



**CITY OF DERBY  
MEETING OF THE CITY COUNCIL  
REGULAR MEETING  
August 25, 2015  
6:30 P.M.**

*Our mission is to create vibrant neighborhoods, nurture a strong business community, and preserve beautiful green spaces.*

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1. **CALL MEETING TO ORDER**
2. **FLAG SALUTE**
3. **INVOCATION--Pastor Ben Ray, First Presbyterian Church**
4. **ROLL CALL      COUNCIL MEMBERS PRESENT:**  
MAYOR            Randy White  
WARD I            Tom Keil  
WARD II           Jack Hezlep, Vaughn Nun  
WARD III          Cheryl Bannon, Chuck Warren  
WARD IV          Tom Haynes, Mark Staats  
**COUNCIL MEMBER ABSENT:**  
WARD I           Rocky Cornejo
5. **CONSIDERATION OF MINUTES**
  5. A. **Regular Meeting Minutes - August 11, 2015**

Recommend a Motion to:

- Approve the regular meeting minutes of August 11, 2015, as presented.

Moved by Tom Haynes, seconded by Vaughn Nun, to approve the regular meeting minutes of August 11, 2015, as presented.

**Vote: 7 - 0**

Other: Rocky Cornejo (ABSENT)

## 6. PUBLIC FORUM

**Council Member Bannon** said there is a new database at the library for continuing education, and it has over 500 different courses people can sign up for. You get assigned an instructor, you have to take a test and pass with 70% and you receive continuing education hours.

This is the 10-year anniversary of hurricane Katrina. She thanked everyone who helped spearhead helping the city of Slidel, Louisiana that Derby adopted.

## 7. PRESENTATIONS

### 7. A. Kite Festival ACE Grant Presentation

**Kathleen Avitt**, Program Director, Derby Recreation Commission, presented an overview of the Kite Festival held at High Park on May 16, 2015.

**Mayor White** asked if it was the 3rd or 4th year?

**Ms. Avitt** said it was our 4th year. We are looking forward to having new events each year. We are getting closer to having hot air balloons or stunt kites.

### 7. B. Recognition of Service

**Mayor White** presented a framed sunflower print to Chris Sexton for his 12 years of service representing the City on the Derby Recreation Commission.

**Mr. Sexton** said 12 years is a long time. He is so glad former Mayor Dion Avello is here tonight. Mayor Avello said we need some youth and strong-minded people to handle some tough issues that are in our future. Derby has been so good to our family and our son. The partnership the DRC has with the City and the school district in Derby is a formula for success when it comes to public recreation. It is good to move on and have fresh ideas. Diverse ways of thinking is not a weakness; it is a strength of ours in this community.

## 8. NEW BUSINESS

## 8. A. Public Hearing for a STAR Bond Project District

### Guests:

- Rick Worner, Managing Director, National Realty Advisors
- Korb Maxwell, Attorney, Polsinelli, P.C.
- Guy Gsell, Executive Producer, Field Station: Dinosaurs
- Joe L. Norton, Gilmore & Bell, P.C.

### Background:

- On July 16, the City Council heard a proposal for a destination development on north Rock Road to include a dinosaur-themed park and museum as its main attraction.
  - The development also would include commercial businesses including retail shops that would generate sales tax revenue.
  - The project would be financed in part using STAR bonds if so authorized by the Derby City Council and the Kansas Department of Commerce.
  - These STAR bonds would be paid off using sales tax revenue generated by businesses in the STAR bond district.
  - The sales tax rate would not increase. Consumers would pay the same amount of state, county and city sales tax as they would pay in any other part of the city.
- On July 30, the Kansas Department of Commerce approved the district as an "eligible area" as defined by state law. This was the first step in the state's approval process.
- Mr. Rick Worner is the lead agent for the project and will present additional aspects of the proposal at this meeting. He is expected to introduce additional businesses considering location in the proposed destination development. A diagram of the north tract of the proposed district (attached) gives an indication of some of his plans.
  - Mr. Worner, his attorney Mr. Maxwell, Mr. Gsell, and others will be available to respond to questions from the City Council.
  - A feasibility study was just completed and is being provided to the City Council for review. Questions about information in the feasibility study also will be addressed at the City Council meeting.
- On July 16, the City Council scheduled a public hearing for August 25 so the Council can hear from Derby residents and members of the public about the project.

### Financial/Sustainability Considerations:

- A Funding and Developer of Record Agreement (attached) would obligate Derby Destination Development, LLC to provide \$25,000 to cover the City's costs of exploring the proposed STAR bond project, including publication and other administrative costs, attorney's fees, and an

exploratory visit by Derby officials to Field Station: Dinosaurs in Secaucus, New Jersey.

- The visit is scheduled for Friday, September 4 with air travel on September 3 and 5. Participating will be Mayor Randy White, Council Members Mark Staats and Vaughn Nun, and City Manager Kathy Sexton. Estimated costs include \$3,600 for airfare and hotel plus meals. Findings from the visit will be reported at the September 8 meeting of the City Council.
- The agreement also names Derby Destination Development as the exclusive developer of record for the North Tract of the proposed STAR bond district and provides 90 days for submission of a Project Plan to the City.

#### Legal Considerations:

- Once the August 25 public hearing is held, per state law, the City Council has 30 days in which to pass an ordinance establishing the STAR bond project district and approving the district plan. A draft of said ordinance is attached for a first reading. Second reading and a vote are planned for September 8.
- This ordinance is the second in a series of steps required by state law for the City to perform as it considers issuance of STAR bonds.
  - The ordinance itself does not indicate the City Council has approved the destination development rather that the Council is considering approval and is ready to receive more information.
- After approval of the ordinance and receipt of a Project Plan, future steps in the process (with dates that are subject to change) include the following:
  - Consideration by the Derby Planning Commission as to whether the Project Plan is consistent with the City's comprehensive plan - September 17
  - Resolution to set a public hearing on the Project Plan - Sept. 22
  - Public Hearing on the Project Plan - October 27
  - City Council considers an ordinance to approve the Project Plan and a detailed development agreement - November 10
  - Submit the project to the Kansas Department of Commerce for its approval.

#### Recommend a Motion to:

- Approve the Funding and Developer of Record Agreement and schedule consideration of an ordinance establishing a STAR bond project district for the Sept. 8 meeting of the City Council.

**Kathy Sexton**, City Manager, presented the staff report. Ms. Sexton introduced Rick Worner who explained additional aspects of the project and introduced additional partners of his project.

**Rick Worner**, Managing Director, National Realty Advisors, said Guy Gsell

with Field Station: Dinosaurs is here tonight. In addition to the dinosaur park, there is a medical facility developer in the audience. He intends to develop a \$40 million inpatient/outpatient medical facility within the district, plus a medical office building. Johnny Parmar is here. We hope to develop a second hotel within Derby. The developer for an archery training center is also here. His goal is to have a regional Olympic trial here because there is no facility in Kansas where you can have 30 competitors compete at the same time. The archery training facility would have regular bow, cross bow and two rifle shooting lanes. We are hoping to do a 150 yard rifle shooting range. The main thrust of this facility will be archery. He is negotiating with a restaurant company to build a restaurant on site. There is also a daycare from Kansas City, Missouri that would like to locate within the district. He is negotiating with other retailers and restaurants, but no one is willing to come tonight like the dinosaur people, health care people and the archery people. They are not ready to come yet. If Derby were to approve this and the state were to approve this, he hopes to bring more and more venues to help Derby grow. Korb Maxwell, Attorney from Polsinelli, is also here to answer the legal questions.

**Ms. Sexton** advised the Council to ask questions now about the new issues just raised and the wait until after the public speaks to ask questions about the feasibility study.

