

**APPROVED
REGULAR COUNCIL MEETING
May 22, 2007
7:00 PM**

Mayor Dion Avello presiding.

ROLL CALL:

WARD I
WARD II
WARD III
WARD IV

COUNCIL MEMBERS PRESENT:

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

Flag salute was led by Council President Charlie Schwarz.

The invocation was led by Pastor Ben Ray, First Presbyterian Church.

**CONSIDERATION OF
MINUTES**

Minutes of the May 8, 2007, Regular Council Meeting.

MOTION: Schwarz moved to approve minutes of May 8, 2007 Regular Council Meeting. Arnold seconded.

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

PUBLIC FORUM

Constance Nunnally, 1401 Pinion, served on the Parks and Recreation Citizens Committee in 1999. While the pool and the skate park are important additions, they do not address the weaknesses that were outlined by this study. The high priorities were development of larger parks, ways to finance and to get a permanent Director of Parks and Recreation. She doesn't know if a river walk park will meet these needs, but regardless of location, the recommendations for funding have never been addressed. Currently we use sales tax, ad valorem taxes and general obligation bonds. But what is needed is to develop a fee in lieu of land policy and an alternative land acceptance policy for the acquisition of open space. These types of ordinances have survived all legal challenges and are used throughout the United States. It was her experience in Overland Park when she served on the Parks and Rec Board, they passed an open space ordinance and now it is such a pleasure to go back there and see that they have a beautiful arboretum, they have a farm park where the kids can be on a farm with animals, all kinds of things have happened because of that. Currently a great deal of our park property is in the flood

plain, this is good for trails but does not help other facilities. Time and land available are running out. This council needs to act now, these recommendations came in 1999. Regarding the library, she does not understand the rush for a public vote. She attended the planning meetings for the library; there was sparse attendance, mostly elderly people. You are going to meet a claim saying that the internet provides all the information we need, but she provided some suggestions from her own experiences. First of all you need a “wow” factor; the present drawing lacks some originality. Why don’t we get the university departments to have a contest to see what they can do with that outline, and how we could put that up around the community and let them vote for what they thought was the best architecture, this will also get the public involved. Then, let some of our computer wizards put together a video presentation showing what other cities have done. Little Rock just put in a brand new library; Seattle has a fantastic one and say that their costs for heating and cooling will be almost zero. There is a lot of pride in Derby, when they see what other cities have done they will get behind you because they want Derby to be a great first class community. She went on to speak about donors, donors can be found if you have a dream. Let interior designers and local college people present drawings of some of the rooms in the library, what is the children’s place going to look like, the teen room, the coffee room. She presented an example of donors regarding a prayer garden in her church in Florida and providing plaques for donors. She thinks the same thing can happen in the library, there are people who want to honor a loved one and there are people who have lost children who may want to help with the children’s room. She advised to take time to design a brochure, that should be from the final design and it should include landscaping plans. She provided another example regarding brochures. She went on to state there needs to be a “friends of the library organization”, this can be very good for using volunteerism and to raise money. Finally she suggested using the parking lot, while it is empty as a courtyard for various other uses. She added that the staff in the library is fantastic and have met every request she has ever made.

Mandy Wagner, Assistant to the City Manager, introduced the Youth Leadership Council (YLC). The Youth Leadership Council is a youth led organization of 7-12th graders who want to make a difference in the Derby Community. The YLC was formed in December 2006 as a youth committee of the Derby Community Coalition Promoting Healthy Choices, which of itself is a community organization that cares about youth and at risk behaviors. Even as a committee of this broader coalition, the YLC lives up to its name. They have asked that we, as a city show our support and we have responded by coordinating meeting space in the municipal court to hold their general meetings. They have also designated herself as a city liaison so they can have one stop shopping for all things Derby. She attends the general meetings so they can have real time information about public policy in this organization, ultimately so these young leaders can have an in depth knowledge of local government and how they can accomplish their goals by working with government and with community partners.

Kristin Grooms, chair of public relations and funding committee of the YLC. She presented the council with the YLC’s strategic plan, which includes their four main focus areas for this year, which are; drug use, family issues, violence/discrimination and education. She thanked the council for their support, the YLC is very excited to be partnered with the council and she thanked Ms. Wagner as well.

Robert Mendoza, Director of Public Works and Parks, reminded everyone that Rock River Rapids will be open next Monday. The prices have changed this year; 3-17 years of age is \$5.00, 18 and older is \$6.00. Individual season passes are being sold for \$55.00 each at the DRC. Those can be purchased until close of business on Saturday, May 26th. He presented a slide show indicating how Derby has assisted with Greensburg in their efforts to rebuild and clean-up. They were contacted through the city manager's association about specific needs. They needed someone to come in and look at the public works equipment that was there and determine what was usable and what is not.

David Peebler, 706 Rockford, member of the Park and Urban Forestry Board. On Saturday, June 9th the Derby Park and Urban Forestry Board, Wichita Botanica and the Wichita Area Garden Council are sponsoring the Gardens of Derby tour from 9:00 a.m. until 6:00 p.m. It is their hope to make this an annual event Promoting beautification of Derby. There will be six homes on the tour, tickets are \$5.00 for the six gardens, however garden council people will be at each home to sell tickets, one house is \$1.00. All six of the gardens have water features, several having koi ponds. This will be a great way to get ideas for your own gardens, as well as a chance to meet some new people.

Becky Robinson, 401 N. Derby, representing the Derby Community Coalition Promoting Healthy Choices. They have been approached by Derby High School to help out with next year's After Prom. She went over the history of After Prom. It was started 14 years ago by SADD sponsor Judy Cummings, with the help of several teachers who wanted to provide a safe activity to their students on Prom night. When Mrs. Cummings retired five years ago Mrs. Dressen volunteered to become the unpaid sponsor for SADD and After Prom. After Prom has been completely funded by donations from the community and fund raising activities conducted by SADD (Students Against Destructive Decisions). For 12 years, After Prom was held at the Derby Rec center, as participation by the students increased it became apparent that they needed to do more in order to keep the students interest for a longer period of time so that the goal of keeping them safe all night could be met. After surveying the students SADD decided to move After Prom to All-Star Celebrations last year. The decision proved to be popular and over 425 students attended in 2006 and 2007. This activity does not take the place of any Prom activity; Prom ends at about 11:30 p.m., After Prom starts when Prom is over and ends at 4:00 a.m. While having After Prom at All-Star Celebrations is popular with the students, it has put greater pressure on SADD to solicit donations and volunteers. They start out their fundraising efforts in September, but have to compete with senior celebration for decreasing contributions from the community; therefore After Prom has become too large of an activity for one teacher and a small student organization to coordinate for the community. The Derby SADD chapter is the only SADD chapter in the State of Kansas that takes on a project of this magnitude. She just attended the state SADD conference in Salina a couple of weeks ago and the local SADD chapter presidents and organizers were amazed that Derby takes on a project of this magnitude. At this time SADD has decided that they can no longer provide After Prom for the students at Derby High School. Mrs. Dressen, who has been a SADD sponsor for the last several years is retiring as the SADD sponsor and no one at this point has stepped up to take her place. The DCCPHC invites the community to continue to provide an After Prom activity for our students, she feels it is the responsibility of all community members to join together to keep every student in our community safe and this is just one of the many activities that can be offered. If After Prom is to

be held at All-Star Celebrations or another facility, there is an immediate need to reserve a space, at All-Star they require that reservations be made by June 1st in order to hold the date of April 12th of next year available because they do have several other schools that reserve it for activities and a down payment of approximately \$1,400 is required. If fifty (50) parents, community members, community leaders and businesses were to donate \$28.00 a piece, the down payment could easily be made. The remaining amount due to All-Star Celebrations, which is paid after the event, can be covered by the \$13.00 admission price paid by the students. For the last several years, SADD, during their fundraising efforts intentionally raised enough money that the \$13.00 could be subsidized and they usually paid ½ of the admission ticket. She challenged everyone to become some of the first to help with this fundraising goal so they can make the down payment. The coalition is stepping up to help organize this event for next year and they would like the help of community in any way possible. The impending date of June 1 is quickly approaching and they need to come up with the down payment money. They do not have an actual budget set aside that is allotted by the school district and the position for the SADD sponsor does not receive a stipend at this point. The coalition wants to assure there is an event planned for next year because keeping 425 kids safe and giving them a safe and drug free alternative is very important. They also want to relieve some undue stress on whoever the new sponsor might be coming in to take over SADD.

Mayor Avello asked if there was a mailing address if someone just wanted to send some money.

Ms. Robinson advised it can be mailed to her home address at 401 N. Derby or to the high school at 920 N. Rock Road, attn: Dr. Kristin Sherwood.

Council Member Bannon reminded everyone that Derby Days is coming up next weekend. There is a lot going on in this community in the upcoming months, if you don't find something in this town to enjoy, you are just not looking. She stated that we are hosting a National Forensics and Debate Tournament and they are looking for judges for those events. She mentioned that we are in the process of issuing notices regarding weeds that need to be taken care of and she had a conversation with a citizen last night who said for the last four years she has called city hall every year to complain about a space in front of her home. She is getting very tired of it and she wants to know why these areas are not getting taken care of earlier when city employees drive around this town daily, driving past these areas. She knows there is a process to go through, but we are wanting to be an All-American City and we want to draw people from all over for our commercial and residential, yet whenever you drive down many of our main streets you have weeds. People that have property here, this is not "I might comply if I get caught", that would be like saying that the ordinance for speeding is only if I get caught. If your weeds are over 10 inches tall, mow them. It is pretty simple, and she asks, as a council member, what we need to do to enforce this on a more strict nature. Basically, most of the people that own this land, the longer they can go and work the process, the fewer times they have to mow so the less it costs them, it doesn't take rocket science to figure that out. We as a city, if we want to maintain the standards that we are setting, we need to enforce these.

Kathy Sexton, City Manager, stated she does not have to tell anyone how wet it has been. It is early in the season and there is a process for notifying private property owners of what the city ordinances are and giving them time to take care of the mowing and if they don't, we mow it and

send them the bill. If they don't pay it it's attached to their property. It is early enough in the season that basically you start at the beginning. They won't necessarily be given as much time later, so you talk about working the system, not to many of them do that, but this early in the season a lot of people are absentee owners, which adds a level of complexity in terms of tracking owners down. Sometimes it takes longer because the ownership records indicate one address and when you send it to them they don't necessarily get it on the first try so you try again. But, rest assured our code enforcement staff, consisting of several people, has been very busy. They have sent out more letters and made more contacts in the month of May than they have in quite a long time. She apologized for the grass that is growing so high in several lots and she encouraged any council member to call city hall if they receive any complaints. The people who work the phones keep track of who calls and when and they get staff out to look at those properties to assure we enforce the rules.

