax authorized for 10 years, beginning after the aquatic park sales tax ends. The aquatic park sales tax is projected to sunset in 2010. Current debt service projections are based on repayment of bonds in 8 years, assuming that the local economy continues along at its current strength.
- Temporary notes would be used to finance construction in late 2008 or early 2009. These notes would be repaid by issuing general obligation bonds in 2010.
- The additional operating costs projected for the first full year of operations are estimated to be around \$320,000.
- The cost of holding a special election on Tuesday, October 16, 2007 is anticipated to be approximately \$5,000.

Legal Considerations:

- State law requires a vote of the people for a sales tax and for issuance of general obligation bonds. State law also limits a special purpose sales tax to 10 years.

Policy Considerations:

- A decision on location is now required for the election. The location currently being considered for the new library is a portion of the lot currently owned by Derby Public Schools at the corner of Walnut Grove and Sumac streets, just east of Tanglewood Elementary School. The City is working with the school district to develop terms of an agreement to transfer the land to the City if the library financing is approved.
- The current library is approximately 9,000 square-feet. According to Judy Bennett, Library Director, the standards for public libraries in Kansas recommend square footage between 12,600 and 21,200 for cities with populations between 10,000 and 25,000. The proposed library of 36,620 square feet would serve the community as it reaches a population of \$32,000 and beyond.
- The City's estimated population is currently 20,543. According to the 2005 Comprehensive Plan, the population is expected to reach 25,000 in approximately 2018 and 31,144 in 2030.

RESOLUTION NO. 47-2007

A RESOLUTION AUTHORIZING AND PROVIDING FOR THE CALLING OF A SPECIAL QUESTION ELECTION IN THE CITY OF DERBY, KANSAS, FOR THE PURPOSE OF SUBMITTING TO THE ELECTORS OF THE CITY THE QUESTION OF IMPOSING A ONE-HALF PERCENT (1/2%) CITYWIDE RETAILERS' SALES TAX FOR THE PURPOSE OF FINANCING THE COSTS OF CONSTRUCTING AND OPERATING A NEW PUBLIC LIBRARY IN THE CITY, AND AUTHORIZING THE ISSUANCE OF SALES TAX/GENERAL OBLIGATION BONDS OF THE CITY TO FINANCE SUCH COSTS

DISCUSSION:

Council Member Craig pointed out in the body of the election question where it refers to payment of operating and maintenance costs, is that where you are talking about that this goes into a fund, and do we know what the level of that fund is, in other words the reserve, how much has to be in there.

Ms. Sexton explained there is no amount that has to be in there, it is whatever's left after the debt payments are made that year and whatever the sales tax bring in, it goes into that fund. The council will approve the operating budget of the library each year, this isn't money that somebody gets without the council's approval, the council will approve that each year, as far as what can be spent. Essentially, it will defray those costs of a new library for approximately 10-years, then when the tax is ended, which will definitely end in 10-years with no council action, but if the council is able to and desires to end it sooner than 10-years it will be whatever is in the fund at that time.

Council Member Craig asked if the construction were paid off and everything, your reserve fund, whatever is left over, then it cuts off and that can be early, correct?

Ms. Sexton stated it can be earlier than 10 years, and it must be at the action of the council.

Council Member Craig asked if the maintenance and operating issue can drag it on.

Ms. Sexton explained that when the people vote on this, if it is passed, this tax will end in 10-years. There is no legal authority that we have to extend it beyond 10-years.

Council Member Craig asked what the criteria was for ending it earlier.

Ms. Sexton advised it is a council decision. Basically you have to have your debt payments provided for. You have to have the money in the fund to make the payments when the payments are due.

Council Member Craig clarified that we have not set an amount that has to be in the reserve fund at this time.

Ms. Sexton advised that was correct.

Council Member Craig asked Mr. Norton if there will be a requirement during this bond issue, if passed for a certain amount to be in a reserve fund.

Joe Norton, City's bond council, explained the ballot question does not place a maximum amount to be established in that reserve. As Ms. Sexton indicated, once you have sufficient money to retire the debt then it's the council's decision how much you want to accumulate for

operating and maintenance funds before you terminate the sales tax if you decide to do so before the 10-year period.

Council Member Craig pointed out there is still the option, even though the debt is retired, if you still had operating and maintenance costs you could continue it on.

Joe Norton stated it could not exceed 10-years.

