



# MINUTES

## City Council Meeting

6:30 PM - Tuesday, May 27, 2025  
Council Room

### 1 CALL MEETING TO ORDER

The City Council meeting was called to order on May 27, 2025, at 6:30 p.m. in the Council Room.

### 2 FLAG SALUTE

Council President Nick Engle led the flag salute.

### 3 INVOCATION

Pastor Kirk Hayden, Grace Communion Church, gave the invocation.

### 4 ROLL CALL

<b>PRESENT:</b>	Council Member Kristi Truitt Council Member Mike Neel Council Member Elizabeth Stanton Council President Nick Engle Mayor Mark Staats Council Member Jenny Webster Council Member Rick Coleman Council Member Chris Unkel Council Member Wayne Molt, Jr.
<b>ABSENT:</b>	None

### 5 ACCEPTANCE OF AGENDA

#### 5.1 Adoption of the Agenda

**Nick Engle moved, seconded by Jenny Webster, to approve the meeting agenda, as presented.**

<b>RESULT:</b>	Carried
<b>MOVER:</b>	Nick Engle
<b>SECONDER:</b>	Jenny Webster
<b>AYES:</b>	Kristi Truitt, Mike Neel, Elizabeth Stanton, Nick Engle, Jenny Webster, Rick Coleman, Chris Unkel, and Wayne Molt, Jr.

### 6 PRESENTATIONS

#### 6.1 PBS Kansas Sponsorship

**Kristy Bansemer, Communications Director, introduced Victor Hogstrom, President & CEO, PBS Kansas, who made the presentation.**

#### **BACKGROUND:**

- PBS Kansas relies on financial support from Wichita metro area cities and many other donors to help support local public television.
- Since 2017 the City Council has donated money most years.
  - In 2017, 2018 and 2022 the City Council gave PBS Kansas \$2,500 each year.
  - In 2023, the Council increased the donation to \$5,001 and in 2024 \$5,003.
- PBS Kansas is the only locally owned television station in central Kansas and ranks #1 as the safe and most trusted place for children to watch television.

#### **FINANCIAL/SUSTAINABILITY CONSIDERATIONS:**

- The City has \$5,000 budgeted for PBS in 2025. Those funds come from the community fireworks revenue.
- Through this partnership PBS Kansas will provide the following benefits to the City:
  - PBS Kansas will produce and broadcast a minimum of two profiles about the City of Derby for broadcast on Positively Kansas with Sierra Scott. Each segment will air as part of Positively Kansas, six times per year (includes repeats). Value: \$9,400
  - The City will be branded at least two times per day with Channel 8s Station IDs with use of City's slogan and video of the City of Derby. Value: \$11,900
  - PBS Kansas will broadcast a 30-second promotional spot about the City of Derby within the partnership year. The total number of spots to be broadcast is 125, determined by the amount of the City's grant, divided by \$40 (discounted from \$130). Additional :30 spots purchased within the partnership year will be billed at \$40 each. Value: \$16,250
  - The Derby Mayor will be invited to appear in a free 30-second spot that promotes the City and Channel 8 together. Spot run approximately 1,092 times throughout the year. Value: \$65,520
  - City will be listed as a City Partner on the PBS Kansas website, linked back to City's website. Value: \$500
  - The City may provide announcements of community events for the PBS Kansas website by providing information on a regular and timely basis. The City may also have a City of Derby Night during live pledging. Priceless.
  - City will receive one play of its :30 promotional spot either on two of PBS Kansas social media platforms: Facebook, Twitter (X), LinkedIn, Instagram, or in the PBS Kansas e-newsletter within the partnership year. Value: \$500

**Victor Hogstrom, President and CEO, PBS Kansas**, thanked the Mayor and Council for their continued support. We are proud to offer local programming that helps to highlight our communities, including the history of Derby dating back to when it was known as El Paso. I hope this year we can get the Mayor featured in a 30-second spot to share about your growing city, which will be shown numerous times throughout the year.

## 6.2 2025 Smoke on the Plains BBQ & Music Fest

**Kristy Bansemer, Communications Director**, introduced **Andrea Walters, Communication Specialist**, who is stepping into the role of Event Coordinator and gave the presentation.