Council Member Bannon advised the ones she recommended considering more stringent enforcement would be the ones that have been vacant land along Rock Road, north of Rock River Rapids, north of 71st, there are different areas that are repeat offenders and wants to see if there is something we could look at doing. These properties have been owned by the same people for quite some time and this process is not new to them.

Ms. Sexton added that in addition to enforcing the current ordinances, we have been researching how maybe we should update our ordinances on this matter, looking at how some other cities have experienced different procedures. Sometimes there is a municipal court involved besides just attaching to the tax bill. We do have some ideas on some changes we will bring to the council, not just about the tall grass, but some other code enforcement items. We are trying to do it in a comprehensive manner so that when we bring it to you; you can see that we've looked at other cities, some of the pros and cons of how to do some of the enforcement and how it does affect the community long term.

Council Member Craig advised he has spoken with Mr. Brown regarding the length of time it takes to process all of this once the notification is made. He agrees with Mrs. Bannon, the ones we are talking about are local; they are pretty much within telephone capability to call and tell them quickly. It would be a courtesy call the first time and the next time followed up with a letter. Those that Mrs. Bannon has identified, he thinks they have a responsibility to get it done and get it done quick, especially when it dries out. He went on to say that he had a chance to interact with the finest in Derby last week and encouraged citizens that if something is unusual in your neighborhood and it is happening right before your eyes, do not hesitate, pick up the phone and call the dispatcher, 788-1557. If you wait, it is nonresponsive, they can respond to it but everything has already happened. If you see something that is going on in your neighborhood that you have concern about and you think it's a law enforcement matter, give the dispatcher a call and they will send somebody out. Last week he had an unusual occurrence, one call and within 20 minutes they had them rounded up, although they were just truant, they were Wichita truant, except for one Derby student, and with that they were dispatched to where they should be, not in Derby. If you will just be vigilant, keep your eyes open, he encourages people to call immediately; do not wait, that way some proper action and timely action can be taken. That helps everybody and it definitely helps our community.

Mayor Avello stated that a couple of weeks ago he and Mrs. Avello attended the Derby museum. He hadn't been there in quite some time and if you haven't been there you are in for a shock because it is coming along quite well. They have new rooms, one of the being what he would call a "war room" where they have artifacts from the First World War through the second and into Korea. He is assuming we will also see some stuff from Iraq. This is all done on a volunteer basis, if you haven't been there he strongly emphasized you go take a look at it and support the local museum; it is really a fine place to go visit.

PRESENTATIONS

Recognize outgoing board members.

Mayor Avello recognized the following outgoing board members: Kim Patterson (ADA Advisory Board) Charles Jeffries (Board of Zoning Appeals), Francis Brace (Construction Trades Board), Paul Muehring (Economic Development Board), Gloria Killian, Reba Hubbard (Library Board), Kelly Miller (Ordinance Review Board), Carla Lewallen (Planning Commission), Robert Duckett, Margaret Knoller, Albert Gordon (Senior Center Advisory Board).

Robert Duckett suggested that the city employees that drive around town everyday take note of the areas that need mowed.

SALE OF TEMPORARY NOTE SERIES 2007-1

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

Greg Vahrenberg, Piper Jaffrey presented information regarding the sale of temporary notes.

Background:

- Bids for the purchase of Temporary Note Series 2007-1 will be received via facsimile, mail, and the Internet for the notes to be opened at 2:00 p.m., May 22nd.
- Upon acceptance of the best bid, the next required action would be the approval of the resolution authorizing and directing the sale and delivery of the notes.

Financial Considerations:

- The notes provide temporary financing for infrastructure development primarily for commercial development on the north and east areas of the city. Specific subdivisions include Stone Creek Commercial 3rd Addition, Derby Marketplace, Anderson Farms Commercial, Ridge Point 4th Addition, Springcreek Plaza, The Oaks Phase XV Addition and Rock Road reconstruction.

Legal Considerations:

- The notes are being issued pursuant to and in full compliance with the Constitution and statutes of the State of Kansas. Local resolutions, ordinances and policies have been adhered to.

RESOLUTION NO. 44-2007

A RESOLUTION AUTHORIZING AND DIRECTING THE ISSUANCE, SALE AND DELIVERY OF \$5,020,000* PRINCIPAL AMOUNT OF TEMPORARY NOTES, SERIES 2007-1, OF THE CITY OF DERBY, KANSAS; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX, IF NECESSARY, FOR THE PURPOSE OF PAYING THE PRINCIPAL OF AND INTEREST ON SAID NOTES AS THEY BECOME DUE; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS CONNECTED THEREWITH.

DISCUSSION:

Council Member Schwarz asked if these were sold pretty quickly.

Mr. Vahrenberg advised he did not know that answer in this specific situation; but the process that an underwriter will go through prior to submitting a bid, after being notified a week to 2 weeks in advance of an upcoming sale, they will then begin calling their investors advising they are planning to bid on a Derby temporary note issue on May 22nd, and ask if they would be interested in buying the notes from them. The goal is to sell them as quickly as possible. It is the goal of any underwriter to sell as many as possible, even before that 2:00 sale time.

Council Member Schwarz pointed out that just everybody is edgy on the economy right now, things are getting weak in the economy but there are certainly inflationary pressures just about everywhere.

Mr. Vahrenberg responded that they actually expected a few more bids, the market sold off on Friday, interest rates went up. The ten-year treasury, which had been around 4.65% ended up at about 4.81% and came back to about 4.79% yesterday and he thinks some of those market jitters may have caused a few people to sit on the sidelines rather than bid on this issue. It's not a reflection of the city by any means, there is just concern on where is the market headed from here and how much risk do underwriters want to take.

Council Member Craig asked what keeps Derby in the favorable rating class.

Mr. Vahrenberg explained that Derby has a very solid economy, sound financial management along with debt ratios and statistics that stack up well against peers so there are a lot of positive things we can point to in working with the rating agencies. One thing he did point out is that the categories for rating for a temporary note or short term financing are different than a bond issue rating. The category for a temporary note issue is Mig 1 or Mig 2 and it's a big change to move from one category to another. On a bond issue rating, which we are obviously going to be pushing harder for an upgrade as we go through longer term financing, you move from an AAA,

AA, etc, and inside each category there is an A-1, A-2 and A-3. It is easier to move around in those categories and a movement in that rating has a much more noticeable impact on your borrowing costs because you may be borrowing for 10 or 20 years as opposed to a 1.5 year temporary note. Where we hope to be able to convince the rating agencies that you are in a position for an upgrade is in that longer term bond rating. He would be very surprised if you ever see change out of the Mig 1 rating on a temporary note issue, it would take a big problem financially for the city to move down into the Mig 2 category.

MOTION: Schwarz moved to accept the bid of Cooper Malone McClain and authorize and direct the Mayor and City Clerk to execute the bid form selling the notes to the best bidder on the basis of said bid and the terms specified in the Notice of Note Sale, and approve a resolution authorizing and directing issuance, sale and delivery of temporary notes in the amount of \$5,020,000. Bannon seconded.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, 0 absent, motion carried.

PUBLIC FORUM DISCUSSION:

Ms. Sexton stated regarding the After Prom discussion from earlier, checks are to be made out to the Derby Community Coalition and mailed to Post Office Box 536, Derby, Ks. These are tax deductible contributions.

TEMPORARY NOTE DISCUSSION:

Mayor Avello asked if we still use Moody's on bond issues.

Ms. Sexton advised Moody's is the one that gave us the Mig 1 rating.

Mayor Avello asked if we were still physically going there.

Ms. Sexton explained we do that over the phone now. There was a conference call last Thursday and we received the rating on Friday.

**PRESENTATION –
BUSINESS PARK VIDEO**

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

Background:

- Periodically, the City's public information office coordinates the production of videos on different topics of interest.
- The newest video production highlights the Derby Business Park and the existing businesses.

- The video will be shown on Derby Channel 7 as part of our regular programming to educate residents, and will also be shared with prospective businesses as a recruiting tool. Eventually, we hope to be able to place video clips online as well.

Financial Considerations:

- The cost of the video production was \$1,000. This cost includes videography, music and editing services.

Policy Considerations:

- The Derby Business Park, located on River Street north of 79th Street South, was built in 1999 to serve as a tool for economic development. Since that time, three local businesses have made their homes in the Business Park, providing a current total of 123 jobs. Those three businesses are BRG Precision Products, a manufacturer of electronic clocks and message systems; Mid Continent Controls, a manufacturer of cabin management and in-flight entertainment systems for business jets; and Mockry and Sons Machine Company, a machine shop that creates parts for a number of local manufacturers.
- The lots, which are listed for sale at 70 cents per square foot, range in size from 1 acre to 3 acres. Eight lots out of 15 still remain for sale by the City. The zoning of the area is Industrial (M-1), and additional covenants limit the use of the lots to manufacturing, processing, storage, wholesale, office, laboratory, professional and research and development uses. The covenants also include some aesthetic standards for landscaping, signage and exterior appearance.
- In 2006, the City was awarded a \$413,000 grant through the Kansas Department of Transportation’s Economic Development program to help pay for relocation of the railroad crossing on the east side of the Business Park. This project will close the current crossing at Cherry Street, a steep and narrow road, and install a new crossing just north at Madison Avenue. This change, planned to take place in 2009, will greatly enhance customer, employee, visitor, and delivery access to the Business Park from K-15 and will improve the visibility of the area.

DISCUSSION:

Council Member Craig asked if this was available to be sent out on CD.

Ms. Moeding advised that is their plan, in a DVD format with a jacket and an explanation to go along with it.

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

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, 0 absent, motion carried.