Council Member Warren advised his concern is this, if there is any part of this question that is open-ended, and open to the council to make a decision down the line, that can create a reason for somebody to vote against this thing. If we wanted to put into this resolution that upon the payment of the \$9,435,000, plus a reserve account of \$1 million or whatever figure that would be, then the sales tax would end at that point rather than at the discretion of a future council, could we do that tonight? He does not want to delay this and he knows there are people that want to go to work on this thing and they can't do that until we make a decision.

Mr. Norton stated that if you would like to make a motion to adopt subject to inserting a "not to exceed number" that is well within the purview of the council. The one thing you need to think about is this project is slightly different than the aquatic park, in that the aquatic park charges fees for admission so they generate some revenue to cover the operating and maintenance expenses. The council may be fully briefed on what number you would want to put in there to cover the operating and maintenance expenses for this building for a period of time. He is not in a position to say you should do "x", but the council may be. The question of whether or not you are able to do that this evening is one of comfort level of the council.

Council Member Warren stated that his concern is to try and create a ballot question that has as few unanswered questions as possible so that when people go to vote they know what they are voting for and what we have created is a situation that it might end in 8-years, but somebody out there is going to say that if the council has anything to say about it, it's going to go 10-years no matter what. He thinks there is some merit in creating a definite dollar amount that we are going to pay off on debt and a definite reserve amount, and when we reach that figure whether that be 6-years or 8-years, not to exceed 10-years, it will drop, he thinks you will pick up votes.

Mr. Norton stated there are really two questions there. One being, do you want to impose a maximum reserve amount, and the second being; what is the amount you want to set that number at.

Council Member Warren advised that would be a question for the council members to determine what that figure would be.

Council Member Bannon stated that this is an issue that she and Ms. Sexton have discussed at length, and honestly she does not think the council can come to the exact right figure tonight, it's very hard, you're hitting a moving target. When Rock River Rapids was voted on there was some open ended questions there, no one expected it to be able to pay off as early as it has been, it's just been through sheer growth that that has happened. She does not have a huge problem with setting a dollar figure in there, but we honestly don't know what the right dollar figure is and we have delayed this vote and delayed this vote to where we are at the point we either have to do it or back it up and there is too much riding on this to back it up. So far no one she has spoken to has said that we do not need a bigger library, they have not said we do not need a bigger senior center, nor has she heard that we don't need a community room. Given those facts, and the facts of the sales tax financing, which this is going to be funded by, it actually will change. By the time this library tax goes into effect it is estimated it will be 1% less than it is right now because the arena sales tax comes off at the end of this year, so the sales tax in Derby will at that point, unless something else changes, be 6.8%. Money, as in all things is the big

question mark. She asks everyone to check out the facts as far as what it is we are getting for our dollar, look at the cost of Rock River Rapids, the number of days it is open, which is about 80 and the number of kids it appeals to. The cost of a brand new, privately built building, just a few blocks away from where this library is going to be built is about double per square foot than what the library is. This isn't the Taj Mahal we are building, it's a needed facility and she thinks all of the council is probably at that point. She too has concerns about reserve, but at 10-years it stops, whatever council is in charge is in charge of agreeing to each year's budget for the library. It is going to be very difficult in an amount of time to pick the correct dollar figure of what that building and reserve account is. You might pick up some votes, you might lose some votes and so far she has been told by so many people that they are not going to vote because of this or that. The library board has come down in what they expect to build; they have taken away any "fluff" items. There have been a lot of changes already in this and the bottom line is in being on this council she has found that you can't satisfy all the people, there is not a design, there is not a ballot question we can make that will satisfy everyone, the goal here is to try to satisfy the most.

MOTION: Bannon moved to approve a resolution to call a special election for a one-half percent sales tax to construct and operate a new public library and issuance of bonds to finance such costs. Schwarz seconded.

Council Member Warren advised he made a statement at the last workshop that he would support whatever the library board wants to go for and he is going to stand by that. He asked Mr. Fanning if the board was comfortable with marketing this without a hard and fast number on the reserve, in which case he will go ahead and vote for this, or would it be advantageous to have a number on there?

Frank Fanning, Director of Library Board, stated that he agrees with what Council Member Bannon said. It is going to be hard to come up with that number, although Council Member Warren's point was well taken, people will say the council will spend whatever money they possibly can. To him it is rather clear, the language is very plain, a maximum of 10-years, less than that if it's paid off, at that time the council may want to discuss the operating cost. A straight answer to the question is that he is comfortable with the resolution.