### **BACKGROUND:**

- The City will hold the 14th Annual Smoke on the Plains BBQ & Music Fest on June 13 and 14 at High Park.
- The event will include live music on the Don Hattan Derby Mainstage, the People's Choice Tasting Contest, Kids Corner activities, food trucks, beer garden and more. The Derby Recreation Commission's Smokin' 5K and the Derby Rotary Club's Hot Wheels for Hot Meals Car Show will be held June 14.
- There are three contests, including the KCBS Cook-off, Lamar Advertising Backyard Cook-off and BRG Precision Products Kids Que.
  - As of May 20, we have 36 pro and 28 backyard teams (with two spots remaining). We still have spots open for our Kids Que.
- The Derby Public Library will hold its 5th Annual Medallion Hunt beginning June 9. Look for clues on the Library and BBQ Facebook pages.
- Military Appreciation Night will be held Friday, June 20 at Rock River Rapids. The event is sponsored by Evergy.
- Friday, June 13:
  - Security 1st Title Food Truck Row, Derby Lions Club Beer & Beverage Tent, First Man Brewery, and Shaken or Stirred Bartending, 6 to 10 p.m.
  - Derby Recreation Commission Cornhole Tournament, KCBS Kids Que, and axe throwing
  - People's Choice Tasting Contest, 7 to 9 p.m., tent south of the amphitheater
  - Road 23, 6 to 7:30 p.m. and Howard Mahan and Friends, 8 to 10 p.m. on the Don Hattan Derby Mainstage
- Saturday, June 14:
  - KBCS Cook-off and Lamar Advertising Backyard BBQ Cook-off
  - Security 1st Title Food Truck Row, 9 a.m. to 3 p.m. and 6 p.m. to 10 p.m.
  - Derby Lions Club Beer & Beverage Tent, First Man Brewery, and Shaken or Stirred Bartending, 11 a.m. to 3 p.m. and 6 to 10 p.m.

- Smile Safari and Derby Orthodontics Kids Corner, 9 a.m. to 3 p.m., featuring bounce houses, foam parties, face painting, princesses, Toss with a Twin, Derby Fire & Rescue and more.
- Live music on the Don Hattan Derby Mainstage: Nuke Bushner from 6 to 7:30 p.m. and Jed Harrelson from 8 to 10 p.m.
- Thank you to our generous sponsors:
  - AT&T, Don Hattan Derby, Smile Safari, Derby Orthodontics, Evergy, Security 1st Title, All States Home Improvement, BRG Precision Products, Woodbridge Home Solutions, Lamar Advertising, Wichita Army Recruiting Co, Hutton Design + Build, Advanced Physical Therapy, Renewal by Anderson, Grill Shak, Credit Union of America, Derby Community Foundation, K&S Liquor, Outdoor Adventures RV, Chick-fil-A

**Andrea Walters, Communications Specialist**, said this event would not be possible without the many volunteers and employees that step up to help fill needs. Thank you to those on Council who have already signed up to assist; we still have room for more to join. One of the easiest ways to help is to follow us on social media and share our content to spread the word about this amazing event.

**Council Member Elizabeth Stanton** asked what performers will be on the main stage this year?

**Ms. Walter** replied on Friday we have Road 23, which is a somewhat local group made of a father-daughter duo with a third member. Their sound is a bit of easy listening with a country feel. They will be followed by Howard Mahan & Friends, from the Lawrence, KS area. Saturday evening Nuke Bushner will open, followed by Jed Harrelson who was one of our openers last year.