**Council Member Bannon** asked what is the inpatient/outpatient hospital. Are you talking about a hospital with an emergency room? How many beds?

**Mr. Worner** introduced Mike Belew, CBC Real Estate Group, Kansas City, Missouri who said CBC Real Estate Group focuses on health care projects as well as other commercial projects throughout the country. We have done business in the Wichita market for about 10 years. The project itself is a combination of an outpatient/inpatient facility. It will have overnight stays that are mostly a post acute nature. It will have both inpatient and outpatient services for the patients that reside within the facility.

**Council Member Bannon** asked if it is a specialty where you go in for an outpatient procedure and then if something goes funky, you are spending the night. Or are you talking about a person who has pneumonia and you need to be in the facility for a week?

**Mr. Belew** replied it would be a combination and could handle both. For instance, there is not a dedicated facility in this general region of the midwest that focuses on traumatic brain injuries (TBI). This is a facility that will be structured to handle very special cases like that.

**Council Member Bannon** asked if that were more like a rehab center.

**Mr. Belew** replied it can be but there are outpatient services like physical and occupational therapy, different types of rehab for that facility and for that particular patient. It is a facility that is going to be developed to a nature that will accommodate different types of patients. We are not going to pigeon hole it, but it will be unique to the market.

**Council Member Bannon** asked if he expects to have an emergency room.

**Mr. Belew** said no. There is an emergency room that is coming to the market. It is very complimentary to what we are doing.

**Council Member Bannon** asked if he said how many beds were planned.

**Mr. Belew** said he did not say how many beds.

**Mr. Worner** added it will be a \$40 million facility.

**Council Member Bannon** asked when he expects to build.

**Mr. Belew** said that is contingent on Mr. Worner and the City of Derby to move forward with the project. We have started schematic drawings, so we are pretty far along in the process. This facility can break ground 90 days post final documentation on this project.

**Council Member Bannon** asked with the doctor's facility, are you trying to model it like the Kansas Heart Hospital where you have the heart doctors facility that is right there. You go down a long hallway and you are in the Heart Hospital.

**Mr. Belew** replied he has not had the pleasure of visiting that facility. We are very focused on accommodating the patient and the experience. We recognize healthcare has become an outpatient-focused industry. There are certain types of patients that do need overnight stays for certain acuity levels.

**Council Member Warren** asked what draws you to build this type of facility next to a dinosaur park?

**Mr. Belew** replied we have been focused for the last three years on identifying the demographics of this type of facility. We actually honed in on 63rd and Rock Road three years ago. The size of acreage or ground we needed was not available. When we heard about the opportunity, we contacted Mr. Worner because we felt he could carve out a piece for us. We were interested in the visibility and access of that intersection and not necessarily the attractions around it. Anytime there is additional capital that is brought to the market, we are attracted to that. The recent announcement of an ER facility across the street doesn't hurt. We liked the demographics. We look at it as more than a

regional play from all of the outlying markets, Mulvane, Rose Hill, Belle Plaine, but you are able to pull that patient load from Wichita, which is really attractive to us.

**Council Member Keil** asked if the hospital is a project that you would move forward with regardless if the Council approves a STAR bond project.

**Mr. Belew** clarified this is more a healthcare project that is more outpatient and inpatient oriented. It is not a hospital; it will not be licensed as a hospital. It will have services similar to a hospital. We are attracted to the market. We feel like it would survive on its own.

**Council Member Haynes** asked about the 150 yard shooting range. Is that expandable to 500 yards?

**Mr. Worner** replied we are not opposed to it.

**Council Member Haynes** said we have several shooting ranges in the area. Do we have sufficient public that would utilize this 150 yard range?

**Mr. Worner** said where most facilities are catering to people within a five-mile drive, this facility would cater to regional competitions. This is Oklahoma City, Tulsa, Dallas, Fayetteville, Arkansas to get people to come, to get sponsors to come in and have archery competitions. It is a one of a kind facility. This is not like McDonald's to get people who live here. This will draw from a long range. When we started the medical care facility, it was not our goal. It was perceived as a need. Anything that create synergistic traffic that can draw people from a good distance to Derby whether it be to see the dinosaurs or compete on a Saturday afternoon in an archery tournament. He talked to a rifle guy and found out to site a rifle he would need 150 yards.

**Council Member Staats** asked if the archery range was all outdoors or indoors.

**Mr. Worner** said it will be all indoor. The cross bow has special targets where people could shoot a cross bow inside.

**Council Member Bannon** said in the feasibility study in Goddard, you showed how many millions participated in each exercise group. Swimming was at 52 million which is great for the natatorium you are building there, but archery was only 6.5 million. Do you think there are enough archers in the area to participate in this?

**Mr. Worner** said because there are not many facilities like this around the country, this will be a unique facility. It is going to be the next area sports edutainment.

**Council Member Bannon** asked how is it different from the facility on west Harry.

**Mr. Worner** said there isn't anything in the region that has 30 lanes. To get in a brief conversation with the Olympic committee is how many do we have to hold a regional qualifying event.

**Council Member Bannon** asked where do they currently have these competitions.

**Mr. Worner** said in Las Vegas, in California, and on the east coast. The people he spoke with couldn't name anything in Kansas, Missouri, Iowa, Nebraska or Oklahoma.

**Ms. Sexton** asked Mr. Worner if you could tell us who we are talking about with both the medical care facility and archery. Usually medical systems are Ascension Health, Via Christi Health, and HCA Wesley. Is this a group that is associated with a hospital group, or is this a brand new business with local doctors that are putting this together?

**Mr. Worner** said what he knows is it will be staffed by doctors who are currently in the market, that for now do not want their specific names in the paper.

**Mr. Belew** rejoined the meeting.

**Ms. Sexton** said she has the same question about the archery range. Is this a brand new business or can you tell us who is running this sort of business in another state? She repeated her questions to Mr. Belew.

**Mr. Belew** replied it is not a system that you are used to seeing. Wichita has Via Christi and HCA Wesley. Wichita had the highest amount of physician-owned hospitals in the day when the government allowed physician-owned hospitals. The law changed in 2010, so that is no longer allowed. This is a regional operator that focuses on the midwest, and we have had relationships with in the past. There are several different types of layers of acuity. HCA is one of the largest hospital systems in the country. What we are focusing on here is not that type of player within the market.

**Mr. Worner** said the developer for the archery center currently has a manager who has a job elsewhere. He does not want his name in the paper because he is afraid he will be fired. It is a person who operates a similar facility. If you could go into executive session in the future, we could provide financials that would show the group has a huge net worth. They have invested in these types of facilities before.

**Ms. Sexton** said the map in the agenda packet includes the dinosaur site of 14 acres and the hotel site and archery training site. There is a 7-acre site and a 4-acre site. Which of those is the medical facility site?

**Mr. Worner** said the 4-acre site is the medical office building and the 7-acre site is the medial facility. One of the two pad sites would be a daycare and the other would be a restaurant.