VOTE: Craig yea, Meidinger absent, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold absent, 6 yea, 0 nay, 2 absent, motion carried.

The council recessed at 7:42 p.m. and returned at 7:52 p.m.

Council Member Bannon exited the meeting.

FINAL PLAT OF THE PHILLIPS K-15 ADDITION

Don Losew, City Planner presented the staff report.

Background:

- On June 1, 2006 the Planning Commission by a vote of 8 to 0 approved a Final Plat for this application area. A zone change to B-5, Restricted Commercial, Warehousing, Limited Manufacturing zoning has been approved for this site subject to platting. An unusual or unique situation involving this plat, is that a portion of the platted area is the site of an existing pet cemetery. The area involved with the pet cemetery has been

identified on the plat as a Reserve A. The plat does provide for continued access to the cemetery. Sanitary sewer is presently available to the site. However, water will need to be extended to the site and a petition has been submitted for that purpose. The site is within McConnell's APZ II zone and an Avigational Easement and Restrictive Noise Covenant were required.

Financial Considerations:

- The applicant has submitted a petition and a Certificate of Petitions for the improvement required for this site's development (extension of 16 inch water line).

Legal Considerations:

- Pursuant to State Law and the City's Subdivision Regulation, the Planning Commission has approved this plat.

Policy Considerations:

- City-At-Large costs associated with the proposed 16 inch water line along Nelson Drive are in accordance with the City's Public Finance Policy.
- Upon approval of the petition, City Staff will submit it to Gilmore-Bell for preparation of the required resolution which the Council will consider in the very near future.
- The applicant has complied with all requirements of the Subdivision Regulations.
- The Planning Commission approved this plat on June 1, 2006.

DISCUSSION:

Council Member Craig asked what was adjacent to this property to the north.

Mr. Losew advised there was a Fuel Outlet, which is presently vacant, Mid-Con Plastics is to the north and there are two existing buildings currently at the site. There was a home removed a year or so ago, at this time the rest of this property is all vacant and undeveloped.

MOTION: Warren moved to (1) approve the plat of the Phillips K-15 Addition and authorize the Mayor to sign the plat, (2) accept the Avigational Easement, (3) approve the petition submitted as guarantee that certain required improvements will be installed, and (4) instruct Staff to record the Avigational Easement, Restrictive Noise Covenant, Certificate of Petitions, and the Plat. Craig seconded.

VOTE: Craig yea, Meidinger absent, Johnson yea, Warren yea, Schwarz yea, Bannon absent, Staats yea, Arnold absent, 5 yea, 0 nay, 3 absent, motion carried.

**REVISED RESOLUTION
FOR STORMWATER
IMPROVEMENTS TO
SERVE PHASES 5 & 7,
THE OAKS ADDITION**

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

Background:

- The Oaks Addition is located between Meadowlark and Patriot on the west side of Rock Road.
- The Oaks Addition (original plat) was approved by the City Council on January 25, 2001.

- Due to various replats and re-phasing of projects, the Council has approved various versions of resolutions to construct public improvements including the stormwater improvements (reinforced concrete box culvert) proposed on Dry Creek under Tall Tree Road.
- Bids were received for the stormwater project on April 3, 2007. The bids received resulted in the total project costs exceeding the approved resolution amount.
- The developer has opted to submit a new petition which increases the allowable project costs and Gilmore & Bell has prepared the corresponding resolution for Council consideration, which would amend the original resolution (65-2003).
- If the revised resolution is approved by the Council, the bids for the stormwater improvements construction will also be considered at the June 12 Council meeting.

Financial Considerations:

- Funds for the construction work are included in the 2006-2 Temporary Note issue.
- Costs for the stormwater improvements will be paid 100% by the benefit district and none by the City-at-Large.
- Special Assessments will be spread against the benefit district properties over a 15-year period.