**REPORT ON ECONOMIC
DEVELOPMENT
INCENTIVES**

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

Background:

- Currently, the City has three economic development incentive agreements (EDX agreements) in effect with local companies.
- State statute requires verification be provided to Sedgwick County stating that companies continue to meet the criteria set forth in their EDX agreements, to ensure that their eligibility for tax exemptions should continue.
 - Mid Continent Controls was granted a 100% property tax exemption for 10 years in May 2001. The company agreed to create 66 jobs over the 10-year period and to construct a 20,000 SF building at 901 N. River in the Derby Business Park, along with new equipment valued at \$250,000. The building was completed in 2002.
 - Currently, Mid Continent Controls has 60 employees, an increase of 38 employees. (58% of target employment)
 - The company, which manufactures in-flight entertainment and cabin management systems for business jets, continues to work with a variety of business jet manufacturers. Currently, many new aircraft are in development, which leads to new opportunities for manufacturers like Mid Continent Controls. The company continues to develop relationships with new customers in overseas markets, as well as companies close to home such as Cessna, Hawker Beechcraft and Bombardier.
 - Plans to remodel a portion of the building to allow for additional administrative space and an expansion of the product testing area are currently in the works. They also hope to expand the building in the next few years, as business continues to grow and demand for their products increases.
- BRG Precision Products:
 - BRG Precision Products was granted a 100% property tax exemption for 10 years in June 2005. The company agreed to create 103 jobs over the 10-year period and to construct a 40,000 SF building at 600 N. River in the Derby Business Park. The building was completed in March 2006.
 - Currently BRG employs 46 people, an increase of 21 jobs. (20% of target employment.)
 - The company continues to focus on its core business of custom electronic clocks, and is also making progress in the development of wireless wide-area emergency notification systems (both text and audio-based) along with other wireless technologies. They are pursuing contracts with hospital networks and universities, both of which typically have multiple buildings and offices/rooms that will benefit from coordinated clock and messaging systems.
 - Tentative plans to expand at the current site may include additional warehouse space and completion of the basement office space to house added administrative staff in marketing, sales and support.
- Family Med Centers, P.A.:

- Family Med Centers, P.A. received approval in May 2005 for \$3.25 million in Industrial Revenue Bonds and a 100% property tax exemption for 5 years, with the option for a 5-year extension. The company agreed to create 15 jobs over a 10-year period and to construct a freestanding 9,800SF ambulatory surgery center (ASC) at the site of their current Derby facility at 1101 N. Rock Rd. The building was completed in July 2006.
- Currently, the ASC portion of Family Med Center's complex employs 17 full- and part-time individuals, most in a health care capacity (nurses, anesthesiologists, etc.) Of these 17 employees 13 are filling new positions created by the project. (78% of target employment.)
- About 230 surgeries are performed each month at the new facility, and there has also been an increase in colonoscopy and EGD procedures formerly done in a single clinic facility.
- The use of the ASC continues to grow each year, and the facility is seeing new doctors and patients utilizing the services each month. The ASC will celebrate its first anniversary in July 2007.

Policy Considerations:

- All three companies continue to comply with the conditions of their respective EDX agreements and we have seen good progression toward job creation requirements.

DISCUSSION:

Council Member Craig stated that the Family Med Centers indicates 17 full and part-time individuals and asked if part-time qualifies in fulfilling the requirements.

Mrs. Moeding responded they did not. She was advised of the number of full-time employees but it is not reflected in her report, she will however get that number to Mr. Craig. In the agreement full-time jobs are the only ones that count, part-time jobs are not calculated.

Council Member Craig commented that for all we know the 13 may be all part-time.

Mrs. Moeding explained they are not all part-time, the majority of them were full-time. She apologized for not including that information.

Council Member Craig stated he would appreciate follow-up on that.

Council Member Meidinger asked what happens if the company does not meet their requirements to create jobs at the end of the 10-year period.

Mrs. Moeding advised if it's the end of the issue before we are aware of any problems, there honestly is very little that we can do. The idea is that as time goes along that we are monitoring them and checking their progress. If we were at year 5 or 6 and we weren't seeing job progress then that would be a call to the council for some discussion and perhaps a change of course. She

does not think we would get to the 10-year period before realizing a business wasn't doing what they said they would do. We do avoid assigning a job creation requirement each year because we try to be somewhat flexible, understanding that market conditions change, businesses don't hire an equal number of employees every year and we try to allow some flexibility.

Council Member Meidinger asked what the penalty was.

Mrs. Moeding explained there is a penalty written into the agreement and in most cases it would be a forfeiture of the tax exemption.

MOTION: Bannon moved to receive and file the report. Meidinger seconded.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, 0 absent, motion carried.

PRESENTATION OF ECONOMIC DEVELOPMENT PLAN

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

Kristin Ward, Chair of the Economic Development Board encouraged the council to look over the plan ask any questions they may have, a lot of time and effort went into doing this and they very much enjoyed working on it and they appreciate the opportunity.

Background:

- The Economic Development Board approved this Economic Development Plan for recommendation to the City Council at the April 16, 2007 meeting. The Board spent several months discussing the contents of the Plan.
- The Plan focuses on five primary areas of economic development viewed by board members to be uniquely valuable to Derby:
 - Business Attraction – recruiting a variety of new businesses into the community, including manufacturing, service, retail and hotel.
 - Business Retention & Expansion – ensuring that existing businesses are able and willing to remain in our community.
 - Entrepreneurship & Small Business Development – encouraging and assisting in the growth of small and startup businesses.
 - Housing – working to ensure a variety of housing options across many price ranges.
 - Marketing – promoting the attributes of our community in general but especially economic development opportunities to continue growth.
- The document was intended to assist the Council in its current strategic planning initiative and also to act as a guide for the economic development efforts of staff and other community agencies throughout the year.

Financial Considerations:

- None at this time, although some of the individual projects and activities within the five categories will require additional financial resources.
- Any project or activity requiring additional financial resources can be discussed at a later date, either as part of the budget process or by redirecting existing funds.

Policy Considerations:

- One of the responsibilities given to the Economic Development Board is the development and maintenance of the city's Economic Development Plan.

DISCUSSION:

Council Member Bannon asked what the cost would be to implement this plan, and she assumes that will be covered by the Economic Development budget line item.

Mrs. Moeding explained they had talked about some different scenarios of how they might achieve that marketing plan. They talked about the possibility of producing it in house, they talked about having a consultant come in and do that for us and certainly the board was willing to attempt to start something in house initiated by the board. They did not go so far as to create any budget numbers, but they would be happy to look at that and she has been talking with the city manager regarding that topic.

Council Member Bannon stated that we want to be all we can be but pointed out under “trade shows” that there is local, national and global.

Mrs. Moeding stated that just this past May she was part of a Kansas contingent at the Cornett Global Conference in Denver, she didn't have to go very far, but a lot of times we will have global organizations that will come to places that are cheap and easy to travel to.

Council Member Bannon stated she could understand that, but she was wondering why we would be traveling to Japan. She thanked the Economic Development Board and she knows a lot of time and effort has gone into determining exactly what role you are going to play in the future and we really do appreciate it.

Council Member Warren also thanked the Board for putting this together and looking over a number of great goals. He asked how we go from this piece of paper to implementation, who has responsibility for implementing this. Are there measurable results and when will we know when we have arrived at certain points. It's a nice piece of paper, but where do we go from here.

Mrs. Moeding advised it falls on the shoulders of staff, herself, and she will be working with the city manager to determine which of these activities we can handle and put together a schedule for implementing as budget allows, as time permits and do our best to follow up on these. Our intention for the board is to review this annually, so at the end of this year we will review it and see where we have been successful, what needs more attention, how can we assess where we have been. We have had discussion about benchmarking goals, how can we make this a more tangible document and it is something we will continue to refine over time. This is our first stab at it and it will only get better.

Kristin Ward added that there are certain things the board has already begun working on, one of them being the BREES program that we are really excited about and looking forward to as far as business retention in the community. Putting this down on paper is the first goal and once we get it there we can go ahead and use that plan and follow that plan and make a difference. She thinks everyone can agree, we are proud of our town and look forward to growing this town and keeping it going in a positive direction and making a difference.

Mayor Avello stated he sees this board as hooking into the Chamber in Wichita. There are businesses that go to Wichita that don't fit that marketplace and if we could integrate this board with those people up there, as we are getting closer to Wichita between the governments, we may get some overflow from them that could work with this board, that is what he is envisioning.

Ms. Sexton advised she could not agree more. Our Economic Development Director is definitely involved with the Greater Wichita Economic Development Coalition, which is not a group that just works to get businesses in Wichita; it is a Sedgwick County driven thing, so anywhere in the metro area as well as some other counties. Allison is in communication with them and those representatives, and in cooperation with them. Some things aren't right for Derby either, but she might get a lead on something and it is very much a cooperative process.

Council Member Arnold recommended that if you have a well thought out plan it needs to be reviewed as far as results are concerned, not after 12 months, but maybe quarterly. You might be able to pick up some areas where you are lacking or some areas that are really producing some effect for you and you may want to enhance that, that is something you might want to consider.

Council Member Craig agreed with Mr. Warren and some of the other comments made. This is overall, very general and the thing that stands behind it is the metrics you are going to have to use to see if you have accomplished anything. That is probably the next challenge to build metrics to see what you have done as it applies to this overall plan.

Mrs. Moeding presented a PowerPoint going over the Economic Development plan.

MOTION: Arnold moved to adopt the Economic Development Plan as recommended by the Economic Development Board. Warren seconded.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, 0 absent, motion carried.

The council recessed at 8:30 p.m. and returned at 8:40 p.m.

REQUEST TO VACATE A PORTION OF PLATTED FLOODWAY

Don Losew, City Planner presented the staff report.

Background:

- This vacation request involves a portion of floodway as platted on Lot 16, Block 5 of the Spring Creek 2nd Addition.
- The lot involved in this vacation request was originally in the area platted as the Spring Creek 1st Addition but was subsequently in an area replatted as the Spring Creek 2nd Addition. The 1st Spring Creek Addition was recorded in January 1987 and the area replatted as the 2nd Addition was recorded in June, 1987. A primary purpose of the replatting appears to have been the conversion of an area platted as a Reserve, into areas of lots. By way of the replatting, this lot was extended down to more or less the center line of Spring Creek. Not only has this created a very awkwardly configured lot, but approximately 80% or more of the lot was platted as floodway.
- Recent information from FEMA now indicates that the area of floodway, as impacts this site, can be reduced. However, having been depicted on a plat, any such change in the floodway as depicted, requires that changes be pursued by way of a vacation.
- The area involved in this vacation request was reviewed by City Engineering and has been determined to no longer be within the area identified as floodway.
- The applicant has requested this vacation in order to build an accessory structure that would have otherwise been prohibited if the area were within floodway.
- On April 17, 2007 the Planning Commission recommended approval of the vacation by a vote of 8 to 0.
- Vacation cases are a public hearing item before the City Council, and as such a notice has been published as required.

Financial Considerations:

- The cost associated with mailing notices to adjacent property owners, publishing the Notice of Public Hearing, and recording the Vacation Order are covered by the filing fee for this case.

Legal Considerations:

- As required by the Subdivision Regulation, the Planning Commission has reviewed and acted on this vacation request. Also, as required by State Law, this vacation request has been advertised in the official City Newspaper two weeks prior to the May 22, 2007 City Council meeting. The City Clerk has not received protest petitions. This is a public hearing item before the Council and after hearing from the public such hearing may be closed and the Council then act on the request as it deems appropriate by majority vote.

DISCUSSION:

Council Member Bannon pointed out there is a 60-foot easement just north of that floodway vacation and asked if we were leaving that intact.

Mr. Losew advised that is still there, this does not affect that 60-foot easement.

Council Member Bannon clarified the accessory structure will actually be built in this 40-foot vacation.

Mr. Losew advised the area that is being vacated is south of the easement, but was also within floodway.