## 7 PUBLIC FORUM & ANNOUNCEMENTS

**Randy Thomason, 925 E. Waters Edge**, said I have a long-time interest in Derby, starting by attending first grade here in 1949 when the population was only 200. I am very proud of Derby and feel it is a wonderful city. That said, I am asking Council to vote no to the proposed zone change that would allow Tractor Supply to go in at the Meadowlark location. I know the Planning Commission has made the recommendation to approve, but the surrounding area is primarily residential. When I left to go to college, Meadowlark was the far north edge of Derby, but now it extends nearly to 55th Street, leaving Meadowlark more in the center of town. I don't believe a farm and feed store business belongs in the middle of Derby. To my knowledge all along Rock Rd. from Derby up into Wichita, there doesn't exist a similar business. Tractor Supply stores are generally located on or near a highway. I feel such a business would be better suited in a different area, even if still within or around Derby. Current traffic on Meadowlark is primarily small personal vehicles. I understand by State law, the notification area is 200 feet from the proposed site, but very few residents who will be impacted by this are within that 200-foot radius. The City has gone to a great deal of effort to maintain a certain character as more and more businesses have come in, but I feel a store who primarily deals in animal feed supply

would negatively change the character of this established neighborhood. I appreciate your consideration and encourage you to vote against the Planning Commission's recommendation; it is just not the right location.

**Robert McElroy, 1402 Briarwood PI.**, said I would like to have the Council address the area to the east of our neighborhood before we move to approve the next project regarding a Tractor Supply to the north. After the construction of The Waffle Bus, we have been left looking at a huge pile of dirt, a drainage pond which cannot even be mowed due to the design. I find it hard to see how a large metal building for a Tractor Supply store would be an asset to this area or fit in with the current character of existing buildings. I hope all Derby residents would want planning for future development to align with the City's commitment to maintain a visually appealing environment. I would like both of these areas to end up with buildings that reflect the Derby pride to which we are accustomed.

**Janet McElroy, 1402 Briarwood PI.**, shared photos of a current Tractor Supply location with Council. I have never attended a City Council meeting before, and my first time to attend a Planning Commission meeting was when this project was being discussed and considered. I've never before felt the need to do so. The recommendation from the Planning Commission that is being voted on this evening is what brings me to speak tonight. I'm sure you've had time to review and consider the information shared by the City Planner, but now I also want you to hear and consider the thoughts and concerns of the residents who live in this area who will be forced to live with the permanent effects of such a decision. I found it unsettling that concerns shared before the Planning Commission were one-by-one dismissed. We addressed everything from environmental issues, to increased traffic and noise, to decreased property values. I want you to hear this loud and clear: we are not opposed to Tractor Supply Company coming to Derby. We are opposed to it at the proposed location, surrounded by a golf course, apartment complex, duplexes, and a well-established neighborhood. Our neighborhood consists of 76 single-family, owner-occupied homes. Through our HOA, we maintain a standard of maintenance, appearance and character for the neighborhood in order to protect our home values. The Planning Commission used a traffic study from 2021 to determine the traffic flow on Meadowlark. Plenty of changes have happened since then, including the addition of the traffic signal at Windmill and Meadowlark, rendering the reported flow inaccurate. Tractor Supply is a business that caters to farmers, ranchers, and landowners with agricultural supplies for farming and some lawn and garden needs. It is open seven days a week and some stores open as early as 8:00 a.m. and close as late as 9:00 p.m. This will bring a considerable increase in traffic to the area as many come from surrounding rural areas to shop there. Customer traffic, large trailers, and semi-trucks will be arriving every day, creating additional hazards in the area for the pedestrian and bicycle traffic common along Meadowlark. The over-sized signage, outdoor lighting, increased noise, and the various outdoor implements such as cattle gates, trailers and other items needed by rural customers, do not belong at this location. There are numerous other more suitable locations in and around Derby that would not draw the ire of existing neighbors. The risk to home values is real. Who wants to look out their window to see this? A group of neighbors recently went door-to-door to inform others about the proposed change, and no one we spoke to thought this was a good idea. Most said, "Why here?" and felt it makes no sense. Such a business

should be on the outskirts of Derby. In closing, I agree with the City Manager's recent comments regarding window signage, "We want our City to look a certain way, and you want to find the right balance." Council, I ask you find the right balance on this item. We have a lot of pride in Derby.