Legal Considerations:

- This is a valid petition 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. 48-2007

A RESOLUTION DETERMINING THE ADVISABILITY OF THE MAKING OF A CERTAIN INTERNAL IMPROVEMENT IN THE CITY OF DERBY, KANSAS, AND SETTING FORTH THE GENERAL NATURE OF THE IMPROVEMENT, THE ESTIMATED OR PROBABLE COSTS THEREOF, THE EXTENT OF THE IMPROVEMENT DISTRICT TO BE ASSESSED FOR THE COSTS THEREOF, THE METHOD OF ASSESMENT, AND THE APPORTIONMENT OF THE COSTS BETWEEN THE IMPROVEMENT DISTRICT AND THE CITY AT LARGE; AUTHORIZING AND PROVIDING FOR THE MAKING OF THE IMPROVEMENT IN ACCORDANCE WITH THE FINDINGS OF THE GOVERNING BODY (STORM WATER SEWER-PHASE XV/THE OAKS AND THE OAKS 2ND ADDITIONS).

Council Member Craig asked about the areas shaded in lavender to the north of Tall Tree.

Mr. Brown advised they will be assessed based on the original resolution, approximately \$5.00 a month for each of those lots for this particular project.

Council Member Craig asked if this was another example of somebody already owning the property and then have specials go up.

Mr. Brown advised it was not, this was based on the original resolution and not going to be paying more. The only lots that are going to be paying more are the dark ones that are all under the ownership of Lusk Communities.

Ms. Sexton added that that is exactly what staff and the developer have worked hard to make sure we don't repeat on this one. We had an opportunity to make sure the increased costs only go to undeveloped lots so when people buy them they know what they are getting into and we don't assess them to houses that are already there and it turns out to be that we charge them more than they thought when they bought the property, we fixed it.

Mayor Avello stated that we are going to fix it on all of the other land development that comes in also; he doesn't want it only on this one.

Ms. Sexton advised that tonight we are fixing this one.

Council Member Warren asked about the area in light blue, part of what we are doing tonight is assessing storm water against these homes, is that correct?

Mr. Brown advised that was correct.

Council Member Warren stated they have not been assessed yet, petitions are in place but they haven't been assessed, so they are going to get a year or two down the line they will get a new tax assessment that they or may not realize depending on how well they were paying attention when they bought the property.

Mr. Brown agreed. If you go to the model office at The Oaks, the first thing you see is a list of all the special assessments and everything is included, he has seen it personally himself. There is no reason for people out there to not understand that they are going to get special assessments. This project has not yet been spread, it will come, but it will come at the price that they have supposedly seen prior.

Council Member Warren wants to make sure everyone understood that there are some new dollars coming, they don't have them all, but they have been informed at every opportunity that it is coming. He guarantees that when they get it in the mail they will be down here saying nobody told them. If you are listening tonight on TV pay attention, this is part of what happened when you bought your land and it is fair, there is nothing underhanded or illegal from that standpoint. He asked about the wording of "future residential phases of The Oaks Subdivision" and questioned if that applied to all three items, c, d & e, or does that apply just to items d & e.

Mr. Brown advised it only applies to item d.

Council Member Johnson asked about the streets, is it in the original lavender?

Mr. Brown explained the water line has been approved by the council, it is under budget and it is under construction. We took bids on both the drainage structure and the street together, even though they are two separate numbers. The street portion of that bid is acceptable under budget and is going to be assessed only to phases 5 & 7 that was based on the original petition. It is not the same benefit district as the drainage structure.

Council Member Johnson asked for the information to be repeated.

Mr. Brown advised that street and drainage were combined into one bid. The street portion of that bid is under budget and will be assessed to phase 5 and phase 7. This is under budget so they are not asking for a revised resolution on the street or the water, only the drainage, which will be a box culvert bridge.

Council Member Warren asked if items C, D & E can all be taken at once or do they need to be done separately?

Phil Alexander, City Attorney explained since these will ultimately be financed he would recommend that they be done separately.

MOTION: Warren moved to approve the revised resolution for stormwater improvements to serve Phases 5 & 7 and future residential phases of The Oaks Addition. Schwarz seconded.

Ms. Sexton restated the motion for clarity, Warren and Schwarz agreed.

VOTE: Craig yea, Meidinger absent, Johnson yea, Warren yea, Schwarz yea, Bannon absent, Staats yea, Arnold absent, 5 yea, 0 nay, 3 absent, motion carried.