**Mayor White** opened the public hearing at 7:09 p.m.

**Robert Winn** is a 28 year resident of Ward 3. He spent over 3 decades as a certified public accountant. He spend the last 22 years evaluating, reviewing and auditing financial proposals for the Department of Defense which had similar information contained in the feasibility study. He is concerned about the ability of the City management staff to perform a due diligence review of this study in its current state. He has seen other proposals like this, not in the real estate industry, which have been worse, but not many. It would be a lack of due diligence to submit that as a basis for drawing conclusions about the expenditure of \$40 or \$50 million of public funds. The developer is a ghost. Destination Development Derby did not exist before February 2015 according to the Secretary of State; when it was incorporated with a one-page articles of incorporation signed by Mr. Worner's personal attorney. The principal stockholders are undisclosed. It has no assets or employees and no business history. To enter into an arrangement without further review is unwise. That agent hired a company to prepare this study who has a conflict of interest. Similar to the situation, the State Auditor found in Topeka, which is now the basis for his recommendation that the statute actually be changed to prevent this. Topeka's project is about \$5 million in the hole. The feasibility study was not available on the website until 9:00 a.m. Friday. We have had 2 and a half business days to read it. The scope, nature and estimated cost associated with the project were not disclosed until Friday morning. He is concerned that the decision made tonight will start statutory clocks and calendars clicking that will prevent our fine management staff in Derby the amount of time necessary to vet this feasibility study. In my professional opinion, in 30 days, without severe changes, it would be impossible to properly vet this feasibility study with due diligence. It lacks transparency. It is like a set of financial statements for a very complex company without footnotes. Much of the data he tried to reconcile to cited sources did not agree. Much of the data was unsourced and much of the data that generated a conclusion is generated conclusions that, on their face, are almost farcical.

Chuck Warren moved and Cheryl Bannon seconded, to add two minutes to Mr. Winn's time.

VOTE: 7-0

**Mr. Winn** continued one of the conclusions that bothered him is from un-sourced data. It looks like they are suggesting in their conclusions that about 2/3 of the population of the northern counties of Oklahoma will come to this facility annually. This a 45,500 people roughly. If you look at the four counties in I-35 corridor that are the four northern counties of Oklahoma, you are talking about a population of about 65,000 people. If you are convinced that those people are going to come every year to play putt-putt golf, you are being misled. There is not enough information available to make an evaluation. How is the City manager and her staff, without a lot of further information, going to evaluate this? It is her staff and the City that is statutorily responsible for submitting this study which was commissioned not by us, but by the developer. There may be a risk of bias in a report that contains dozens of estimates. They are saying 100,000 people a year are going to come to the training center. He did not know if we have 100,000 Olympic people in the region that shoot arrows.

**Mayor White** asked for any points of clarity. There were none added.

**Helen Parish** said she is one of the vanishing species of Derby natives. She has seen this town grow from 300 to what it is today. This is specifically about the dinosaur park. Please think very carefully about the limited interest to the general public. We are a regional draw for goods and services. Once the new is off the dinosaur park or it fails, will that be a tax advantage? Beware of sales reps bearing development concepts not yet tested in our area of the midwest. Derby has proven to be a location very ideal for reputable businesses. Do we really need to muddy the waters of success?

**Cynthia Wentworth**, Vice-President of Marketing for Visit Wichita, the Wichita convention and visitors bureau. You have heard some drawbacks, maybe some considerations of risk. What she would like to address today has less to do with the packet and more to do with the concept of something that not everyone, other than us, thinks about every day and that is tourism. When she tried to start that concept for Derby, we started with smaller events and activities. The idea was there were a lot of ways to have economic impact from visitors. When she thought about the opportunities for that, we had the discussion about what that looks like in this region. Tourism or visitors bring a billion dollars from the Wichita MSA into the community every year. People are extremely surprised to hear that. We have 6 million visitors into the Wichita area each year. We need to market the opportunities well outside the borders of Wichita and the state. We currently market Rock River Rapids because they are one of the partners of Visit Wichita. One of our draws is it is unique and it's one of the only in the entire region. We make sure that message reaches even further than what Derby on its own can do. Everything from visitors guides that go to 150,000 places from convention goers and everywhere from Missouri to Oklahoma. Similarly, a dinosaur themed park

would be one of the only kind in this entire area. We work with travel writers from across the nation and will host three from Europe in September. We just finished meeting with 22 that came from across the entire U.S. to see what we have to offer in this area. We look for things that are unique. We are working with all kinds of museums and attractions in the Wichita area that are called experiential visiting or offerings. Those adventures are not just walking through a museum, but experiencing them. We have found that many have found much success with the same exact facility, but approaching it in a different way. When we hear about digging up dinosaur bones or seeing or hearing life-size animatronic dinosaurs, you can see that fits into the category of experiential. When we look at things, it is not from a Wichita perspective, but more along the lines of what are opportunities throughout the region to drive 6 million visitors into this region each year. Since we feel like an attraction similar to this, after it is vetted and after you have asked all of the questions and you feel they are sufficiently answered, from a concept, would something like this be of value? The attraction itself would be assistance not just to the Derby community, but to this region as one of the many draws we could offer. We have sales managers who draw in conventions and sports competitions from across the U.S. We have one individual dedicated to luring different kinds of sports events. In June, we were able to host the national YMCA gymnastics championships in Wichita. When you think of those kinds of opportunities, you look a little bit globally, and once everything is vetted and the questions are answered, consider what an opportunity it might be for tourism in Derby.

**Verdou Parish** stated his concern was about the STAR bond project district. The presentation from the City Manager tonight clarified there will be no increase in the percentage of sales tax. The public needs to follow that as this project moves along. He was concerned about a percentage increase in sales tax, including grocery stores, medical, etc. As long as the increase is void, that is not an issue.

**Evan Hathaway** has lived in Derby a few years. He understands that a STAR bond is debt issued to pay for up to half of the project costs. He assumed that is \$18 million in debt. To say there is no increase in sales tax is a little misleading. Just this year, the state legislature ran out of money, and they found it in sales tax revenue. A STAR bond takes away from the state's sales tax revenue for the amount that is taxed in that district. Half of this project is going to be funded by the public one way or the other. To simply make the statement that it is not going to increase taxes seems a little bit disingenuous. He is not against business development in the community. He does not want to be on the hook, or have the state be on the hook, for half of the capital that needs to be raised. If the developers think this is a good project, then they should pay for it. He will go to the park and take his kids to it.

**Council Member Warren** asked if Mr. Winn could continue his comments.

**Ms. Sexton** advised the mayor to ask if anyone else wants to speak before closing the hearing.

**Andrew Nelson** is the owner/operator of Chick-fil-A in Derby. Being a local business owner, he is pro-growth as far as the city moving in a new direction. There are some concerns of other citizens about the sustainability of this in Derby. He was happy to hear about the inpatient/outpatient medical facility. It is exciting to hear about the new growth. Bill Hybels once said "Don't you dare think too small." This community has been nothing but welcoming to him and his family since moving here.

**Johnny Parmar**, owner of the Hampton Inn in Derby, is excited to see something is happening in the field. It will be nice to see the dinosaur park in Derby, Kansas. It will be nice to see something exciting in the city. He does not know how much property tax it will bring to the city. It will bring a lot of people to the City. He is also excited about the new medical center coming to Derby.

**Natalie Weber**, long-time resident of Derby, said she came to observe tonight. She has done a considerable amount of research about the STAR bond process and the past history of this particular developer. She said it is not a good or bad idea at this point. Please do your due diligence to review this proposal and the ramifications of this project. It seems like there are a lot of ambiguities and unnamed people in the study. There are a lot of dreams. She likes to see people pursue their dreams. There are not a lot of statistics or concrete sources to back up the projections. The failure of Wild West World north of Wichita that had similar dreams of bringing lots of tourists to the area. Looking at the long-term future of Derby, we are talking about the entrance to Derby off of Rock Road, and she thinks of Joyland. That was a great place in its hay day, and again we have an eyesore in Wichita with a run-down area. The long-term feasibility of a project like this, what is the developers commitment to maintaining the site? How can we make sure we avoid having an eyesore at the entrance to Derby 50 years down the road? She spoke with Cody Bird and he explained the long-term vision for the community so we preserve the community we have.