**John Torline, 1408 N. Briarwood PI.**, said, like Ms. McElroy, I have never before spoken at a Council meeting, but feel I need to do so in response to the proposed changes near Meadowlark and Rock Rd. and the possibility of a Tractor Supply being allowed to build there. Last week, you all received an email from me outlining some of the concerns my neighbors and I have: the environment, increased noise, signage, unsightliness, effect of property values, and traffic. When these issues were raised at the Planning Commission, no one had any answers, nor seemed to want to answer. This was very concerning for my neighbors and me, as we will be the ones most impacted by the decision. Reference was made to a 2021 traffic study, but no details were provided. A vague comment after the vote was made saying our questions would be answered "later", but we were given no indication of when later might be. To me, it seems this is an action being pushed through without proper thought or consideration to the long-term effects to the surrounding neighborhood. I know those within the 200-foot radius of the site were notified. I do not live within that radius; however, I do use the same neighborhood entrance and exit as those who live within the 200-ft area. I will still be impacted by the noise, property value, environmental issues, and traffic brought on by such a change. If this passes, our development will be one of a few, if not the only one, in Derby whose front entrance opens to a big box chain store driveway. This is not a good fit. At the Planning Commission meeting, the neighborhood behind the Dillons at Meadowlark and Rock Rd. was given as a sample of a similar situation, but it is not true. Those properties abut the rear of the store, not the front, and are separated by architectural features such as a wall and pond. Since the May 1 Planning Commission meeting, I have had the opportunity to speak to many Derby residents about the proposed change, both within and outside our neighborhood. Without exception, those I spoke with agreed this is not a good fit. Meadowlark is not the place for a farm store, especially one of this size. I agree with Ms. McElroy that no one is opposed to a Tractor Supply coming to Derby, just not at this location. Our family has made our home in Derby for nearly 30 years, during which time we have seen it grow into a wonderful, family-friendly community with a good mix of residences and commerce. Please keep it that way by listening to those in the community and voting against this measure.

**Robert Nelson (1336 N. Broadmoor St.)** said on behalf of concerned citizens, I urge you to vote "no" on Items 9.2 and 9.3 before you this evening, the proposed rezoning and special use permit. I offer rebuttal to the staff findings of fact shown in the agenda items reports, highlighting inconsistencies and adverse impacts overlooked, ignored or minimized in the report. I ask you to look beyond the Planning Commission's recommendation and scrutinize the issues more closely and objectively for yourselves. Finding of Fact #1, claims the area is dominated by Derby Marketplace commercial character, however, the site is surrounded more directly by residential areas. To the north: R-1 and R-2; to the south: R-1; to the west: R-1 and R-PUD including a detention pond, golf course and apartments; to the east: a small-scale garden center. The nearest high-intensity commercial area is up the hill and across Rock Rd., not directly adjacent to the site. The site lacks direct Rock Rd. access,

making it more aligned with a residential buffer role such as the current B-1 and B-2 zoning. Finding of Fact #3 suggests B-1 and B-2 zoning are unsuitable for this property, although they often do serve as the aforementioned buffer between B-3 and residential areas. The report claims that since these sites have not developed as B-1 or B-2 for 25 years, the solution is to rezone as B-3. This overlooks and minimizes the intended buffer role for the current zoning designations. The "1,200-feet deep" comparison to other B-3 zones ignores this site's unique residential adjacency which sets it apart from those examples. Derby Vision 2040 identifies using neighborhood commercial, such as B-2 zoning, as a transitional land use for higher-intensity commercial areas, like Derby Marketplace, and is yet another reason to keep the current zoning as B-1 and B-2. Finding of Fact #4 is regarding rezoning negatively affecting nearby properties. Allowing the B-3 rezoning will negatively impact the home values in The Oaks and Broadmoor Hills due to increased noise and traffic. Meadowlark is insufficient as the only buffer between the existing residential area and the proposed B-3 zone. No comparable B-3 and residential interfaces exist in Derby where the two share direct drive access opposite one another onto the same minor arterial road. On multiple reports, the City has noted a shared property line precedent between residential and B-3 commercial properties, but this is not the case here. Other locations where shared property lines exist, they are the back of the business and the back of the residences; they do not directly face one another. Finding of Fact #5 argues that 25 years of vacancy notes unsuitability of the current B-1 and B-2 zoning, however, it does not take into account additional factors, such as a preference for Rock Rd. frontage and the intended buffer or transitional role of a B-1 or B-2 designation. Rezoning should not take place on the single factor of time a property has been vacant; doing so would set a harmful precedent and undermine zoning integrity.