Council Member Bannon advised this is her subdivision and she knows the FEMA maps have been redrawn in that area with one homeowner ending up with more area in the FEMA maps, but there are some with less, she asked if those maps are here for homeowners to look at.

Mr. Losew advised they can come to the City Engineer's office.

MOTION: Warren moved to approve the request to vacate a portion of floodway and instruct Staff to record the Vacation Order. Arnold seconded.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, 0 absent, motion carried.

**FINAL PLAT OF THE
DERBY MARKETPLACE
2ND ADDITION**

Don Losew, Derby City Planner presented the staff report.

Background:

- On April 19, 2007 the Planning Commission by a vote of 7 to 0 approved a Final Plat for this application area. This site had previously been platted as the Derby Marketplace 1st Addition. The purpose of this replat is primarily to realign the lots to conform to the site's anticipated development plans. Originally, the eastern portion of this site was platted as one large lot. However, an expected tenant has requested or is anticipated to obtain ownership of only a portion of that larger lot. The reconfiguration of that larger lot into individual building sites, potentially under separate ownerships, was therefore necessary for those sites to be considered acceptable building sites.

The realignment of lots also involves the smaller lots along Rock Road. The applicant's conceptual development plan indicated buildings being located across lot lines of lots expected to be under different ownerships. Also, the site's major north-south circulation aisle planned along the east side of these smaller lots meandered in and out of the smaller lots creating possible conflicts with how that circulation aisle would be constructed, owned and maintained. This replat now places that circulation adjacent to the eastern property line of the smaller lots rather than within any of those smaller lots.

Financial Considerations:

- The applicant has resubmitted petitions and a Certificate of Petitions for the improvements required for this site's development. The public improvements required are: sanitary sewer; water main in Tall Tree Road; water loop to Derby Downs; extension of Tall Tree Road; traffic signals at Rock and Tall Tree; traffic signals at major entrance on Rock Road; Rock Road accel/decel lane; Rock Road left turn lane and drainage improvements. All projects are 100% benefit district with the exception of Rock Road and Tall Tree traffic signals (60% City, 20% Derby Marketplace, 20% The Oaks) and paving of Tall Tree (85.2% benefit district, 14.8% City).

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 various infrastructure improvements are in accordance with the City's Public Finance Policy (Resolution No. 40-2007).
- Upon approval of the petitions, City Staff will submit them to Gilmore-Bell for preparation of the required resolutions 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 April 19, 2007.

DISCUSSION:

Council Member Craig advised he is concerned with the entry/exit off of Rock Road. As far he knows that is a non-controlled entry and exit point allowing left hand turns out onto Rock Road to go south, is that correct?

Charlie Brown, Director of Community Development explained that as part of the development plans and the platting process, the developer has presented a petition for traffic signals at that location in accordance with our policy, 100% paid by the developer. That signal will not go in with the Rock Road project; we will wait until the traffic warrants that, we will install conduits in preparation for that signal. There will ultimately be a signal at this location based on traffic warrants.

Council Member Craig asked if it would be prudent, instead of having another signal 1/8th of a mile south of the one at Tall Tree, to put in left hand turn only islands, such as they have on north Rock Road by Best Buy and Bradley Fair. That instead of a light they have access with a left hand turn coming south that is somewhat protected by the islands, instead of trying to design a light to allow people to try and cross four lanes of traffic to go south. That concerns him greatly at that entrance there. He understands they would pay for the light, but another light 1/8th of a mile south of Tall Tree, he knows it's a safety concern but he thinks we can control it without a traffic light.

Council Member Bannon asked if Target will be located on parcel 1 or is it the north piece.

Mr. Brown advised it is basically the center portion.

Council Member Bannon asked what the distance was between Tall Tree and 71st Street.

Mr. Brown advised it was ½ mile.

Council Member Bannon pointed out that in that ½ mile we are going to have 3 stoplights. In terms of traffic, 3 stoplights in ½ mile, she understands you can time those to where traffic flows better, but she remembers back when we started this project, those access routes in there were all going to be basically right hand out onto Rock Road, not just the north one and the south one, but anything out of there because there was a concern of too many stoplights in that area. She asked if there was any way to get around this.

Mr. Brown advised this is not anything new, there was a stoplight in the first addition as well, it has been approved by the council once before.

Council Member Bannon stated she understands the developer wants to get people in and out of there easily, but there are a lot of access points there. She asked if they were too far gone at this point.

Mr. Brown restated this is not going to be installed with the Rock Road project; it is something we can look at as we design things in the future with Target and the ultimate development of this subdivision.

Council Member Bannon advised that bothers her just as much, if not more because as soon as Rock Road is done people will have to cross 3-4 lanes to turn south.

Mr. Brown advised there is another access point with a signal.

Council Member Bannon asked how many lanes of traffic would have to be crossed at the planned exit to go south.

Mr. Brown advised there will a right turn lane going northbound, 2 thru lanes and a left turn lane for south bound traffic.

Council Member Bannon stated she too has concerns about that.

Council Member Warren advised he can't imagine coming out of a very busy shopping center and try to go south without a stoplight, it would be almost impossible to go south. They don't have one there, but if you have ever tried to come out of Eastgate shopping center to go south, it is almost impossible and that is less than 1/8th of a mile to that intersection. If we get the kind of traffic he hopes we get, this is going to be a very successful area and if we get the kind of traffic trying to get out of there, when most of the residents live on the south end of that subdivision,

trying to get there without a stoplight would be almost impossible. To him putting a signalized situation there makes all of the sense in the world and trying to go without it would create an unbelievable traffic jam and ultimately a safety hazard. He believes a traffic signal there is an absolute must.

Council Member Meidinger asked if that is going to be considered the main entrance into Target.

Mr. Brown advised that is what is considered a major entrance.

Council Member Meidinger agrees with Mr. Warren, he doesn't think we should wait and would think Target would want that traffic light in immediately. If their customers can get in that's fine, but if they can't get out and they want to go south, that's a nightmare and he doesn't think that's good traffic management. He would put the light in immediately.

Mr. Brown advised they would work with their Rock Road consultant on that.

Council Member Craig advised it comes down to two choices, either you have a light or it's right hand only. This being the north half, second addition, is the first addition similar, as far as the main entrance.

Mr. Brown advised it was.

Council Member Craig asked if there was going to be a petition for another light at the ¼ mile section north of 71st Street.

Mr. Brown advised there would not.

Council Member Craig asked if this would be one full movement in and out in the first addition.

Mr. Brown explained that the 1st addition is the same as this property; you are looking at the same property. The 1st addition had one full turning movement, generally at the same location. The area south is Derby Downs Addition, which is being developed concurrently, by the same developer. There is no plan for another signal on Derby Downs.

Council Member Craig advised there are plans for a full movement, entrance and exit at the 1/8th mile point north of 71st Street.

Mr. Brown advised that was not correct.

Council Member Craig clarified this is the only one from 71st to Tall Tree.

Mr. Brown advised that was correct.

Council Member Craig stated the options are still the same, either it's a traffic signal or it's a restrictive, flow-out, north only with a protected left hand turn lane coming from the south.

Mr. Brown pointed out two other locations that are right-turn only.

Council Member Craig advised he had that well in hand, but it's only like 600 feet north to Tall Tree to get out to a light.

Council Member Warren pointed out you didn't want to send all that traffic from the subdivision all the way up there to that one light.

Council Member Craig advised he was just pointing out the obvious, that either obviously it's going to be another signal, or if we don't get a signal, based upon past experience, he would, at the beginning without a signal, he would not let people come out and turn left to go south on Rock Road, period. That is within our capability as a city to do that.

Mr. Brown agreed, and thinks probably the best solution at this point is to work with the Rock Road consultant, check with the warrants and we will go from there if that's appropriate. At this point, again, the signal was not planned to go in with Rock Road, it may be appropriate to do so.

Council Member Arnold stated that since his office is in downtown Wichita, which is flooded with traffic lights, synchronization seems to work very well. Also, if you go up to Bradley Fair, they have a traffic light coming out of their facility with two or three entrances into it and every time he goes there he always goes down to where the traffic light is so you can go left or right, whichever way you want to go. He agrees we need a traffic light there and if he was the customer, if he was Target, he wouldn't be happy if his customers could only go right instead of left also because you are cutting a lot of people off. He thinks the traffic light is the way to go.

Council Member Bannon stated she did not think she made herself very well understood earlier. Her desire would either be, in such a short distance, to not have an additional traffic light and make that right hand turn only from a safety standpoint, or, if we are going to do it, do the traffic light now because there is no way anyone is going to be able to make a south turn on that coming out of there. She thinks we are getting to where there are a lot of traffic lights and clarified that there is a stop light at 63rd street, Tall Tree, which is ½ mile, there is a stop light and there would now be one 1/8th of a mile farther south, then one at Meadowlark. There would be 4 lights then in that mile section.

Mr. Brown agreed, counting 63rd, Tall Tree, the major entrance into the shopping center and Meadowlark.

Council Member Bannon stated that they plan on that being their major entrance and nobody thinks that the Tall Tree or south can't handle the traffic, then assuredly the stop light should go in with the planning of Rock Road now, not down the road. Otherwise she thinks we are creating a problem area.

MOTION: Warren (1) approve the plat of the Derby Marketplace 2nd Addition (2) authorize the Mayor to sign the Developer's Agreement and Plat, (3) approve the petitions submitted as guarantee that certain required improvements will be installed, and (4) instruct Staff to record the Developer's Agreement, Certificate of Petitions and the Plat. Arnold seconded.

FURTHER DISCUSSION:

Council Member Bannon questioned if we needed to add any verbiage to take care of the stoplight issue now.

Mr. Brown explained the petitions have been submitted and the action tonight will approve the petitions. Staff will be back to the council in the next meeting or two with resolutions for those petitions, at that time you can discuss this again.

Council Member Johnson asked to be shown Target's north lot line on the map.

Mr. Brown pointed it out.

Council Member Johnson stated that when you are doing this, all the streets are going in; you are just not putting up a light, right? It doesn't matter to us because it's not our money, but if a developer is paying 100% of this cost he is not sure we should be able to tell him when he needs his light, as long as he gets it there when the traffic is there. If we do north Rock Road, we can put up the light any time can't we?

Mr. Brown advised that was correct.

Council Member Johnson asked if there were any priority to putting it up next month when we are doing Rock Road and have him pay for it 18 months ahead of the use time.

Mr. Brown stated he would prefer at this time to meet with their consultant on Rock Road, visit with them about the warrants and the need for this and if it's appropriate we will be back and let you know.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, 0 absent, motion carried.

Mayor Avello advised they would be moving Item O up and place it before Item G.

**SOUTHWESTERN BELL
TELEPHONE
FRANCHISE
AGREEMENT**

Mandy Wagner, Assistant to the City Manager presented the staff report.