**BIDS FOR
STORMWATER
IMPROVEMENTS TO
SERVE THE OAKS AND
THE OAKS 2ND
ADDITIONS & STREET
IMPROVEMENTS TO
SERVE THE OAKS
ADDITION, PHASES 5& 7**

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

Background:

- A bid opening for the construction of Stormwater Improvements to serve The Oaks/Oaks 2nd Additions and Street Improvements (Tall Tree Road) to serve The Oaks, Phases 5 & 7 was conducted on Tuesday, March 20, 2007 at 2:00 p.m.
- Requests for quotations were submitted to contractors after advertisement in the appropriate publications.
- The following bids were received by the City Engineer's office and witnessed by the City Clerk:

Lafarge North America	\$805,228.15
APAC – Kansas	\$802,420.10
Kansas Paving	\$796,130.74
Cornejo & Sons, Inc.	\$765,160.65

Financial Considerations:

- Funds for the construction work are included in the 2006-2 temporary note issue.
- Costs for the stormwater improvements will be paid 100% by the benefit district and none by the City-at-Large. Costs for the Street Improvements will be paid 81.59% by the benefit district and 18.41% will be paid by the City-at-Large in accordance with City policy on payment of collector streets.
- Special Assessments will be spread against the benefit district properties over a 15-year period.

Legal Considerations:

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

Policy Considerations:

- 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.

DISCUSSION:

Mayor Avello asked if we had a start and finish date on any of these projects.

Mr. Brown advised all of our projects are based on a calendar day basis, so once we process the contracts they will have a set number of calendar days to do that work. He does not recall what that is on this particular job but we do have a deadline based on the number of calendar days in the contract.

Council Member Warren asked if this was just for phases 5 & 7.

Mr. Brown advised this is for stormwater improvements to serve The Oaks and The Oaks 2nd, which gets all of the phases shown in dark purple earlier and the street improvements to serve phases 5 & 7.

MOTION: Warren moved to approve the bid of Cornejo & Sons, Inc. in the total amount of \$765,160.65 for the construction of Stormwater Improvements to serve The Oaks/Oaks 2nd Additions and Street Improvements (Tall Tree Road) to serve The Oaks Addition, Phases 5 & 7. Staats seconded.

VOTE: Craig yea, Meidinger absent, Johnson yea, Warren yea, Schwarz yea, Bannon absent, Staats yea, Arnold absent, 5 yea, 0 nay, 3 absent, motion carried.

**WAIVER OF FINANCIAL
SECURITY-
STORMWATER
IMPROVEMENTS IN
PHASES 5 & 7, THE**

OAKS ADDITION

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

Background:

- The Oaks Addition is located between Meadowlark and Patriot Avenue on the west side of Rock Road.
- The Oaks Addition (original plat) was approved by the City Council on January 25, 2001.
- Resolutions for all public improvements projects – including improvements in and on Tall Tree Road between Derby Hills Elementary School and the existing roundabout in The Oaks (Water Line Resolution No. 21-2005; Stormwater Improvements Resolution 65-2003; and Street Improvements Resolution 22-2005) – have been approved by the City Council.
- City recommends construction of this Tall Tree Road connection to provide secondary access for emergency vehicles into Phase 5 of The Oaks (Rough Creek Road) and also to provide additional ingress and egress through The Oaks during the upcoming Rock Road construction.
- Although construction of infrastructure projects is typically initiated by the developer via submittal of a letter of credit or other approved financial security when market conditions warrant, in this instance the City of Derby desires to initiate construction of the stormwater project.
- While all three projects (water line, stormwater and paving) could be authorized without financial security, Lusk Communities has agreed to submit letters of credit for the water line and paving, leaving only the stormwater project without the normal financial security.
- The City's Public Improvement Finance Policy (Resolution 40-2007) allows improvements to be authorized by the Governing Body without financial security.

Financial Considerations:

- The City will still construct the stormwater project with public financing and the developer will still be responsible for the payment of corresponding special assessments.
- The normal letter of credit requirement would be 35% of the estimated \$566,024 cost of the stormwater project, or approximately \$198,108

Legal Considerations:

- As noted above, resolution no. 40-2007 allows for construction of K.S.A. 12-6a infrastructure improvements without financial security when authorized by resolution of the governing body and determined to be in the best interest of the City.

Policy Considerations:

- The request to waive the letter of credit is in compliance with the City's public improvement finance policy (Res. 40-2007).
- The City has not historically required letters of credit on special assessment projects which are included in City initiated projects such as turning lanes included in a major street project or sidewalk petitions included in a bike path project.
- Construction of the three Tall Tree projects (water line, stormwater and paving) will result in improved access for emergency vehicles and all other motorists both during and after Rock Road construction.
- Lusk Communities has no known history of delinquent special assessments with the City of Derby.