**Nick Engle moved, seconded by Rick Coleman, to grant Mr. Nelson an additional 3 minutes to speak.**

<b>RESULT:</b>	Carried
<b>MOVER:</b>	Nick Engle
<b>SECONDER:</b>	Rick Coleman
<b>AYES:</b>	Kristi Truitt, Mike Neel, Elizabeth Stanton, Nick Engle, Jenny Webster, Rick Coleman, Chris Unkel, and Wayne Molt, Jr.

**Mr. Nelson** continued, refuting Finding of Fact #6 which presumes a denial would impose undue hardship on the applicant which outweighs the gain to public health, safety, and welfare. It is worth noting uses for B-1 and B-2 zones remain viable. Public welfare should carry greater weight than the speculative value of an as-yet undeveloped commercial site. Expected traffic increases and negative impact on small business operations, along with the need for a buffer between high-use commercial and residential zones seem to support keeping the current B-1 and B-2 zoning which better embodies prioritizing public interests over applicant gain. Finding of Fact #9 claims updating to B-3 supports Vision Derby 2040's commercial designation, but B-1 and B-2 also meets the commercial designation while supporting the plan's walkable, context-sensitive goals. B-3 uses, including the proposed equipment rental, conflict with abutting residential zones and do not align with the Plan's suburban character priorities. Vision 2040 further outlines Meadowlark as a top-priority corridor for transportation and mobility, identifying it as a minor arterial roadway, which has a 120-foot-wide expectation. That width expectation includes

roadway, turn lanes, landscape buffers, walkways, and medians. While site plan processes are note-worthy for squeezing every last foot out of a site, it just does not make sense to expect this increased level of development to the roadway within the Vision to fit this site. Large business zoning does not fit at this location. I urge the City Council to reject the recommendation to rezone these property sites and to grant a special use for equipment rental on them. Preserve Derby's small town values, prioritize family and community over mislocated high-intensity commercial development, and show a dedication to smart growth, rather than any and all growth.

**Brittney Nelson, 1336 N. Broadmoor St.,** said I am here to voice my opposition to rezoning from B-1 and B-2 to B-3, the area west of Rock Rd. on Meadowlark between the golf course and Stutzman's. I am not opposing growth in Derby; I am opposing rezoning to allow large retailers in residential areas that will negatively impact Derby's character and its residents. Vision Derby 2040 aims to encourage growth in a responsible manner, taking into account aspects such as mobility, character, health, play, transportation, and neighborhoods. Allowing a B-3 business on these lots will go against these standards. Furthermore, part of the Vision Derby 2040 calls for maintaining its reputation of abundant green spaces. Clearing tens of thousands of square feet of green to make way for a big box store has a much larger impact on that goal than B-1 and B-2 zoning and seems to contradict the Vision. The increased traffic likewise goes against aspects of Vision Derby 2040. The impact on community facilities report downplays traffic impacts, deferring to site plan review in spite of B-3 zones generating up to four times the amount of traffic as B-1 or B-2. The expected increase will result in unplanned added congestion to Meadowlark near the already busy and dangerous intersection of Meadowlark and Rock Rd. The City Planner has indicated a six-lane road as a solution to handle the increased traffic volume, but this seems unwise given the immediate proximity to a residential neighborhood with access to and from the neighborhood opening onto Meadowlark with no additional traffic signals, due to the proximity to the existing signal at Rock Rd. An increase of 750 daily trips will flood the area with unnecessary traffic, including semis, making it difficult and dangerous for residents to access their neighborhood. The busy Rock Rd. and Meadowlark intersection already has an alarming number of accidents. There has not been a recent traffic study of this area, bringing into question whether or not Meadowlark can handle increased volume. The proposed site plan calls for the entrance and exit to be directly across from that of the Broadmoor Hills neighborhood. A shared property line is not the issue at hand, rather these directly opposite entry and exit points onto Meadowlark. Meadowlark is heavily used by pedestrians and the increased traffic will pose additional safety concerns for those who regularly enjoy walking or bicycling here. I'm worried for the safety of my children and their friends who frequently walk along Meadowlark if a B-3 business with the allowed special use of equipment rentals is approved. Home values of approximately 1,000 nearby residences could decrease by 5% to 10% if B-3 zoning passes. Noise, increased traffic and an unsightly storefront including a proposed 24-foot tall storefront with a main entry topping at over 33 feet, will make the surrounding neighborhoods less desirable. As Derby grows, thought has gone into maintaining and encouraging residential growth; adding a B-3 zone to this area will do the opposite. A multitude of opposition has already been heard regarding this rezoning. As of now, the online petition opposing the rezoning and special use has 161 signatures and is growing. To move forward with approval disregards the damages to residents and makes it seem their voices do not matter. Instead, it would show what matters is the amount of tax