Background:

- One of the City's primary responsibilities is to ensure citizens are provided with fair access to utilities, including electric, gas, water, sewer, cable and telephone service.
- In lieu of the City itself directly providing utilities, the City has the purview to grant non-exclusive, competitively neutral privileges to private companies to use public rights-of-way to provide services to citizens.
- These privileges are conveyed through franchise agreements which allow utility companies to locate infrastructure in the public rights-of-way to provide service to Derby customers. In exchange, utility companies provide the City with payment via franchise fees typically based on the profits made by the company in the City.
- The City's current franchise agreement with AT&T (Ordinance No. 1803) was granted to Southwestern Bell Telephone L.P., d/b/a AT&T Kansas in March 2004. An extension of the franchise agreement was granted on May 23, 2006 and expires May 31, 2007.
- A new franchise agreement between the City and AT&T has been developed. The ordinance is attached and hereby submitted for your consideration and approval.

Discussion:

- The most notable features of the franchise agreement are as follows:
 - The length of the franchise will be from June 1, 2007 to May 31, 2010.
 - According to state law, June 1, 2010 will be the City's next allowable opportunity to consider increasing franchise fees of telephone service providers.
 - This length of time is commensurate with past franchise agreements between the City and AT&T.
 - Revenue will continue to be collected from access line fees as opposed to a percentage of gross receipts.
 - An increase in the access line fee is recommended. Per K.S.A. 12-2001(j), an increase from \$1.50 per access line (per month) to \$2.00 per access line (per month) is proposed, resulting in approximately \$38,000 more annual revenue for the City. Further discussion on the proposed rate change is included below.
 - Per K.S.A. 12-2001(g), a franchise application fee of \$300 will now be collected from AT&T to cover the City's administrative costs of developing the agreement.
- AT&T is amenable to the proposed franchise agreement.

Financial Considerations:

- K.S.A. 12-2001(j) grants cities the purview to raise access line fees to a maximum of \$2.25 per month per access line beginning in 2006; a maximum of \$2.50 in 2009; a maximum of \$2.75 in 2012 and thereafter.

- However, according to K.S.A. 12-2001(l) cities cannot raise access lines fees more than once every 36 months. In changing its franchise fee in 2004, Derby has set that schedule for itself as follows:

<i>Next allowable date to increase fees</i>	<i>Statutory Limit</i>
June 1, 2007	\$2.25
June 1, 2010	\$2.50
June 1, 2013	\$2.75

- Utility franchise fees are an important source of revenue for the City. Franchise fees total \$1.3 million in the 2006 budget or 12.5% of the total revenue. This equates to 10 mills which illustrates the importance of this revenue stream.
- Specifically regarding revenue from AT&T's franchise, at the current rate of \$1.50 per access line, the City is projected to collect \$116,370 in franchise fees from AT&T in 2007.
- Based on current projections, if the access line fee had been \$2.00 per access line throughout 2007, the City would have been projected to receive \$155,160 in revenue which is \$38,790 more than its current intake at \$1.50 fee per access line.
- The differences in rates, revenues, and annual impact to the customer is as follows:

<i>Per Access Line Fee</i>	<i>Revenue</i>	<i>Added Revenue</i>	<i>Annual Impact to Customer</i>
\$1.50	\$116,370	N/A	N/A
\$1.75	\$135,765	\$19,395	\$3.00
\$2.00	\$155,160	\$38,790	\$6.00
\$2.25	\$174,555	\$58,185	\$9.00

- At \$2.00 (per month) per access line, the difference to the customer will be an additional \$6.00 per land line annually.

Legal Considerations:

- Under its home-rule powers, the City Council is empowered to enter into franchise agreements and franchise extensions regarding revenues and conditions regulating use of the public rights-of-way.
- The City's Right-of-Way Ordinance No. 1871, adopted by the City Council on December 12, 2006, adequately addresses right-of-way maintenance issues with all utility companies that locate infrastructure in the public rights-of-way, including AT&T Kansas.

Policy Considerations:

- In 2004, the City raised its access line fees from \$1.04 to \$1.50. If the City raises its access line fees in 2007, the next opportunity it has to raise access line fees will be 2010.

- While the City currently has the purview to raise access line fees to \$2.25, raising access line fees to \$2.00 provides Derby with a favorable revenue increase while maintaining its rates on par with comparable cities that collect revenue through access line fees.
- Rates on access line fees among comparable cities range from \$1.44 to \$2.25. It has only been a relatively short amount of time since cities could statutorily consider increasing franchise fee rates and, depending on their previous rate increases and when their current franchise agreements expire, many cities have yet to have the opportunity to consider increasing fees.
- Franchise fees spread the public finance burden more broadly since all customers, including those operating from tax-exempt property, pay the fee.
- The City has a positive working relationship with AT&T Kansas; AT&T Kansas is amenable to the franchise agreement.

DISCUSSION:

Council Member Meidinger asked if cell phones paid any access fees.

Ms. Wagner advised we have some cell phone lease agreements through, for example, the city water towers, but it is kind of a different technology and we collect our money differently from them, if at all.

Council Member Meidinger questioned, with more and more people using cell phones are we going to lose the hard lines going to customers.

Ms. Wagner pointed out Mr. Meidinger had touched on the exact reason state law recently allowed us to charge more for the access line fee. The thought is that if and when land line phones would decline, that would be captured by that increased net of the access line fees.

Council Member Meidinger asked if we have a contract with Cox Communication for land line now that they are getting in to phone service.

Ms. Wagner responded that Cox is a little bit of a different beast. They bundle all of their services together in one line so we don't charge them a separate franchise for phone services as opposed to cable service and they are actually now on a state franchise. We have a little bit of say so with our franchise with them, but not too much. We collect a 5% gross receipts fee from Cox which is set by state statute at the maximum allowed.

Council Member Meidinger advised his point is, are we being fair to AT&T, are we changing the same thing to Cox for the same access service.

Ms. Sexton explained that we are charging what the law allows us to do.

Council Member Meidinger advised he is looking at being fair to AT&T and Cox.

Ms. Sexton stated we are being as fair as the law allows us to be in terms of federal and state telecommunications policy. This is an area where the technology grows faster than the regulations sometimes, and sometimes the law. But essentially, Cox is paying their franchise fees, 5%, which is the maximum the state and federal governments allows cities to charge.

Council Member Johnson asked what the 5% was of.

Ms. Sexton advised it was 5% of gross receipts.

Council Member Meidinger questioned, if customer A has Cox and customer B has AT&T, are they paying the same land line cost, in franchise fees.

Ms. Sexton explained it was not the exact same because they are two completely different types of technology that the state and federal governments have chosen to tax differently.

Council Member Meidinger stated that we have the ability to say that we will charge them both the same, don't we?

Ms. Sexton advised that if you want to switch from an access line to a gross receipts tax, you can.

Mayor Avello commented that he would think the gross receipts tax would be higher. He pays \$124.00 a month to Cox and \$38.00 to AT&T, so if he is paying 5% on \$124.00 he is paying more.

Council Member Meidinger pointed out he is paying for cable TV, internet access..

Mayor Avello stated the bill is higher.

Council Member Meidinger stated he doesn't care what the bill is, what he is saying is if Cox has a landline, he just thinks it should be fair because what we are doing is we are creating an unfair playing field for AT&T if we aren't charging Cox the same thing. He has heard over and over again that we want a level playing field, he has heard that expression a hundred times over the last month, so he thinks that we should structure this franchise fee to be comparable to what Cox would be. By the way, this is nothing more than just a hidden tax to the homeowners quite honestly. We want to be as fair to them as we can; we certainly want to be fair to our franchise agreements, that is his point.

Mayor Avello advised we are bound by the law.

Ms. Sexton agreed. There is nothing completely fair about telecommunications policy right now in 2007. There are changes she would make, changes you would make, but we are not federal or state legislators and we are doing the best we can with the rules and the boundaries we have been given. As Mandy said, and our AT&T representative Les Depperschmidt is here and can speak for himself, but the negotiations with the company have been pretty amenable to both sides. She has not heard that AT&T thinks we are being unfair to them, they certainly have a lot of good

people representing them at the state and federal levels pushing for better more up to date telecommunications tax policy. Every year there are changes made in those areas, at state and federal levels, it is just really hard to keep up with some of the changes going on right now.

Council Member Schwarz disagrees a little bit with the concept of a hidden tax and some of that comes to mind with the Greensburg situation. The city has 18 or 20 different avenues to collect tax and certainly in our discussions there are a lot of organizations within the city that do not pay property taxes and this is one way to generate revenue from those entities. He asked for a definition of an access line, is it a hard line into the house or business?

Ms. Wagner advised she believes that it is.

Council Member Schwarz asked about the small sub carriers.

Ms. Wagner stated that is a hot topic right now. Certainly when you talk about fairness and you talk about the public good and utilities, you want to capture everybody under the same level playing field and that is one area where we believe we have some wiggle room to go after those kinds of services that aren't being captured in our franchise net right now. If and when you adopt this, we will have in essence the golden standard from our primary land line provider to then pursue those other companies who are not currently under our franchise agreements and AT&T is in support of that effort as well.

Council Member Schwarz advised he was surprised when we talk about a level playing field, which is where he sees the real disparity that some of these smaller companies don't pay this franchise fee, that is where he really sees a disparity going on. You can grab a 5% from Cox but when these small carriers don't pay the franchise fee it really puts AT&T and whoever else at a very uncompetitive disadvantage. Any avenue we can take to pursue those and put it on a level playing field, he is for that. He appreciates the efforts of everyone here to work on that.

Council Member Bannon agreed the cable bill may be higher but if you are looking at equality and all fairness, if the bill is \$40.00 and a \$2.00 access fee, if her math is correct, that is 5%, so that means basically the cable companies by state law are paying 5% and we are assessing AT&T the franchise fee of 5%, therefore it all kind of works out the same.

MOTION: Bannon moved to approve the proposed franchise agreement which specifies a \$2.00 fee per access line. Warren seconded.

FURTHER DISCUSSION:

Council Member Craig advised first of all this is a revenue stream. He is not sure that AT&T really cares because it is passed through to the customer. He is concerned about Sage and Birch and SBC and all those others that slide through the net, it is a revenue stream that is passed on to the customer and really it's not level. Mainly because he gets AT&T's lowest rate that he can get and he pays \$2.00 against \$25.00 and that's 8%. It really bothers him that we are driven by

franchise fees, although he understands why, it's a revenue stream that helps us, that money helps us keep our mill levy down, therefore he would like to give the customer a break, but at times you just can't because you have to keep moving in a direction to finance things. In all honesty to our constituents, it is a lot easier for us to pass a franchise fee instead of telling you that we are going to raise your taxes through a mill levy, that is what it comes down to as far as Jim Craig is concerned.