**Gil Nye** read the feasibility study and if he has this correct, they are estimating 1.5 million visitors for the park. The number one attraction in the state is Sedgwick County Zoo with 500,000 people attending each year. The number two attraction is Exploration Place is 200,000. Those numbers are contradictive.

**Naomi Wickham** is a life-time resident of Derby. One of the things she loves about Derby is the family orientedness and how much the City Council and different leadership positions try to maintain that. The park that is proposed to

come here, at some point would draw a lot of tourism. It would bring visitors that would support local businesses. One of the reasons her parents moved to Derby in 1980's was because they liked how Derby was removed from the bigger city atmosphere. The park will bring busier traffic. It would be the type of attraction to get families to move here. These are things for the Council to consider to help maintain a family oriented community and continue why we want to live here.

**Derek Frazier**, owner and operator of Derby Bowl, said his is the oldest business in Derby. It started in 1959, and my family has owned it since 1975. He has not read the feasibility study and does not know the developer. He is against the incentives. He knows how STAR bonds work. If the city would take a picture of this district today and pay me the additional sales tax revenue over the next 10 to 15 years that Rock Road is going to realize between 71st and 55th Streets South, he will break ground tomorrow with his business so he can get it paid for. The dinosaur park would be an attraction and if the developer would pay for it with his own money, that would be great. He does not believe the City should pay for it. Sure, it would get paid for over the next 10 to 15 years, and who wouldn't want that gig?

Chuck Warren moved and Cheryl Bannon seconded, to give Mr. Winn one additional minute to speak.

VOTE: 7-0

**Mr. Winn** said it is his understanding the current estimate of total project cost is \$178 million. Of that, \$39 million would come from STAR bond funding. When you add interest and carrying charges over 20-year period, this would total over \$40 to \$50 million. It is my understanding that the primary source of revenue for 60% of our state budget is sales taxes and is used to support public education, including USD 260. One of the reasons my family moved here was because of the quality of the education system. He doesn't want that money to not be available.

**Mayor White** closed the public hearing a 7:43 p.m.

**Council Member Haynes** asked about the saturation of hotels. We have one hotel with a potential of a second one going in. Now this project is talking about a third hotel. At what point do we feel like the area will be saturated with hotels?

**Mr. Worner** said Mr. Parmar would build the second hotel.

**Council Member Haynes** said the executive summary gives the following projections for visitors. These numbers are roman numeral VII in the estimated visitor count section. 1.5 million visitors projected to come to this attraction

every year. 315,000 is projected to come in from out of state which is 22% of the 1.5 million. The math gives us 1.1 to 1.2 million will be coming from in-state. Roman numeral V in the synergy with other area attractions section stated that the Wichita area boasts 34 family entertainment, cultural, educational and historical attractions that in 2013 collectively hosted 2.5 million visitors. 2.5 million divided by 34 attractions gives about 73,500 visitors average per attraction. He asked where the other 1.3 million is coming from.

**Korb Maxwell**, Attorney with Polsinelli, P.C., represents Derby Destination Developers. I have had the pleasure of representing Mr. Rick Worner on other projects across the state in many different projects. Some of the comments spoken were this sounds like a dream. His client is a dreamer. He has a record of delivering within the process of the STAR bond. The public needs to understand we are only at the first step of this process and that first process is creation of the district. It has absolutely no financial obligation to the citizens of the state of Kansas, the City of Derby or otherwise. We are making a financial obligation to you to fund all of the pursuit costs that you would have to study this process and do the due diligence on it. The feasibility study was provided to Derby early in the process. It is not a required component of the phase we are at now. The phase we are at now is district creation. You prepare a feasibility study at project plan. The project plan phase that we have laid out is many months down the line. We have provided this feasibility study to give the citizens and others the chance to review it and ask questions, and take us to task. It is supportable, is it long-term viable, and does it work? We are happy to comb through those.

**Mr. Maxwell** said please look at page 39 of the packet. People ask how is 1.5 million visitors possible. The Wichita Zoo only has 500,000 visitors. Mr. Worner walked through the various components of the project. It is not just Field Station: Dinosaurs. When you look at the dinosaur component, it is 112,000 visitors. When you look at the ropes course and mini-golf it is 20,000 visitors. When you look at the training facility, it is 100,000. The hotel is 25,000 and the restaurants is 200,000. The big number there - retail is 900,000. It is a lot of the things that you already have going on in this community in the Derby Marketplace. What is the number one tourist attraction in the state of Kansas? It is Nebraska Furniture Mart. Retail is a driver of people and driver of the 1.5 million number. The point is to bring others, bring people that come and visit the museum and stay for a night. We are extending their stay. They are spending more money in your town and your state. People come to check out the zoo, and other things and that is the intent of STAR bonds. He asked the Council to think about we are very early in the process. We want to make sure all of the numbers add up for the citizens and others.

**Council Member Haynes** said the 1.5 million scares people. It is not just the

Field Station: Dinosaurs. It is everything else associated with it. He asked about the north and south tracts of the STAR bond district. What is our current annual average of shoppers or visitors to the STAR bond district?

**Ms. Sexton** said we do not have any numbers for the north track because that is north of the QuikTrip and a car wash. The south track is south of Patriot Avenue and that includes the Derby Marketplace as well as the shops on the other side of the road: Braums, the hotel, and Spangles. We have had the study for a couple of days. You asked how many people shop in Derby in this particular area with Dillons, Target and all of the shops up there. We asked the finance director to back into that based on the numbers she is privy to as far as retail sales. Using the same assumption used in the feasibility study that each visitor would spend an average of \$75 each visit, we have 1.2 million people shopping in that area now at the current stores. The study estimates in the new stores that would be 900,000 additional as a result of bringing new stores to this district such as Hobby Lobby, Aldi, T.J.Maxx and Ross Dress for Less. When we first looked at the chart on page 40 that shows 112,000 visitors for just the dinosaur park. She looked at the summer attendance at Rock River Rapids, and we had 70,000 in the two and a half month period at that facility. When you hear the dinosaur park would be open year round with an estimated 112,000 visitors, it probably isn't a stretch. The zoo is at 600,000 and is the biggest thing around here.

**Council Member Haynes** said hearing 1.2 million shoppers visit that one area in Derby surprised him.

**Ms. Sexton** said these are not unique visitors. She goes to Dillon's each week. You can't distinguish who goes, but it is every time someone goes.

**Council Member Haynes** said pages 21 and 22 indicate Derby has outperformed Sedgwick County and Wichita in the retail pull factor areas. Do we consider this one of the factors of the indication of Derby's ability to sustain the project?

**Mr. Maxwell** said yes pull factors are the stated analysis of our department of revenue and our state to tell communities how they are doing. Where are they pulling dollars from. Are they just servicing their citizens, underservicing their citizens or are they bringing in people from the region. Derby does a very good job for being a bedroom community or a suburb of a larger metro area, usually you have a very poor pull factor. You have substantial numbers and solid pull factor numbers. Can we look at some unique visitors to this area? It is the easiest economic development to your community. It is easy to propose this project here.

**Ms. Sexton** added pull factor is a term that you may not have heard a lot. Our

economic development director looks at the data sheet that shows pull factors. You look at the amount of need, what we have always called here is the three legged stool of retail in Sedgwick County. We all know that the big retail growth areas in this county are way east Wichita and way west Wichita. The pull factor of Derby is the result of the location on the three legged stool of how many people from this area south of Kellogg want to drive way out west and way out east for retail and restaurants. You constantly see people you know from Haysville or south Wichita in Derby because it is a short and accessible drive for them.

**Council Member Haynes** asked about the opportunity gap for retail. If he understands the chart correctly, the retail potential is a demand that we had a potential to sell. We talk about supply of retail sales; that is what we actually sold. We had an opportunity to increase that by \$278 million. We have gaps there that we need to fill.