dollars a new business will generate. As others have said, I do not oppose the Tractor Supply Company coming to Derby; it just does not belong at this site. The company has many areas in and around Derby they could choose that would be better suited for their business and still benefit Derby with their tax revenue. Other Tractor Supply Company stores in our region are located along highways or similarly zoned businesses; none exist next to a residential area. City staff's answer to this cited examples located out-of-state, in Lee's Summit and Independence, MO, as justification for the proposed location. Looking at these examples more closely, one shares a back property line with an additional tree line buffer and the other is across a highway from the nearest residences. Neither shares a road with nor has entrances and exits adjacent to a nearby neighborhood. We believe more attention should be given to Derby's small town values and priorities of family and community and minimize commercial impact on those rather than present far-reaching examples from out-of-state as a reason to rezone this site. This leads me to question the motives for rezoning from B-1 and B-2 to B-3 at this location.

**Cheryl Arthur, 1512 Warren Ave.,** said we moved our family from Wichita to Derby in 1986 when there was only one traffic light in town. I grew up in Wichita where I learned to drive and am quite used to heavy traffic, so I am not a life-long, small town girl. I am an advocate for positive growth in Derby. When conversations began about bringing commercial development to Rock Rd., the Council desired to model it after Overland Park and their aesthetically pleasing approach. I feel we have dropped the ball a little bit on that, but overall, the development efforts have achieved this goal and improved our community. I don't think any of us could have anticipated the extent to which traffic and chaos along Rock Rd. have increased, making it similar to some of the busiest areas of Wichita. Kellogg and Rock Rd. or Maize and 21st Street come to mind. In fact, one of our sons left Derby and moved his family to Winfield because of the condensed commercial area and increased traffic. With this heavy traffic, when you are at a red light that turns green, you better take time to wait and have another look to make sure the traffic from the other way has stopped; there are many accidents because the lights are not heeded. I feel a larger police presence is needed to watch for and stop this from happening. When the idea of the dinosaur park was brought up, I was initially against it. However, as I did research and looked into it for myself, I came to see the potential benefits for our community and supported it. I share this to let you know I do appreciate and encourage growth in our community; I'm not someone who normally comes out against development. I have concerns about a business like Tractor Supply going in at the location on Meadowlark. I do not feel this would be a wise decision. Meadowlark has maintained a quiet, family-living feel while Rock Rd. has continually increased traffic and busyness. I believe we should be conscious of how we allow business development to trickle away from main commercial areas such as Rock Rd. and onto nearby areas. I'm not opposed to Tractor Supply Company bringing one of their stores to Derby; it just does not fit at this location. I have talked with around a dozen community members about this, and none have been in favor of such a store at this site.

**Rick Coleman moved, seconded by Mike Neel, to grant Ms. Arthur an additional 3 minutes to speak.**

<b>RESULT:</b>	Carried
<b>MOVER:</b>	Rick Coleman

**SECONDER:** Mike Neel

**AYES:** Kristi Truitt, Mike Neel, Elizabeth Stanton, Nick Engle, Jenny Webster, Rick Coleman, Chris Unkel, and Wayne Molt, Jr.