Les Depperschmidt, AT&T. This has been a negotiated model agreement. It is a new model agreement that really is based on state statute, for the most part everything that is in this is in state statutes. He advised they do care, even though it is a passed through charge, they do care what the amount is. They don't get into a big debate about it because those limits are defined in state statute as to how much you can charge and when you can charge it. They have a little bit of rubin two areas. Number one is Section 10; it does spell out what is called a "competitively neutral contract ordinance". The industry today from an access line standpoint is being impacted by cellular phones replacing land line phones, cable television service, and voice over internet protocol, which is another way of providing local dial tone. The other players are what's called "competitive local exchange carriers", the Birches and other companies who lease part of AT&T's network and resell those services. Section 10 addresses the providers of local service being the local exchange carrier, which is AT&T, the CLEX(local exchange carriers), that those companies are to be treated in a similar manner in which AT&T is treated by this contract ordinance, that is what the legislation a couple of years ago was all about. The other concern they have is that any time their customers pay a \$2.00 charge and a competitive carriers customer does not pay anything, or a lesser amount, or a larger amount, then the market is not competitively neutral. The main issue he wants to get out of this is that all of us in the business are treated competitively neutral. He advised he supports the approval of this contract ordinance tonight, but he strongly encourages the council and city staff to seek who the competitive local exchange carriers are, because if it is indeed a revenue stream, and it is, as we lose land lines, for whatever reason, be it cellular or competitors, that revenue stream decreases. To be fair and ensure your revenue stream, those people providing service other than AT&T need to be collecting that fee just like we are.

Council Member Craig advised that a lot of folks lose production and you charge more to make up the difference, pretty soon it becomes really lopsided. This is what's happening now he believes, because as access lines go down you have to charge more to maintain the same revenue. AT&T does not really benefit from it other than the phone calls questioning the franchise fee.

Mr. Depperschmidt made another point on access versus gross receipts. He advised to take some time to think about that and study it. Five percent on a \$15.00 line charge is not the same as \$2.00 on a \$15.00 line charge.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, 0 absent, motion carried.

**UNILATERAL
ANNEXATION ZONING**

POLICY

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

Background:

- City Council recently annexed several properties on the City periphery through the unilateral annexation process. These properties annexed into the City come in as R-1 residential.
- Some of the properties recently annexed are non-residential uses.
- Previously, City offered those non-residential owners a waiver of application fees to rezone the property to an appropriate zoning district that would be compatible with the existing use. This offer was good for 1 year.
- During the most recent annexation process, the City Council directed Staff to waive all fees and initiate the rezoning process, and also to develop a written policy addressing the rezoning issues associated with unilateral annexation.
- The City Attorney has drafted a resolution developing said policy for Council consideration.

Financial Considerations:

- Waiver of normal application fees and ancillary costs will approximate \$450 per case (\$350 application fee + \$100 average cost for ownership list)

Legal Considerations:

- Unilateral annexation of property is governed exclusively by state statute.
- City ordinance currently provides that all property is zoned “R-1” Single Family Residential upon annexation.
- Zoning annexed property “R-1” gives the City maximum control over future development but may unduly restrict the options available to affected property owners.
- The proposed resolution would expand the options available to owners of unilaterally annexed, previously developed property without sacrificing the control inherent in decisions based on established zoning regulations.

Policy Considerations:

- The resolution, if approved, will require the City to waive all rezoning application fees and ancillary costs such as ownership lists, recording fees, etc.
- The policy applies only to those properties unilaterally annexed by the City and those properties would be rezoned to the most restrictive zoning district applicable to the subject use.
- Proper base-line zoning of properties provides the property owners more flexibility in maintaining and expanding uses on the property than with a “non-conforming” status.

RESOLUTION NO. 45-2007

A RESOLUTION ESTABLISHING THE POLICY OF THE CITY OF DERBY,
KANSAS, WITH RESPECT TO REZONING OF CERTAIN UNINCORPORATED
LANDS UNILATERALLY ANNEXED BY THE CITY.

DISCUSSION:

Council Member Bannon stated she thinks this is great, since we are bringing them into the city we should offer this. However, she thinks there should be a time limit because if she is reading this correctly it is indefinite. Once we ever bring them in they could ask us to waive those fees 5-10 years down the road. She asked if we should have possibly put a time limit in this document.

Phil Alexander, City Attorney explained that under Section 1 you will find that upon annexation city staff will forthwith initiate the application, in other words we will do it right away.

Council Member Craig asked what would happen if someone decides they don't want to rezone.

Mr. Brown pointed out that is covered in the resolution as well. If a property owner gives us a notice in writing that they do not want to proceed, then we will not follow through with that.

MOTION: Johnson moved to approve resolution establishing a City policy to waive all application fees and ancillary costs associated with rezoning properties unilaterally annexed by the City. Warren seconded.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, 0 absent, motion carried.

Council Member Johnson asked if this would clean up the annexation going from Sewell on up.

Mr. Brown advised it would.

**ZONE CHANGE
REQUEST FOR LOT 1,
BLOCK A OF THE
SEWELL 2ND
ADDITION**

Don Losew, City Planner presented the staff report for agenda items H-K

Ms. Sexton suggested a motion that would move for approval of the recommended action on Items H-K.

Background:

- This change request is for Lot 1, Block A of the Sewell 2nd, from the “R-1” Single-Family District to the “B-3” General Business District.
- This property was annexed to the City of Derby on October 10, 2006. As typical of Derby’s annexation process the property was placed into the “R-1” zoning district. The site is developed with one strip center that consists of a retail liquor store and a pawn shop. During the City Council’s action on annexing this property and several others. The Council encouraged the impacted properties to request a zone change to a classification consistent with the actual use of the site and appropriate to the zoning of adjacent areas. Based on those criteria, “B-3” zoning is being recommended for the site.
- During the public hearing, no citizen opposition was expressed toward the zone change.

Financial Considerations:

- This site is already platted and no requirement to replat is needed.

Legal Considerations:

- On April 19, 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.

1. ZONING USES AND THE CHARACTER OF THE NEIGHBORHOOD:

This general area of the City and the application area are already developed with or are zoned for non-residential uses. The B-3 District classification is intended to replace the application areas existing Single-Family residential zoning. Based on the existing non-residential development on the site, no significant changes to the existing type of use is anticipated. In addition, the rezoning application area had in the past experienced a noise exposure of nearly 75 DNL. Consequently, this area should not be developed with residential uses. The B-3 zoning district will accomplish restriction.

With regard to existing zoning classifications and actual land uses present in the vicinity of the site, the following conditions are identified: 1) the general area along K-15, in which this site is located, is developed with non-residential uses of the same general, non-residential, commercial character as the existing use on the application area; 2) the area immediately to the east, while residential has been adjacent to this site and its present uses for a number of years; and 3) while the area to the west is still low density, rural residential in character, it is separated from the zone change application area by railroad and K-15 Highway rights-of-way.

With respect to existing zoning and uses in the vicinity of the rezoning application area, the proposed rezoning of the application area to the B-3 zoning district is appropriate.

2. **SUITABILITY OF R-1 ZONING FOR THE PROPERTY:** The subject property is not suitable for development of single-family residential uses. This is evidenced by the facts that; 1) the site was in an area that had experienced an aircraft noise exposure of nearly 75 DNL and 2) the site is within a general area that is characterized by non-residential development.
3. **AFFECT REZONING WILL HAVE ON NEARBY PROPERTY:** Since the rezoning application area is part of a larger area which is either already zoned for or largely developed with commercial or other non-residential uses, no negative impacts are anticipated for nearby properties if the rezoning application area is rezoned the B-3 General Business District.
4. **AFFECT REZONING WILL HAE ON PUBLIC HEALTH, SAFETY AND WELFARE:** Rezoning of this property to the B-3 zoning district should have no negative impacts on the public's safety and welfare. It is anticipated that the existing non-residential uses will not be altered to any appreciable degree. Therefore, this zone change will not of itself cause a substantial increase in the number of vehicular trips on the K-15 frontage and/or K-15 itself. The fact that the site is already developed with non-residential uses would at least indicate that no additional negative impacts would be expected even if other non-residential uses were to replace the existing uses.
5. **CONFORMANCE WITH THE COMPREHENSIVE PLAN:** Although this area is not presently being impacted by high noise levels from aircraft operating at McConnell AFB, the Comprehensive Plan has recognized the need to assure development that is compatible with what was once a more significant noise impact and could possibly again occur if there is a change in missions at McConnell. B-3 or non-residential development is a more compatible form of use given this site's past experience with McConnell's operations. Since the application area had experienced an aircraft noise exposure that had historically been in the range of a 75 DNL level, approval of B-3 zoning is supported by the Comprehensive Plan.
6. **IMPACT ON COMMUNITY FACILITIES:** Although the application area is not now served by municipal water, it is expected that all of this general area of the City will in the near future be connected to the Derby water system. The site is, however, already being served by municipal sanitary sewer.

Policy Considerations:

- The rezoning of this property to an appropriate zoning classification was recommended by the City Council during this site's annexation process.

ORDINANCE NO. 1888

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.

**ZONE CHANGE
REQUEST FOR AN
UNPLATTED TRACT AT
1124 N. MCINTOSH RD.**

Don Losew, City Planner presented the staff report for agenda items H-K. (Ordinances 1888-1892). (Motion shown with Ordinance 1892).

Background:

- Zone Change Request is for an unplanted tract located on the east side of McIntosh, in an area north of Madison (79th St. S.) from the “R-1” Single-Family District to the “B-5” Restricted Commercial, Warehousing and Limited Manufacturing District.
- This property was annexed to the City of Derby on October 10, 2006. As typical of Derby’s annexation process the property was placed into the “R-1” zoning district. The site is developed with a retail business (nursery and sod sales). During the City Council’s action on annexing this property and several others, the Council encouraged the impacted properties to request a zone change to a classification consistent with the actual use of the site and appropriate to the zoning of adjacent areas. Based on those criteria, “B-5” zoning is being recommended for the site.
- During the public hearing, no citizen opposition was expressed toward the zone change.

Financial Considerations:

- Although the site is presently unplatted, it has been actively in use for a retail business (nursery and associated landscaping operations, including a number of existing structures). Given that the site’s present use continues to be similar in nature to the site’s previous use(s) and no major construction or reconstruction of facilities is required, platting of the property is not considered necessary at this time.

Legal Considerations:

- On April 19, 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.

1. ZONING USES AND THE CHARACTER OF THE NEIGHBORHOOD:

In as much as the present use of this site is basically similar to the use that had occupied the site for many years, the change in zoning to an appropriate classification for that use would have no expected negative or other impacts on the character of the neighborhood. However, given that “B-5” zoning would also allow other uses should the present use be discontinued, those other possible uses could be of a greater concern than is the case for the site’s present use. While the area to the west of the zone change application area is residential, nearly all of the lots along the west side of McIntosh back up to that street, thereby minimizing the differences between the uses or character of the properties.