MOTION: Warren moved to authorize construction of stormwater improvements to serve The Oaks and Oaks 2nd Additions without financial security

normally required pursuant to Resolution No. 40-2007. Schwarz seconded.

VOTE: Craig yea, Meidinger absent, Johnson yea, Warren yea, Schwarz yea, Bannon absent, Staats yea, Arnold absent, 5 yea, 0 nay, 3 absent, motion carried.

ADD POSITIONS TO THE ORDINANCE REVIEW ADVISORY BOARD

Mandy Wagner, Assistant to the City Manager.

Background:

- The Ordinance Review Advisory Board (ORAB) was created by the City Council in May 2006 with the directive to review, comment on and make recommendations to the City Council with respect to current or proposed ordinances of general applicability.
- The ORAB was established with three members serving on staggered two-year terms.
- The Board meets monthly on the second Tuesday.
- In its first year of operation, the Board observed some disadvantages to having only three members.
- The Board has indicated its desire to consider expanding the number of Board positions to accommodate more members to more routinely ensure a quorum and broad representation.

Discussion:

- Of its first twelve meetings, two meetings were cancelled due to lack of quorum and two included only two of the three members.
- The implication of having only three Board positions means that during times of vacancies and other unexpected emergencies, this may concentrate the responsibility for advisory recommendations to only two individuals. Additionally, it places greater pressure on the two remaining Board members to attend all meetings in order to make quorum, reducing their flexibility to address illness, emergencies, or other life circumstances as they arise.
- The Board has affirmed that having a reasonably diverse perspective (greater than two individuals) represented in recommendations to the Council is beneficial to meeting its mission. The attached ordinance would increase the number of Board positions from three to five.

Legal Considerations:

- The two additional seats would be filled by mayoral appointment.
- The two new mayoral appointments would serve an initial term from the time of appointment until May 2008 at which time they could seek reappointment. From then on, these positions would serve terms of two years, just as the other Board positions do.

Policy Considerations:

- Other City boards and commissions have between five and ten members.
- The amending ordinance also tasks the City Manager with providing appropriate administrative support through the designee(s) of his or her choosing.

- The original ORAB ordinance specified that administrative support would be provided by the City Manager out of the Office of the City Attorney. As staffing dynamics have evolved during the past year, it is now more advantageous for ORAB's primary staff liaison to be the Assistant to the City Manager with administrative support provided by the Executive Assistant and additional staff support provided by the City Attorney.
- The City Attorney will continue to attend ORAB meetings, submitting items for the Board's consideration and acting in an advisory capacity during the Board's deliberations.
- This minor amendment provides the technical language necessary to continue providing adequate staffing for the Board under the purview of the chief executive officer.

ORDINANCE NO. 1893

AN ORDINANCE AMENDING §§2.16.230, 2.16.040 AND 2.16.050 OF THE DERBY MUNICIPAL CODE; PROVIDING FOR THE COMPOSITION OF THE ORDINANCE REVIEW ADVISORY BOARD, THE TERMS OF MEMBERS, AND ADMINISTRATIVE SUPPORT TO SUCH BOARD; AND REPEALING ORIGINAL §§2.16.230, 2.16.040 AND 2.16.050 OF SAID CODE.

MOTION: Warren moved to adopt the ordinance as presented. Schwarz seconded.

DISCUSSION:

Council Member Warren agrees that going from 3 to 5 is a good idea. He would like to see how it works for a year and he would be curious if a year from now we see that 7 might be a better number, but let's grow slowly and take a look at it.

VOTE: Craig yea, Meidinger absent, Johnson yea, Warren yea, Schwarz yea, Bannon absent, Staats yea, Arnold absent, 5 yea, 0 nay, 3 absent, motion carried.

CONSENT AGENDA

Kathy Sexton, City Manager presented the Consent Agenda.

July 4th Parade

Background:

- The Veterans of Foreign Wars and the Ladies Auxiliary is requesting use of city street rights-of-way to conduct a parade on Wednesday, July 4, 2007 at 10:00 a.m. The parade will start at the football stadium parking lot and will proceed west on Madison to Georgie, south on Georgie to Market, east on Market to Woodlawn, and north on Woodlawn to the stadium. The Police Department has reviewed the route, and recommends approval.

Financial Considerations:

- The City will supply police patrol, barricades and traffic cones, which is in keeping with past practices for this parade.