**Mayor White** asked Mr. Worner to please give us a resume about STAR bond projects that you have been involved in and your background.

**Mr. Worner** said he was an investment banker with Oppenheimer and Company for 28 1/2 years. The federal government changed the rule last July 1st that said if you are part owner of real estate development, you no longer could finance that development through Oppenheimer. He became an affiliate of Oppenheimer on November 1st because it was illegal to be a subsidiary. About 14 years ago, the International Speedway Corporation came to Kansas City, interviewed the investment bankers and he helped put that project together. He was the investment banker they hired to do the Kansas Speedway. He got involved with the Unified Government to create a unique destination development. I am the guy that brought Nebraska Furniture Mart, Cabella's, and Great Wolf Lodge. It was my idea to bring Sporting Kansas City, Cerner, Schlitterbahn, the T-Bones all to western Wyandotte County. The first feasibility study on western Wyandotte County said abandon the site, you will never build one square foot of retail. We did over \$700 million worth of retail on the site last year with 12 million visitors and 12,000 new jobs. After that STAR bond project and there are actually four STAR bond projects in Wyandotte County, the Speedway, Village West, Schlitterbahn and Sporting Kansas City, he went to Goddard. We should break ground in the 60 days on a \$27 million swimming and diving center. He has two other STAR bond projects pending that will create tourism. He has used that vehicle to try and create tourism as a form of economic development. That is the goal here. If we don't do a project here, what is the increment. To quote Johnny Parmar, it is a cornfield. How much sales tax are you going to get from a cornfield next year? Not a whole lot. The cheapest form of economic development is to get businesses to come and get people from other states to come spend their time and money. Before we did anything in Wyandotte County 12 years ago, it was

the armpit of the metropolitan area of Kansas City. Nobody went there, shopped there or stayed there. We had 12 million people there last year.

**Council Member Bannon** said thank you to the public who asked the questions. This is kind of like buying a car. We may be at the kicking-the-tire stage, but we don't know whether it is a Ford, a Chevrolet, or a Mercedes. We are at the husband and wife stage. We need a car; but what kind of car? We are a long way away but there is a process and a clock ticking. She asked Mr. Worner about Goddard. In your original feasibility study, there was Jurassic Lands. It did not end up in the final project. What happened?

**Mr. Worner** said the state limited the amount of STAR bonds that we could issue in Goddard. We may face that in Derby. If Derby were to consider this application and send it to the state, there is no guarantee the state will approve this. You don't know what they are going to approve. They may say we like dinosaurs.

**Council Member Bannon** said you picked the family fun center over the dinosaur park.

**Mr. Worner** responded the state picked swimming and diving over dinosaurs.

**Council Member Bannon** asked if the family fun area is not going in, just the swimming pool?

**Mr. Worner** replied the swimming, diving and baseball is going in.

**Ms. Sexton** said she, Kathy Sexton and Jean Epperson looked at the graph on page 23. We read the opportunity gap with surplus in parentheses as \$465 million of retail that we have a surplus of. In other words, we have more retail than we currently demand.

**Ms. Sexton** added the "we" is the whole Wichita metropolitan statistical area which is three or four counties.

**Council Member Bannon** said if you look at the 2012 study which was included in this feasibility study, they only had a \$48 million surplus. We went up over \$400 million in surplus of retail stores.

**Mr. Maxwell** asked if the point of the graph was the \$278 million of additional retail sales that could be captured here.

**Council Member Bannon** replied those two are diametrically opposed. They can't both happen. Let's skip that one.

**Mr. Maxwell** said this may be the total supportable non-automotive sales.

**Council Member Bannon** replied that says total retail sales, excluding automotive sales.

**Mr. Maxwell** said that is the \$6,252 billion number located four lines up.

**Ms. Sexton** asked if he is looking at the Wichita MSA estimated retail demand chart on page 24. She is looking at the opportunity gap chart on page 23.

**Council Member Bannon** asked about the red negative surplus of retail in the Wichita market. Why would we think more retail will fly?

**Mr. Maxwell** said that is not set by store type there. If you turn the page to the retail space demand estimates, as total supportable non-automotive retail sales in the Wichita MSA is almost \$6.2 billion. The estimated amount of sales that actually occurred was the \$5.9 billion leaving out there the additional ability to capture retail sales of \$278 billion.

**Council Member Bannon** asked if we have a breakdown of how the \$39 million pays for each business. Like the medical center gets x amount and the dinosaur park gets x amount.?

**Mr. Maxwell** responded all of these questions are things that need to be vetted. They are all components that get vetted at the plan stage. At the district stage right now we are just asking you to create the district. The plan that we bring forward does exactly what you ask for. At this time, we do not have a broken down analysis of all of those components. Part of that is, at this point we are dealing in very high level numbers. We take a breakdown of all of these components and full budgets where STAR bonds are spent and where private dollars are spent.

**Council Member Bannon** asked if the numbers we are looking at now are actually guesses.

**Mr. Maxwell** replied it is higher than a guess. What we try to do right now at large level per square foot dollar amounts that buildings cost \$100/sf. It is an estimate of what we try to do in the project plan stage and specifically at the development agreement stage where the contract is between us and we get to the level of detail that shows where the exact dollar amounts go.

**Council Member Bannon** asked Mr. Worner if he is showing a lot of retail business that he is hoping to get, not just restaurants, but others. Are the four we know about included in that list?

**Mr. Worner** replied they are included. There are a number of other retailers in northeast Wichita or west Wichita that he is trying to get them to come to

Derby. One of these brokers said we do not have this information from the feasibility study. If we had that, it may push us over the edge to make a decision to come to Derby as opposed to going to Oklahoma City, as an example. He is emailing the retail demand study to brokers to try to get them to move Derby to a 2015, early 2016 decision to as opposed to Tulsa and Derby being a 2018 or 2019 maybe decision. There isn't a lot of information for a national sporting goods store he is trying to get to come to Derby. They are asking what can you send me about Derby. We are sending these studies to get them to come to Derby now instead of five years from now.

**Council Member Bannon** asked about synergy in the feasibility study. Many of those businesses are subsidized in one way or another. In the feasibility study, you talk about synergy with other area attractions such as Botanica, Exploration Place, Great Plains Nature Center, the zoo, Intrust Bank Arena, the orchestra, ballet and Grand Opera. Most all of that is subsidized in some way.

**Mr. Worner** said we are not asking you to annually appropriate money for the operation of these.

**Council Member Bannon** said you are not asking for it now, but will you ask for it in the future?

**Mr. Worner** said we have no plan to come to you and ask for money. Kansas City, Kansas is not subsidizing the Nebraska Furniture Mart, Cabella's, or Sporting Kansas City.

**Council Member Bannon** asked if any of those are taking 14 acres as non-profit land.

**Mr. Maxwell** replied not any of those. Yes, there is another one in Kansas City set up as Prairie Fire. It is the dinosaur museum in Prairie Fire that is related to a natural history museum. It is very successful and it has been unbelievably well received throughout the city.

**Council Member Bannon** said you would have to agree that being a non-profit that takes that land off the tax rolls for as long as the non-profit exists is a form of subsidy, because you don't have that in your overhead to pay, whereas other businesses do.

**Mr. Maxwell** replied he can understand the line and the logic. The City may be making \$250 on that land right now.

**Council Member Bannon** stated in 10 years, it will be a lot more than that.

**Mr. Maxwell** added the overall component is do you want to see more and see that there. For giving up the \$250 during the period it is a non-profit, that is the

price of the deal.

**Council Member Bannon** said to Mr. Gsell, people in town are asking about the dinosaurs animatronics. Explain how much animatronics these dinosaurs will or will not have.