Realistically, being located immediately adjacent to active railroad tracks and just off of a major highway and further, given the awkward shape of the zone change application area, non-residential development would be the most logical use for the site. And even though “B-5” zoning provides for a fairly wide range of possible uses, this site’s location and other site specific conditions would make many if not most of those uses impractical.

With respect to **existing zoning and uses in the vicinity of the rezoning application area**, the proposed rezoning of the application area to the “B-5” zoning District is appropriate.

2. **SUITABILITY OF “R-1” ZONING FOR THE PROPERTY:** The **subject property is not suitable for development of single-family residential uses.** This is evidenced by the facts that; **1)** the site was in an area that had experienced an aircraft noise exposure in excess of 75 DNL, **2)** the site is located adjacent to active railroad tracks and a State highway which severely diminishes the suitability of the site for residential uses and **3)** the awkward, triangular shape of the tract could not be subdivided into a reasonable configuration for single-family (“R-1”) development.
3. **AFFECT REZONING WILL HAVE ON NEARBY PROPERTY:** Given that the rezoning is presently intended to allow for a classification consistent with the site’s actual and present use, the rezoning will have no affect on the area’s present situation. Whether other possible uses under “B-5” zoning would have negative affects on nearby property is debatable, many “B-5” uses would not likely considered this site given its location and other characteristics. In any respect, the site has been in a non-residential use for a number of years, so this zone change itself is not introducing a radical change to the area.
4. **AFFECT REZONING WILL HAVE ON PUBLIC HEALTH, SAFETY AND WELFARE:** Rezoning of this property to the “B-5” Zoning District, **should have no negative impacts on the public’s safety and welfare.** It is anticipated that the existing non-residential use(s) will not be altered to any appreciable degree. Therefore, this zone change will not of itself cause any substantial changes to the area such as increased traffic along McIntosh. Further, as indicated by the Zoning Ordinance, the “B-5” zoning classification was established so that

areas impacted by McConnell's operations would be placed into a zoning classification considered conducive to protecting the public's welfare. Under McConnell's maximum mission scenario, this site was and could again be impacted by a noise level of nearly 75 DNL or a noise level considered inappropriate for residential uses.

5. **CONFORMANCE WITH THE COMPREHENSIVE PLAN:** The Future Land Use Map of the present (2006) Comprehensive Plan, had depicted this site as still being in the County and used for moderate residential purposes. As noted above, however, this site was impacted by noise levels that were considered excessive for residential development and the present Comprehensive Plan has encouraged that development be consistent with the recommendations of the McConnell JLUS study, which for this site would be for non-residential development as is involved in this zone change request.
- 6 **IMPACT ON COMMUNITY FACILITIES:** Both municipal water and sanitary sewer are available to the site. McIntosh is a paved street but not to an urban standard and would be expected in the future to be reconstructed to an urban street. Any such improvement, though, would not be due to this site's use but reflects the likely need to provide for such a street in the future in any case.

Policy Considerations:

- The rezoning of this property to an appropriate zoning classification was recommended by the City Council during this site's annexation process.

ORDINANCE NO. 1889

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.

**ZONE CHANGE
REQUEST FOR A
PORTION OF LOT 2,
BLOCK 1, BERGMAN-
MIZE ADDITION**

Don Losew, City Planner presented the staff report for agenda items H-K. (Ordinances 1888-1892). (Motion shown with Ordinance 1892).

Background:

- This zone change Request is for the south 145 feet of Lot 2, Block 1, Bergman-Mize Addition, from the “R-1” Single-Family District to the “B-5” Restricted Commercial, Warehousing and Limited Manufacturing District.
- This property was annexed to the City of Derby on October 10, 2006. As typical of Derby’s annexation process the property was placed into the “R-1” zoning district. The site is developed with an auto repair business (Rapid Muffler). During the City Council’s action on annexing this property and several others, the Council encouraged the impacted properties to request a zone change to a classification consistent with the actual use of the site and appropriate to the zoning of adjacent areas. Based on those criteria, “B-5” zoning is being recommended for the site.
- During the public hearing, no citizen opposition was expressed toward the zone change.

Financial Considerations:

- This site is already platted and no requirement to (re)plat is needed.

Legal Considerations:

- On April 19, 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.

1. **ZONING USES AND THE CHARACTER OF THE NEIGHBORHOOD:**

This general area of the City and the application area are already developed with or are zoned for non-residential uses. The “B-5” District classification is intended to replace the application area’s existing Single-Family residential zoning. Based on the existing development on the site, no significant changes to the existing use is anticipated. In addition, the rezoning application area had in the past experienced a noise exposure in excess of 75 DNL. Consequently, this area should not be developed with residential uses. The “B-5” zoning District will accomplish this restriction.

With regard to existing zoning classifications and actual land uses present in the vicinity of the site, the following conditions are identified: **1)** the general area along K-15, in which this site is located, is developed with non-residential uses of the same general, non-residential, commercial character as the existing use on the application area; **2)** the area immediately to the east is developed with a major retail use already zoned “B-5” and there also exists to the east a large area of undeveloped land zoned the “B-3”, General Business District; and **3)** while the area to the west is still low density, rural residential in character, it is separated from the zone change application area by railroad and K-15 Highway rights-of-way.

With respect to **existing zoning and uses in the vicinity of the rezoning application area**, the proposed rezoning of the application area to the “B-5” zoning District is appropriate.

2. **SUITABILITY OF “R-1” ZONING FOR THE PROPERTY:** The **subject property is not suitable for development of single-family residential uses.** This is evidenced by the facts that; **1)** the site was in an area that had experienced an aircraft noise exposure in excess of 75 DNL and **2)** the site is within a general area that is characterized by non-residential development.
3. **AFFECT REZONING WILL HAVE ON NEARBY PROPERTY:** Since the rezoning application area is part of a larger area which is either already zoned for or largely developed with commercial or other non-residential uses, **no negative impacts are anticipated for nearby properties** if the rezoning application area is rezoned the “B-5” Restricted Commercial, Warehousing and Limited Manufacturing District.
4. **AFFECT REZONING WILL HAVE ON PUBLIC HEALTH, SAFETY AND WELFARE:** Rezoning of this property to the “B-5” Zoning District, **should have no negative impacts on the public’s safety and welfare.** It is anticipated that the existing non-residential uses will not be altered to any appreciable degree. Therefore, this zone change will not of itself cause a substantial increase in the number of vehicular trips on the K-15 frontage Road and/or K-15 itself. Further, as indicated by the Zoning Ordinance, the “B-5” zoning classification was established so that areas impacted by McConnell’s operations would be placed into a zoning classification considered conducive to protecting the public’s welfare.
5. **CONFORMANCE WITH THE COMPREHENSIVE PLAN:** The Future Land Use Map of the Comprehensive Plan, depicts the general area of this rezoning request for non-residential development. One of the objectives of the Comprehensive Plan is to prevent encroachment of incompatible development within the flight paths, accident potential zones and associated noise contours of McConnell Air Force Base.. **Since the application area experiences an aircraft noise exposure that had historically equaled or exceeded a 75 DNL level, approval of “B-5” is supported by the Comprehensive Plan.**
- 6 **IMPACT ON COMMUNITY FACILITIES:** Although the application area is not now served by municipal water, it is expected that all of this general area of the City will in the near future be connected to the Derby water system. The site is, however, already being served by municipal sanitary sewer.

Policy Considerations:

- The rezoning of this property to an appropriate zoning classification was recommended by the City Council during this site’s annexation process.

ORDINANCE NO. 1890

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.

**ZONE CHANGE
REQUEST FOR LOT 1,
BLOCK 1, BERGMAN-
MIZE ADDITION**

Don Losew, City Planner presented the staff report for agenda items H-K. (Ordinances 1888-1892). (Motion shown with Ordinance 1892).

Background:

- This zone change Request is for Lot 1, Block 1, Bergman-Mize Addition, from the “R-1” Single-Family District to the “B-5” Restricted Commercial, Warehousing and Limited Manufacturing District.
- This property was annexed to the City of Derby on October 10, 2006. As typical of Derby’s annexation process the property was placed into the “R-1” zoning district. The site is developed with a retail liquor store (Miller Liquor). During the City Council’s action on annexing this property and several others, the Council encouraged the impacted properties to request a zone change to a classification consistent with the actual use of the site and appropriate to the zoning of adjacent areas. Based on those criteria, “B-5” zoning is being recommended for the site.
- During the public hearing, no citizen opposition was expressed toward the zone change.

Financial Considerations:

- This site is already platted and no requirement to (re)plat is needed.

Legal Considerations:

- On April 19, 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.

1. **.ZONING USES AND THE CHARACTER OF THE NEIGHBORHOOD:**

This general area of the City and the application area are already developed with or are zoned for non-residential uses. The “B-5” District classification is intended to replace the application area’s existing Single-Family residential zoning. Based on the existing development on the site, no significant changes to the existing use are anticipated. In addition, the rezoning application area had in the past experienced a noise exposure in excess of 75 DNL. Consequently, this area should not be developed with residential uses. The “B-5” zoning District will accomplish this restriction.

With regard to existing zoning classifications and actual land uses present in the vicinity of the site, the following conditions are identified: **1)** the general area along K-15, in which this site is located, is developed with non-residential uses of the same general, non-residential, commercial character as the existing use on the application area; **2)** the area immediately to the east is developed with a major retail use already zoned “B-5” and there also exists to the east a large area of undeveloped land zoned the “B-3”, General Business District; and **3)** while the area to the west is still low density, rural residential in character, it is separated from the zone change application area by railroad and K-15 Highway rights-of-way.

With respect to **existing zoning and uses in the vicinity of the rezoning application area**, the proposed rezoning of the application area to the “B-5” zoning District is appropriate.

2. **SUITABILITY OF “R-1” ZONING FOR THE PROPERTY:** The **subject property is not suitable for development of single-family residential uses.** This is evidenced by the facts that; **1)** the site was in an area that had experienced an aircraft noise exposure in excess of 75 DNL and **2)** the site is within a general area that is characterized by non-residential development.
3. **AFFECT REZONING WILL HAVE ON NEARBY PROPERTY:** Since the rezoning application area is part of a larger area which is either already zoned for or largely developed with commercial or other non-residential uses, **no negative impacts are anticipated for nearby properties** if the rezoning application area is rezoned the “B-5” Restricted Commercial, Warehousing and Limited Manufacturing District.
4. **AFFECT REZONING WILL HAVE ON PUBLIC HEALTH, SAFETY AND WELFARE:** Rezoning of this property to the “B-5” Zoning District, **should have no negative impacts on the public’s safety and welfare.** It is anticipated that the existing non-residential uses will not be altered to any appreciable degree. Therefore, this zone change will not of itself cause a substantial increase in the number of vehicular trips on the K-15 frontage Road and/or K-15 itself. Further, as indicated by the Zoning Ordinance, the “B-5” zoning classification was established so that areas impacted by McConnell’s operations would be placed into a zoning classification considered conducive to protecting the public’s welfare.
5. **CONFORMANCE WITH THE COMPREHENSIVE PLAN:** The Future Land Use Map of the Comprehensive Plan, depicts the general area of this rezoning request for non-residential development. One of the objectives of the Comprehensive Plan is to prevent encroachment of incompatible development within the flight paths, accident potential zones and associated noise contours of McConnell Air Force Base.. **Since the application area experiences an aircraft**

noise exposure that had historically equaled or exceeded a 75 DNL level, approval of “B-5” is supported by the Comprehensive Plan.