Legal Considerations:

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

Woodlawn United Methodist Church Fun Run

Background:

- The organizers of the Woodlawn United Methodist Church Fun Run are requesting use of city street rights-of-way to conduct a ½ and 2 mile run on Sunday, July 8 beginning at 8 a.m.
- The proposed route directs runners from the Woodlawn entrance to the church south to Chet Smith, east to the Park Hill entrance, west to Woodlawn and finishes in the church parking lot.
- It is anticipated that the slowest runner/walker will have cleared the Derby street portion of the course no later than 9 a.m., which should minimize any traffic conflicts or concerns.
- The Police Department has reviewed the route and time of the races and recommends approval.

Financial Considerations:

- The City will supply police patrol, barricades and traffic cones, with all costs paid by the event organizers.

Legal Considerations:

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

26th Annual Derby Firecracker Run

Background:

- The organizers of the Derby Firecracker Run are requesting use of city street rights-of-way to conduct a one and four mile run on Wednesday, July 4 at 7:30 a.m.
- This year the event will be based out of High Park to resolve time/space conflicts in the stadium parking lot between race and parade activities.
- It is anticipated that the slowest 4 mile runner will have cleared the Derby street portion of the course no later than 9 a.m., which should minimize any traffic conflicts or concerns.
- The Police Department has reviewed the route and time of the races and recommends approval.

Financial Considerations:

- The City will supply police patrol, barricades and traffic cones, with all costs paid by the event organizers.

Legal Considerations:

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

Request for Time Extension to Plat Hamilton Field Property

Background:

- This request is for a time extension to complete platting involving a requested zone change from the R-1 Single-Family District to the R-2 Two Family, R-4 Multi-Family, B-1 Office Business, and B-2 Neighborhood Business Zoning Districts.
- The above noted zone changes were approved for the Hamilton Airfield site (south of Meadowlark and east of Rock Road) by the Planning Commission on June 1, 2006 and by the City Council on July 11, 2006. As typical of such a zone change and involving an unplatted property, the zone changes were approved subject to the site being platted and the plat recorded within one year of the City Council's approval of the zone changes.
- The applicant's agent has submitted a letter requesting an extension of the time allowed for completion of the required platting. The letter notes that the owner of the property has retained a realtor for purposes of acquiring a purchaser that would then be the actual developer of the site. The applicant has indicated that they feel it would be more appropriate for the plat to be completed subsequent to the sale of the site.
- Should the plat be completed after the sale of the site, the new owner would be the party submitting required guarantees, requesting annexation, signing the plat, and so forth.

Legal Considerations:

- The City may provide such extensions and has done so in the past.

Policy Considerations:

- This is the applicant's first request for an extension and has indicated that they anticipate to complete the platting, at least the submittal of materials, for the Council's action within the next six months.

Request for Scheduling of Special Council Meeting

Background:

- The City is currently defending litigation filed by Michelle Borin to challenge recently adopted adult entertainment regulations.
- A temporary injunction hearing on the matter is currently scheduled for June 18, 2007.
- The City is represented by Dave Rapp of Hinkle Elkouri.
- Mr. Rapp requests that a special meeting be held June 15, 2007 from 11 a.m. – 2 p.m. for the purpose of preparing for the hearing.
- The meeting would consist of an executive session conducted for the purpose of facilitating privileged communication between the Council and Mr. Rapp and his associates.

Legal Considerations:

- The Council may call a special meeting and may conduct an executive session for the purpose intended.

Policy Considerations:

- The City believes that recently enacted adult entertainment regulations serve the public interest without violating any operator's constitutional rights.
- One or more Council members will be called to testify at the temporary injunction hearing.
- It is important for all witnesses to be prepared for the experience of testifying in federal court.

Annual Motorola Communications Equipment Service Agreement

Background:

- This item is an annual service agreement between the City of Derby and the Motorola Corporation.
- The agreement is for maintenance and support of Motorola radio equipment located in the Derby Police Department's Emergency Communication Center.

Financial Considerations:

- The annual fee is \$12,176, payable in quarterly installments.

Legal Considerations:

- This agreement provides for service of communications equipment purchased several years ago, and has been negotiated in compliance with established purchasing procedures.
- Because the contractor is the sole source of supply for maintenance of its proprietary equipment, the City's purchasing procedures did not require competitive bidding.