**Mr. Gsell** said these dinosaurs roar, blink, breathe, and their arms, legs and tails move. They are pneumatically controlled. They are interactive. If you are the only person that is around the dinosaur, it will follow you. It is the same as more people are around it, it gets triggered and seems more alive because it is interactive.

**Council Member Bannon** said it is different. It is not going to be the same thing that as you just saw it reacting to someone else the same way.

**Mr. Gsell** said it is different because it has a series of triggers.

**Council Member Bannon** asked about the three-quarter mile walking path at the Secaucus location. How much are you expecting to do here?

**Mr. Gsell** said the trail won't be nearly as long. A great deal of our land in Secaucus is that we go up a hill and that had to be ADA compliant. A lot of what gives us so much length on our trail is we had to create a very long ADA compliant trail to get to the top of the park. We have a substantial elevation lift in the park.

**Council Member Bannon** said you are aware of three other places in town that have dinosaur related exhibits. Some to a small degree at Botanica in the children's area, you can dig and there is a fossil area. At Exploration Place, the kids can dig for fossils. The Museum of World Treasures has similar attractions.

**Mr. Gsell** added they are part of an amusement park close to Allentown, Pennsylvania. We do not have the copyright on dinosaurs. Walking with Dinosaurs came to our park and handed out coupons and flyers. We work with the American Museum of Natural History in New York. We bring in those families with little kids and get them excited about science and dinosaurs.

**Council Member Bannon** asked Joe Norton, if six years down the road, we don't have enough sales tax to pay the debt service. What happens and who pays it?

**Joe Norton, Gilmore & Bell,** said if there is not enough revenue to repay the bonds, the bonds don't get paid. My experience in working with several of these types of projects, it is a very complicated and detailed analysis of what the revenue is going to be. A buyer of the bonds typically is on a negotiated basis a very sophisticated, large financial corporation that can evaluate those types of

decisions, and will have their own feasibility study. These bonds will probably not sell for the rates you are used to selling other general obligation bonds for. They make those kinds of decisions and they are willing to invest their money to buy those bonds in exchange for a higher rate of return or yield. They are the ones at financial risk.

**Council Member Bannon** said if the bonds wouldn't get paid, what does the state do? The state just basically doesn't get paid that year? Would it be the investors would not get paid?

**Mr. Norton** replied these bonds are structured as a super sinker type where you may have some minimal required payments. Typically at the end of the year, any excess revenues would get added to retire the principal of the bonds. It is not going to be a flat 20-year deal like you might do in a typical general obligation bond. Any excess revenues are required by the state to be used to pay down that principal as rapidly as possible. They want the bonds retired so they can capture the sales tax.

**Council Member Bannon** asked what happens if in six years the archery center and dinosaur park go belly up.

**Mr. Norton** said the bond holders are secured by the overall incremental increase in revenues of the entire district. If one new business is not successful, that will have some impact on the overall revenue stream. There are already a number of merchants there and planning to come. How much of an impact on a percentage basis is hard to gauge. Some will fail and some will succeed. That doesn't directly impact the ability of STAR bonds to be repaid.

**Council Member Bannon** clarified that once the STAR bonds are set and based upon the destination attraction, say the 14-acre dinosaur park is not sustainable as a dinosaur park and gets sold as something else. Nobody cares that it is not a destination type deal, is that correct?

**Mr. Norton** answered there is nothing that can be done about it.

**Council Member Bannon** asked if the land is no longer a non-profit, it would go back on the tax rolls and could be sold and turned into multi-family housing, for example.

**Mr. Norton** said there is nothing associated with STAR bonds that grants property tax relief, like an IRB.

**Council Member Bannon** said once the STAR bonds are issued and the state signs off on it, then things can change and nothing will be revoked.

**Mr. Norton** replied you will make a commitment and have an agreement that

you will provide money to build that destination attraction. Once that destination attraction is done, you have fulfilled your obligation to the state. If for whatever reason it is not built, that is a different story.

**Council Member Bannon** asked what is the estimated time to pay this off.

**Mr. Norton** answered the statute sets a maximum time frame of 20 years. With the required super sinker structure revenues are there in the early years. A lot of times these types of projects go up and down. If the up is there, then that money is used to buy down the bonds to make it more attractive to the investor. It is a commercial marketplace. Those highly sophisticated investors are going to analyze that before they are willing to buy the bonds. There is a multi-step process here. The first step was to call the public hearing. Now we are having the public hearing. You will consider on September 8th whether or not to form the district. If that happens, then the project plan, like Mr. Maxwell said, gets prepared and a 50 to 100 page development agreement gets generated. Another public hearing is called to consider those documents. If the City approves that, and that is a 2/3 vote of the governing body to do that, then the step becomes whether we have a salable bond issue. Mr. Worner can probably deal with the negotiations with bond buyers better than he can, but it is not always easy.

**Council Member Staats** asked what type of non-profit is Field Station.

**Ms. Sexton** said she would like for one of the attorneys to talk about that. This is the basic piece of the STAR Bond law that requires some of that information.

**Mr. Maxwell** replied a specific requirement of the STAR bond law is if you want to build a vertical development museum. When he says vertical, you want to actually build the building that would house this facility. The only way that can be done is to create a not-for-profit corporation. We are still working through the exact structure. We need to create a Kansas not-for-profit and seek 501(c)3 designation from the IRS.

**Council Member Staats** asked if that is a kind of non-profit like Cowtown, Exploration Place, or Sedgwick County Zoo. If this goes belly up in a few years down the road and they need a little tax help from the City to keep this dinosaur park open, that is his big concern that this will be a burden on the City. He does not want to be in a position to have to do this.

**Mr. Maxwell** said the business models we put together are not based on Council donations or any kinds of donations from the public. It is based on running a business, selling tickets, and the items that would happen for visitors coming to the facility. We are trying to get non-profit status so we can build the building. You are not going to have a facility with debt on it. That is an important component that is so different than so many of those other facilities.

It is the beauty of STAR bonds with source revenues to build the building. Mr. Gsell is not having to use the ticket price to pay back a bank or the debt on the facility. He uses the ticket price revenue to keep the facility in great shape, expand the facility, keep it fresh and new, put in proper reserves, put in proper capital so you are not out looking for donations to pay for debt and the capital structure. The fears of failure are difficult when you start with the facility from the get-go that it has little to no debt on it. It is important to get marketing to bring people in and use that to make the facility self-sustaining.

**Council Member Staats** asked if we proceed tonight and set the district, if we start to get more data that we don't like, can we pull the plug on this anytime.

**Mr. Maxwell** said at the point the district is approved, you have a year to study it and go back to the Secretary of Commerce and ask for an extension. You can have up to another year before we would do the project plans. The risk is on Mr. Worner and his development team. At any stage, if we cannot get 2/3 vote, we will be out a lot of time and money and effort. The City of Derby will be out nothing, but the Council's investment of time in reviewing this and your staff time. All of the risk and expenses of this project are on us, the private developer seeking this.

**Council Member Staats** said any action taken tonight does not mean this is a done deal. There are a lot of things to happen before we decide to go forward. To use Council Member Bannon's analogy, we are going to take a test drive or decide what car dealership we are going to go to and start looking at things.

**Council Member Warren** said to Mr. Gsell, Mrs. Parish brought up an interesting point in asking what this is going to be like down the line. He asked what do you do to keep this fresh? Exploration Place changes their outlook and they bring in new things from time to time. What do you plan to do to make this different in five years and still draw people?