**Ms. Arthur** continued, stating we should not cheer on new growth without considering fall-out, such as the mound of dirt behind The Waffle Bus, about which I've learned there is no regulation requiring its removal or leveling. I do not believe it is wise to leave there, nor do I feel those in the area should look out at it day in and day out. I encourage Council to consider the calmness that exists on Meadowlark and how that might change if Tractor Supply is added at this location. I was told it only means about 200 more cars a day in the area. If this were your neighborhood, would you like to see an additional 200, or even 50, cars each day? Previous Planning Commissions and City Councils worked toward growth for Derby, particularly along Rock Rd., while maintaining it as a great place to live. However, the extent that growth has reached, and the challenges it has brought, could not have been anticipated. Look at the big picture to determine what is positive and what is negative. Please do not neglect peaceful areas for the sake of gaining another business. As stated previously, I am all for new business in Derby and encourage it; I just ask that you proceed responsibly and protect quieter areas, not piling businesses in on top of each other.

**Rachel Wright, 1413 N Broadmoor**, said I've lived in Derby since March of 2020, having served as a council member in my previous community. Thank you to everyone who serves as part of the governing body; I understand how difficult and time-consuming it can be. Thank you to my neighbors who have shared their voices. I value new businesses coming to Derby, but it is crucial to also look at long-term planning and effects of development on the whole community. A publicly traded corporation is not your stakeholder; your residents are. It is possible for both to exist in harmony. Derby includes buzz words such as walkability, family-friendly, health and play, yet then proposes a large commercial business to be next to a residential neighborhood in direct contrast to those goals. It just doesn't fit there. My husband and I oppose Tractor Supply Company coming in at this location on Meadowlark; it would not be a minor component for the area, rather a major one. It would be a large, visibly unattractive, traffic-intensive, industrial, unwelcome addition. The semis, farm equipment, and large machinery that would frequent the business will create noise, exhaust, and light pollution in the area. The industrial nature of Tractor Supply Company is counter to the character of this area. It is not on the commercial corner of the area; it is not located on a highway or the edge of town, where one would expect such a business be. It is proposed to be directly adjacent to a residential neighborhood where citizens walk, ride their bikes, and push strollers. The additional traffic created by recently extending Sunset Drive through has already had an impact; this would have an even greater effect. There are close calls weekly, if not daily, near our neighborhood's entrance. Many times, I wait to enter with one eye on my rearview mirror, hoping that I will not be rear-ended. I cannot imagine how much worse this problem will be with a large business directly across from the entrance. Adding more and even larger vehicles is just a recipe for trouble. While Tractor Supply may be welcome in Derby, and I do not desire to drive away business from the community, this location is simply wrong. Rezoning it is wrong and will be counter to the stated goals of the Vision Derby 2040 Plan. It ignores KDOT access management policy; it ignores the EPA Clean Water Act; it ignores the KDHE stormwater program; and it violates the Sedgwick County joint land use plan. It even violates our own City

policies. Even more egregiously, approval of this item puts the wants and requests of a business, a nameless, publicly traded business, over and above the wants and requests of the tax-paying citizens in this area. We do not want Tractor Supply Company at this location on Meadowlark, full stop.

**Marty Wiltse, 1301 N. Broadmoor**, said in 1968 I moved to Derby and have seen a lot of growth since then. As mentioned earlier, at that time, Meadowlark was the far north edge of town. Today, when I turn into our neighborhood, it is a risky action due to inattentive drivers and those who ignore the posted speed limit. I spent 40 years with the Kansas Turnpike Authority, where our business was transportation, and everything was safety first. I am concerned about the safety of the traffic along Meadowlark, especially with the expected increase a B-3 business would bring. You may recall when Rib Crib came to town, the overflow from their lot would park along Meadowlark, which created a much narrower roadway and was a safety concern. As a result, Meadowlark on the east side got widened with turn lanes added. During my years at KTA, we did a lot of traffic studies, usually in conjunction with KDOT; I am concerned there has not been an adequate 5-, 10-, 20-year study done for the area along this corridor. As several neighbors have mentioned, this business proposes going in directly across from the entrance to our neighborhood. While you could widen Meadowlark to add turn lanes, on our side, we have a wall which would need to be torn into for a widening project. That would create an additional set of problems. On the other side, you'd be cutting into an area that I believe is already too small for a Tractor Supply location. The entire lot on which Tractor Supply Company proposes building could fit in the parking lot of Atwood's. These are similar businesses with product out in the parking lot. I think we need to look at safety as a priority. There is already a Mexican restaurant near our neighborhood that has overflow parking spilling onto Windmill, creating a safety hazard. Therefore, I encourage you to reconsider Tractor Supply at this location. I'm all for bringing businesses to Derby, but I think there are several better-suited locations for this particular business.