- 6 **IMPACT ON COMMUNITY FACILITIES:** Although the application area is not now served by municipal water, it is expected that all of this general area of the City will in the near future be connected to the Derby water system. The site is, however, already being served by municipal sanitary sewer.

Policy Considerations:

- The rezoning of this property to an appropriate zoning classification was recommended by the City Council during this site’s annexation process.

ORDINANCE NO. 1892

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

MOTION: Schwarz moved for approval of the recommended action of Items H-K. Warren seconded.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, 0 absent, motion carried.

**PURCHASE OF
COMPUTER
EQUIPMENT**

Ted Austin, Director of Operations presented the staff report.

Background:

- Bids were sent out to nineteen vendors for computer equipment. Nine vendors returned bids. This year we are programmed to replace twenty-four workstations.
- The low bid received did not meet the specifications. The low bid that met specifications, with the requested options, was provided by JPK Micro Supply out of California. This bid is recommended, including alternate 3. Alternate one is included in the base bid and alternate two will not be purchased.
- The bid board has reviewed and approved this recommendation. This purchase is within the budgeted amount.

Financial Considerations:

- These items are funded through the equipment section of the budget previously approved by the Council.

Legal Considerations:

- All applicable policies and procedures were followed in completing this bid.

Policy Considerations:

- The purchasing policy and bidding process were followed

DISCUSSION:

Council Member Schwarz asked if these were all Vista.

Mr. Austin advised they were not, we aren't moving to Vista until next year. Some of the software we use isn't ready yet for Vista. You have to give those software vendors a little time to catch up and make sure that all the hooks and things are ready and we plan to start implementing that next year, not this year.

Council Member Schwarz advised that some of the larger manufacturers require Vista and a lot of the software is not ready for Vista, it still has some inherent problems with it. He asked if these would come standard with XP.

Mr. Austin stated it would be XP Professional with Office Professional, which is what is used throughout our organization right now.

MOTION: Bannon moved to approve the purchase of twenty-four workstations from JPK Micro Supply for a total of \$22,560. Craig seconded.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, 0 absent, motion carried.

**REVISED RESOLUTION
FOR SANITARY SEWER
IMPROVEMENTS TO
SERVE DERBY MARKET
PLACE ADDITION**

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

Background:

- Derby Marketplace Addition is located east of Rock Road, north of Meadowlark.
- Derby Marketplace Addition was approved by the City Council on September 12, 2006.
- Most recent resolutions to construct public improvements were approved on February 13, 2007.
- Bids were received for the sewer project on May 15, 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 repeal the original resolution (27-2007).

Financial Considerations:

- Funds for the construction work were included in the 2007-1 Temporary Note issue.
- Costs for the sewer line improvements will be paid 100% by the benefit district and none by the City-at-Large.
- Special Assessments will be spread against the benefit district properties over a 15-year period.

Legal Considerations:

- 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.
- The City Council has previously committed City funds to construct this project (Resolution No. 27-2007).

RESOLUTION NO. 46-2007

A RESOLUTION AMENDING AND SUPPLEMENTING RESOLUTION NO. 27-2007 OF THE CITY OF DERBY, KANSAS WHICH DETERMINED THE ADVISABILITY OF THE MAKING OF A CERTAIN INTERNAL IMPROVEMENT IN THE CITY OF DERBY, KANSAS (SANITARY SEWER IMPROVEMENTS/DERBY MARKETPLACE ADDITION AND DERBY DOWNS ADDITION).

DISCUSSION:

Council Member Schwarz advised one of the problems brought up with this location when it was being considered for the aquatics park was a propane or gas line there, which is about where the entrance with the stoplight is. He asked if that is going to be moved or is it going to be buried deeper.

Mr. Brown explained it will stay in place. The entrance you talked about is north of that location.

MOTION: Warren moved to approve the revised resolution for sanitary sewer improvements to serve Derby Marketplace and Derby Downs Additions. Meidinger seconded.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, 0 absent, motion carried.

**BIDS FOR DERBY
MARKETPLACE
ADDITION – SANITARY**

SEWER & WATER MAIN IMPROVEMENTS

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

Background:

- A bid opening for the construction of Sanitary Sewer and Water Main Improvements to serve Derby Marketplace Addition was conducted on Tuesday, May 15, 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:

Utility Contractors	\$ 692,522.00
Mies Construction	601,022.50
Middlecreek Corp.	557,660.00
Nowak Construction	544,865.50
Engineer's Estimate	\$ 558,663.80

Financial Considerations:

- Funds for the construction work are included in the 2007-1 temporary note issue.
- Costs for the Sanitary Sewer and Water Main Improvements will be paid 100% by the benefit district and none by the City-at-Large.
- Special Assessment 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:

- Nowak Construction has completed several projects in Derby and has submitted all required bonds and financial sureties for the project.

MOTION: Craig moved to approve the bid of Nowak Construction in the total amount of \$544,865.50 for the construction of Sanitary Sewer and Water Main Improvements to serve Derby Marketplace Addition. Schwarz seconded.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, 0 absent, motion carried.

DESIGN OF BIOSOLIDS PROCESS AT

WASTEWATER TREATMENT FACILITY

Dan Squires, City Engineer presented the staff report.

Background:

- The Capital Improvement Plan (CIP) provides for major improvements to the biosolids handling process at the Wastewater Treatment Facility (WWTF) to be designed in 2007 and constructed in 2008.
- City staff sent out a Request for Qualifications to consulting engineering firms throughout the state, soliciting their interest in designing the improvements. Statements of Qualifications were received from Wilson & Company, Professional Engineering Consultants (PEC), and Camp Dresser & McKee (CDM).
- Considering the scope and cost associated with this design project, it was decided to conduct interviews with the prospective consultants. The consultants were interviewed by a committee consisting of Kathy Sexton, Loren Johnson, Dan Squires, Carl Rose, and Michael Wilson. The interview committee unanimously selected CDM as the best value to the City for this project.

Legal Considerations:

- Solicitation and evaluation of proposals were conducted in accordance with the City's purchasing procedure, which authorizes an RFP process for professional services.
- A standard professional services consulting contract previously developed by city staff will be executed with CDM if authorized by the Council.

Policy Considerations:

- CDM is a large multinational consulting firm that specializes in the design, and construction of environmental (water, sanitary sewer, and solid waste) projects. CDM as a corporation has knowledge of regional, national and international technologies, and their local staff has personal experience and is intimately familiar with the City's WWTF and its operations.

Financial Considerations:

- CDM's design fee includes \$61,400 for preliminary design, \$209,600 for preparation of construction documents, and \$135,000 for full-time construction inspection and construction administration. Total fee for design and construction-related services will not exceed \$406,000.
- The 2007 CIP includes \$170,000 for the design of the biosolids improvements. Costs for construction-related services are included in the \$2,840,000 budgeted for construction of the improvements in 2008.
- These costs will be updated during the upcoming budget process.

DISCUSSION:

Council Member Craig pointed out the numbers and asked if we were way out over budget.

Mr. Squires responded “yes and no”. We are over budget with the \$130,000 and we will probably address that during the budget process. However, a chunk of that is for construction services that would be in the 2008 construction project.

Council Member Craig asked if the construction service would be full-time inspection.

Mr. Squires advised that was correct.

Council Member Craig asked for some background on how this company is closely connected with Derby.

Mr. Squires stated that two of the key engineers that interviewed for the process were involved with the previous plant expansions at our wastewater treatment facility when they worked with the firm that designed those improvements.

Council Member Craig expressed a concern about getting a real feeling of confidence that these folks will look beyond just mirroring what we have and maybe explore new techniques and new processes that would benefit our wastewater.

Mr. Squires responded that is the primary reason that this consulting firm was selected for this project. He thinks the group in general felt they were taking a very broad overall view, they proposed some things that had not been proposed previously that could not only potentially save quite a bit on the capital cost up front but also a significant potential savings on the operating and maintenance cost of the plant.

Council Member Bannon asked how this particular firm came in as far as price for services versus the others.

Mr. Squires advised the firm was competitive with both of the other firms for construction. There is a piece that they included they called “value added services”, which was going back and looking at some other processes that was in excess. But if you look purely at the design and the construction engineering of it all, three firms were competitive from a design standpoint.

Council Member Bannon asked if they were within \$20,000 of each other.

Mr. Squires advised basically, the original design was about a \$20,000 range and all three of them were within that \$20,000 range.

Council Member Bannon asked about the inspection and construction, she asked if CDM would do it or would they sub it out.

Mr. Squires advised he believed that CDM would probably do that inspection themselves.

Mike Hughes, Camp Dresser & McKee advised they definitely have the capability to perform those services themselves; they have many staff members that do that work exclusively. Whether or not they self perform that would be a discussion with staff.

Council Member Bannon clarified that they don't know right now whether the plan would be to sub it out or to keep it in house.

Mr. Hughes stated they had cost that as a self performed function.

Council Member Bannon stated she has always understood that the plan for the wastewater treatment plant was to mirror what we have, but she understands that technology advances not just in electronics, but also in wastewater, etc., so she is assuming that there is new technology out there that we are looking at instead of just mirroring the current configuration.

Mr. Hughes advised that was correct. As Mr. Squires mentioned earlier, the value added services include evaluation of three alternatives that had not previously been addressed.

MOTION: Warren moved to authorize staff to contract with Camp Dresser & McKee for design and construction-related services and authorize the City Manager to execute all necessary documents. Staats seconded.

Council Member Craig asked about the option of self inspection during construction, if that should change to someone being subbed out to do that, is there any provision that we have that they would come back to us and give us a notification of that and who that might be based upon our desires.

Ms. Sexton advised that would be in the contract that staff will have to approve that if there is a deviation from the intention of what their proposing now.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, 0 absent, motion carried.

ADJOURNMENT

MOTION: Warren moved to adjourn at 9:53 p.m. Meidinger seconded.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, 0 absent, motion carried.

Dion P. Avello, Mayor

ATTEST:

Jean Epperson, City Clerk

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