**Mr. Gsell** replied half of the experience at Field Station: Dinosaurs is live performance, and we change it up every year. We are always bringing in new shows. We partner with the New Jersey State Museum and we work with the paleontologists to get a new collection of fossils and dinosaur skulls. We work these into new presentations and live shows. We have a new movie every year. As we bring in new dinosaurs and add dinosaurs, we do a lot of live programming. We have new puppets every year. The base coming in to see dinosaurs and walking around to see a dinosaur trail does not change from year to year. The group of children that like dinosaurs changes every four years.

**Council Member Warren** said there are issues where we have apathy. This doesn't seem to be one of those cases. We have healthy skepticism and healthy optimism. We have a lot more information to come before we get to a decision.

If he had to make a decision today, it would probably be no because he does not have all of the information that is needed. One of the things that is important is to keep a lot of transparency with the community. We need community buy-in. As a Council, we have an obligation to give the community as much information as we can. We might consider an open house to bring the community in to ask questions. He would like to see the feasibility study on our website, but it is hard to find. He would like to see that on the dinosaurs page to provide the community education about the information. The process is long, and we have a number of places where we can stop the progression. We want to make informed decisions.

**Council Member Haynes** said we have a long way to go. It is important we proceed cautiously.

Moved by Tom Haynes, seconded by Jack Hezlep, to approve the Funding and Developer of Record Agreement and schedule consideration of an ordinance establishing a STAR bond project district for the September 8 meeting of the City Council.

**Council Member Bannon** said what we are going to pass tonight has the developer pay the City \$25,000 to sit in a fund and we can use it to vet this project. We have Council people going to New Jersey to look at the dinosaur park. If we vote for this tonight, it is just to take it to the next tire kicking stage. It is a process and it may be a process we see all the way to the end and it may not be. We don't know yet.

**VOTE:** 7-0

Other: Cornejo (ABSENT)

**Mayor White** asked for a ten minute recess at 8:40 p.m.

**Mayor White** reconvened the meeting at 8:54 p.m.

## 8. B. **Derby Summary of Regional Priorities**

Background:

- At the City Council Retreat on July 7, the attached summary of regional priorities based on the South Central Kansas Prosperity Plan was reviewed and discussed.
  - The summary includes 13 issues as determined by Derby's senior staff to be of most relevance to the Derby community, after they reviewed the larger Prosperity Plan documents.
  - The purpose of the staff review and summary was to narrow dozens of

issues down to a manageable number for further discussion by the Council.

- Following brief discussion at the retreat, Council requested an email follow-up to ensure all elected officials had an opportunity to ponder the list and weigh in as to which projects seemed of most concern or most worthy of devoting future city resources.
  - Issues #4 and 9 (heavy circles) were of most concern.
  - Issues #1, 2, 6, 10 and 13 (circled) were of concern to many council members.
  - Issues with hash marks were priorities to either one or two respondents.
  - Issues #3 and 7 were not among the highest priorities of any council members and thus are recommended to be removed from further consideration.
- Based on Council responses both at the retreat and since, the attached list of 11 issues is proposed as those of most concern for future investment.
  - The list is re-ordered from subject (economy, water, social services and transportation) to relative priority level.
  - Issues #1-7 clearly are of higher priority than issues #8-11.

Recommend a Motion to:

- Approve a list of Derby priorities for addressing regional issues of concern and direct staff to present these issues for consideration for inclusion in the *City Council Priorities for the City Manager* at the September 8 Council meeting.

**Kathy Sexton**, City Manager, presented the staff report.

**Mayor White** said thank you for taking the large amount of information and creating a list of items. The last time he worked on this information was in a meeting with 25 to 30 other mayors. It is important that we take this head-on and he will share this list with other mayors this Saturday. We have discussed the bulk of these items and have some element of each that we are already working on.

**Ms. Sexton** said you will not find information in this stack of books to reinvent the K-15 corridor. We are looking at regional priorities and what that means to Derby, we were trying to pick very specific things. When you talk about redeveloping older areas that are blighted and not highest and best use, without having to take up more farm fields to keep growing out, but to redevelop what we have. The K-15 corridor specifically, and the other in general infill development. Once you start developing the water and sewer mains out, you skip over lots and farms. Infill means trying to get those to develop without layout of lines and going out further. You have talked a little bit in the West End Plan about what incentives we can do for redeveloping older areas or infill

development.

**Council Member Bannon** asked about the worksheet list, there are a couple in process. Since the Wesley ER announcement has been made, is that one we can take off the list.

**Ms. Sexton** replied yes.

**Council Member Bannon** asked about the drought response. Long-term wise, are we going to look at that to leave it on the list?

**Ms. Sexton** said a drought response plan is not the same as responding when we are in a drought. The Wichita City Council was up in arms about having a \$1,000 fee for watering a yard too much. Some people will not reduce their watering. You have to have a plan and be willing to enforce it.

**Council Member Bannon** said we have a plan, but this takes it one step farther.

**Ms. Sexton** said the regional part of this is very real. If we are the only ones replacing toilets or encouraging people to do more water-efficient yard irrigation, that is not going to help much. We buy our water from Wichita and if Wichita is not telling anybody about that, if we are both doing it, we are in the same media market, then paying for the ads makes more sense. Cooperating by doing the same program instead of two different programs makes a lot of sense so people are not confused based on which side of the street their house sits on.

**Council Member Hezlep** said to carry on with what Council Member Bannon said, creating an alternate water supply and conservation should be on the same ticket. Let's look at doing something about finding an alternate water supply other than the 6 wells we have. When drought comes, it is there, and not much you can do about it.

**Council Member Haynes** asked if we removed one item from the proposed list.

**Ms. Sexton** said Council Member Bannon suggested it.

Moved by Cheryl Bannon, seconded by Tom Haynes, to approve a list of Derby priorities for addressing regional issues of concern and direct staff to present these issues for consideration for inclusion in the *City Council Priorities for the City Manager* at the September 8 Council meeting, with the exception of bringing an ER health service to Derby.

**Vote: 7 - 0**

Other: Rocky Cornejo (ABSENT)

## 8. C. **Second Reading: Board Appointment Removal Ordinance**

Background:

- This topic was discussed by the City Council on June 23 and July 14.
- Removal of elected officials is governed by state law. Removal of board and commission appointees is governed by city code, which in Derby, currently includes no provision for such removal prior to the end of the term of office.
  - Board members are visible representatives of the City at public meetings and events and, in some instances, conduct public hearings and other statutory procedures with citizens.
  - As has occurred in other cities, situations may arise where an individual, due to his or her actions, no longer remains a positive representative of the City.
- On July 14, the City Council directed staff to review the draft ordinance with current members of boards and commissions. Emails were sent to most appointees, and letters were mailed to those without email.
  - Responses were received from 15 appointees in the form of emails, phone calls and face-to-face meetings.
  - The vast majority of respondents appreciated the information and had no questions or concerns.
  - Several had questions of understanding, and following the conversation indicated their approval.
  - One concern was raised about section A.2. as to what all might be covered by the term "moral turpitude" and whether it is appropriately used here.
    - In Derby, moral turpitude is used as grounds for disqualification and/or suspension/revocation of a taxicab license, peddler's license, and CMB license.
    - Crimes against public morals include things like promoting obscenity, lewd and lascivious behavior, sexual battery, unlawful gambling, unlawful conduct of dog fighting and other cruelty to animals, prostitution and promoting prostitution, sexual exploitation of a child, and illegal drug possession, sale or distribution. Morals charges disqualify people from being licensed for an escort service or sexually oriented business.

Legal Considerations:

- Defining the grounds and process for removal of a board appointee prior to the need to do so allows time for consideration and discussion of the policy change.

- Misconduct in office has generally been defined by Kansas courts as "any unlawful behavior by a public officer in relation to the duties of his office, willful in character." *Unger v. Horn*, 240 Kan. 740, 743 (1987).