Policy Considerations:

- The communication equipment covered by this contract is located in the Derby Police Department's Emergency Communication center, and is the life's blood of Derby Emergency Services.
- It is vitally important that department radio communication equipment operate at peak efficiency.
- This service agreement will ensure that the Communication Center's radio equipment will be repaired expeditiously in the event it malfunctions.

MOTION: Warren moved to approve the Consent Agenda as presented. Schwarz seconded.

VOTE: Craig yea, Meidinger absent, Johnson yea, Warren yea, Schwarz yea, Bannon absent, Staats yea, Arnold absent, 5 yea, 0 nay, 3 absent, motion carried.

EXECUTIVE SESSION

MOTION: Schwarz moved to adjourn to Executive Session at 8:20 p.m. for 30 minutes for the purpose of attorney, client privilege

VOTE: Craig yea, Meidinger absent, Johnson yea, Warren yea, Schwarz yea, Bannon absent, Staats yea, Arnold absent, 5 yea, 0 nay, 3 absent, motion carried.

The council returned at 8:50 p.m. with no binding action taken.

FURTHER DISCUSSION:

Mayor Avello commented that he and his wife got stuck behind a fire truck at the railroad tracks and they were not able to get across until the train passed. He fears that somebody on the other side of tracks will suffer and that is something we really need to look at

Ms. Sexton advised she has spoken with the fire chief about that. It is certainly incumbent upon a city to serve all of its residents. Fortunately for us we do have a safety net on this deal. We

have mutual aid agreements with Sedgwick County and they respond from their Haysville station to calls on that side of the railroad tracks and Wichita will respond from their south station. In other words, if we see that happening we get help. Any fire department is always going to be able to serve all its residents in the far reaching areas; you just have to make sure you can serve them through aid agreements with others. We will go help Mulvane or Rose Hill, in fact we have a new mutual aid agreement coming to the agenda here soon with Mulvane. We also cooperate with McConnell Air Force Base. You kind of work with everybody around you if you are planning well, you just don't rely on your own resources. The number one need for us is across those tracks and we are relying on our neighbors for that help.

Council Member Warren stated that we are still using volunteer firefighters and asked what the possibility would be of having on the other side of the tracks one piece of equipment that would be an emergency vehicle with first aid supplies and recruit some folks that work or lived on that side of the tracks. They could respond if we had a situation that we could call out on a volunteer basis with one piece of basic equipment that could offer emergency first aid and maybe keep a small fire from becoming too big before the rest of the equipment could get there. That might buy us 5 or 10 minutes that we need, it will take equipment 8-9 minutes minimum to get from Haysville, probably longer and the same from Wichita.

Council Member Schwarz asked what the protocol is on emergencies that are just beyond the city limits of Derby; do we have to be invited to the situation?

Council Member Staats advised that as far as law enforcement goes you have to be invited. There are a lot of liability issues if you are not invited and you show up. If it is an accident at 63rd Street South and K-15, Derby PD will respond, the county may only have 2-3 deputies and it's a busy intersection that will require a lot more emergency vehicles at the scene for traffic control. Regarding other calls of assistance, for example to Oaklawn, that has to be requested by the County, just like if they come into Derby we have to request them to assist us. As far as fire he believes if falls under the mutual aid agreement and EMS is county wide anyway.

Council Member Schwarz clarified that if there were a shooting in the county, the county would go in and assess the situation and then request resources if they were needed.

Council Member Staats recalled an instance where there was a shooting in Oaklawn and they requested assistance from Derby because we could respond a lot quicker from Derby than Wichita could get there. You do have to make sure the needs of Derby are met first and that you are not draining the city of police officers, it is a balancing act and the watch commander at that time makes that call.

Ms. Sexton pointed out that when you say "you are invited", that is a split second kind of thing, it's not like there is a formal invitation issued. This is done at dispatch level, if the county gets a call and their officers are working another call they know that on their screen, they know where their units are at any given time. They can easily see that they are going to need additional assistance and it happens rather quickly.

Council Member Staats explained the process and that if calls are entered in Wichita for a Derby location it is instantaneous and comes up on the Derby dispatchers' screen.

ADJOURNMENT

MOTION: Schwarz moved to adjourn at 9:00 p.m. Warren seconded.

VOTE: Craig yea, Meidinger absent, Johnson yea, Warren yea, Schwarz yea, Bannon absent, Staats yea, Arnold absent, 5 yea, 0 nay, 3 absent, motion carried.

Dion P. Avello, Mayor

ATTEST:

Jean Epperson, City Clerk

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