Policy Considerations:

- The "unexcused absences" language provides flexibility to the Mayor and Council when special circumstances have resulted in an appointee's non-attendance at meetings.
- The proposed ordinance requires the Council to determine that an incident constitutes "good and sufficient cause" for removal in situations not expressly covered by the ordinance.
  - The City of Olathe has used "good and sufficient cause" as grounds for removal of appointees since 1999.
- Other than meeting attendance, the remaining grounds for removal in the proposed ordinance are similar to grounds found in the City of Lenexa's removal ordinance and the grounds for removal of elected officials under state law.

Recommend a Motion to:

- Approve the ordinance providing grounds for removal from boards and commissions.

**Kathy Sexton**, City Manager, presented the staff report.

**Mayor White** said a lot of issues are personal in nature. When we have to deal with personnel, we discuss issues in Executive Session. Do the discussions regarding a public appointed official need to be discussed in public?

**Ms. Sexton** said yes, under the new proposed ordinance, Section B would take an issue to the City Council meeting for consideration of a misconduct in office, failure to perform duties on that board and/or other good and sufficient cause so deemed by the City Council. The Council cannot make any decisions that are not in a public meeting.

**Council Member Haynes** asked if the individual resigned before being brought to the Council, then that would not be discussed in public.

**Ms. Sexton** replied yes. If an attendance issue happens, we count it up and call the person. If the person violates the law and it is taken to the Mayor, often the person resigns, especially if asked.

Moved by Chuck Warren, seconded by Tom Haynes, to approve the ordinance providing grounds for removal from boards and commissions.

**Vote: 7 - 0**

Other: Rocky Cornejo (ABSENT)

## 9. CONSENT AGENDA

Recommend a Motion to:

- Approve the Consent Agenda.

Moved by Chuck Warren, seconded by Cheryl Bannon, to remove the Assessment Ordinance from the Consent Agenda.

**Vote:** 7 - 0

Other: Rocky Cornejo (ABSENT)

### 9. A. Land Acquisition for Nelson Dr. and Meadowlark Blvd. Intersection Project

Background:

- The City's Capital Improvement Plan (CIP) includes a project to re-align Nelson Dr. at Meadowlark Blvd.
  - A traffic engineering study found the accident rate at the intersection to be more than triple the average rate for intersections along the state highway system.
  - The study recommended re-alignment of the intersection to improve safety.
- The City has secured federal funding administered by the Kansas Department of Transportation (KDOT) to help re-align the intersection.
- Realignment will require the City to acquire land from several property owners.
  - Due to the federal funding for the project, land acquisition must be completed in compliance with strict federal guidelines.
  - The City has contracted with Land Acquisitions Inc. (LAI) to assist in valuing the properties and negotiating purchases in accordance with federal requirements.
- LAI has recommended payment of \$13,000 to Carolyn Thomas who owns the property at 230 Harral St. (east of Ultra Modern Pool & Patio).
  - In exchange for payment, the City will receive the right-of-way and temporary easement necessary to construct the project.
  - The recommended purchase price also includes payment for trees that will need to be removed.
  - The property owner has agreed to accept \$13,000 as full and fair compensation for the real estate and damages of the other impacts.
  - Payment will be made to the property owner after the property rights are conveyed to the City free and clear of any encumbrances.

#### Financial/Sustainability Considerations:

- The CIP anticipates the need for and includes funding to acquire land for this and other street projects.
- Payment of \$13,000 appropriately balances the needs of the public with the impact to the property owner.

#### Recommend a Motion to:

- Authorize execution of an agreement with Carolyn Thomas in the amount of \$13,000 for the purchase of land and easement rights necessary for construction of improvements at the intersection of Nelson Dr. Meadowlark Blvd.

### 9. B. **Land Acquisition for Southcrest Drainage Project**

#### Background:

- The City's Capital Improvement Plan (CIP) includes a project to improve drainage in the Southcrest neighborhood.
  - During rainfall events, sediment from agricultural property south of the neighborhood accumulates in the channel and drainage structures, significantly reducing their ability to convey stormwater.
  - The box culvert under Southcrest Dr. is more than 2/3 full of sediment, resulting in stormwater threatening to overtop the roadway during significant rainfall events.
  - The project will remove sediment from the culvert and channel, and construct a sediment pond to capture future sediment.
  - The sediment pond will remain dry most of the time, but will capture and filter stormwater during rainfall events.
- The pond will be constructed on the agricultural property south of the neighborhood.
  - The City must acquire land and easement rights for construction and future maintenance of the pond.
  - The property is owned by the Arthol R. and Paula A. Harness Trust.
  - The property owners have agreed to sell the City the required property and easement rights for \$10,000.

#### Financial/Sustainability Considerations:

- The project budget anticipates the need and includes funding for land acquisition.

#### Recommend a Motion to:

- Authorize execution of of an agreement with Arthol R. and Paula A. Harness, Trustees, in the amount of \$10,000 for the purchase of land and easement rights necessary for construction and maintenance of a sediment

pond.

Moved by Tom Haynes, seconded by Vaughn Nun, to approve the Consent Agenda, as amended.

**Vote:** 7 - 0

Other: Rocky Cornejo (ABSENT)

## 10. A. **Assessment Ordinance for Nuisance Abatement**

Background:

- City ordinance requires debris be removed from properties and lawns be maintained at 10 inches or less to protect the public health and safety.
- The City has incurred costs in abating nuisances found to exist upon certain properties. This ordinance includes 7 properties, of which 3 are vacant, 3 are vacant lots, and 1 is a rental.
- Each owner of record at the time the charges were incurred was sent notification that the City Council will consider assessment of the charges by ordinance.
- Ordinances are brought before the City Council for action as soon as possible so that recovery of the City's costs can occur from the owner of record at the time of assessment. Because the affected lots are often in foreclosure or in process of being sold, timely assessment is important to an equitable recovery of City funds.

Financial/Sustainability Considerations:

- Costs total \$880 which includes the City's mowing and trash removal costs plus administrative fees.

Legal Considerations:

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

Recommend a Motion to:

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

**Ms. Sexton** said the assessment ordinance for nuisance abatement contains 7 properties for a total of \$880. This is essentially when property owners who do not maintain their vegetation at 10 inches or less, or remove their trash and debris, and other city code requirements, the City performs that work for them and charges it back to them. If they don't pay it, we then assess it to their real estate taxes.

**Council Member Warren** said the property where the park is being built has some issues. It is a unique situation. What is the guideline when we decide to strictly enforce that? Is this something that all construction sites get this consideration? Have we purposefully left that area alone because of the difficulty of the construction site, or how do we determine when we take a hard line or when do we take a softer line?

**Ms. Sexton** said we have not exempted this property from the City codes. We have talked with the builder and we hoped that would gain compliance. This area is very wet, but we are not being unrealistic in our expectations. The contractor has not responded to City staff, so now the Code Enforcement staff have taken over as opposed to the project manager, and have sent a letter of violation to the contractor. The inspectors met on site with the contractor. Here by the end of the week, if they haven't mowed the property, we will perform that work and assess that cost to the contractor to pay the fine.

Moved by Chuck Warren, seconded by Vaughn Nun, to adopt an ordinance levying a special assessment upon certain properties the costs incurred by the City of Derby in abating nuisances found to exist thereon.

**Vote:** 7 - 0

Other: Rocky Cornejo (ABSENT)

## 11. **ADJOURNMENT**

Moved by Tom Haynes, seconded by Chuck Warren, to adjourn the meeting at 9:14 p.m.

**Vote:** 7 - 0

Other: Rocky Cornejo (ABSENT)

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Randy White, Mayor

ATTEST:

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Karen Friend, City Clerk