**Shanna McIlvoy, 1410 N. Briarwood PI**, said our family is a military transplant, having come to Derby in 2017. As one of the newer families in the neighborhood, we work to bring our home to the standard of those around us who have lived there for years and take great pride in their homes. This same pride is seen throughout Derby. When we purchased our home, we thought we were going to be in the Derby North Middle School area, but I was quickly surprised with the rezoning of schools. Our intended elementary school zone was also changed. So, I have a mortgage as well as a home that I love, but a lot of change keeps happening around me. When I found out from my neighbors about another potential change, the rezoning of this site, I was very surprised. The one thing I have heard since first arriving in Derby is how proud we are of the small-town, family-friendly feel. This feels like an out-of-place location for this business venture. My concern is from a slightly different angle than others already expressed. Tractor Supply Company is a big business with \$14 billion in revenue, which breaks down to roughly \$5 million per location. That will bring a lot of traffic to Meadowlark. We want dollars from surrounding communities to come into Derby, but I don't want that increased commerce along Meadowlark. I have seven children who regularly walk along Meadowlark. At times I've been surprised by the growth of Derby, but don't usually speak out. I thought the dinosaur park was odd and would be better going next to Exploration Place, but I understood Derby's desire to

have growth and an attraction to bring others here; that project felt family- and children-centered. I agree the additional tax revenue such a store can bring would be great for our community, but I do not agree it should go in this location, which is primarily residential. This takes away an opportunity and prime location from smaller businesses who want to be in a B-1 or B-2 area. Tractor Supply Company can afford to build anywhere, so they should look for a more appropriate location. I'm thankful to my neighbors for allowing someone newer to Derby to come in and understand the growth that has taken place over the past 25 years. At that time, Rock Rd. was simply a route to and from Wichita or McConnell. The City has done an amazing job growing its parks and other quality-of-life measures that drew families like ours to choose Derby over other cities. I hope you will listen to what has been shared by newer generations as well as those who have been here for several decades. Thank you.

## **8 CONSENT AGENDA**

- 8.1 Consideration of Minutes**
- 8.2 Notification of Emergency Signal Pole Replacement Purchase**

### **BACKGROUND:**

- The signal pole at Patriot Avenue and Rock Road intersection was damaged in March by a single-vehicle accident.
- City staff and Phillips Southern Electric company completed emergency repairs at that time of the accident to keep the intersection operational.
- The signal pole was inspected, and it was determined a replacement pole was required.
- An insurance claim was filed with the driver's insurance.
  - Due to their lack of response, the claim was forwarded to the City's insurance provider, EMC.
- EMC has agreed to cover the costs, minus the City's \$5,000 deductible and will pursue reimbursement from the driver's insurance company.

### **FINANCIAL/SUSTAINABILITY CONSIDERATIONS:**

- Phillips Southern Electric provided a cost of \$38,488 to replace the signal pole.
  - Due to the long lead time for the delivery of the signal pole, the City Manager approved the emergency purchase of the pole.
- The City will receive reimbursement for the cost of the signal pole and other costs associated with the emergency repairs in the amount of \$33,488.

### **POLICY IMPLICATIONS:**

- The City's purchasing policy allows the City Manager to exercise discretion to authorize emergency purchase when deemed in the best interest of the City and report said decisions to the City Council at the next available meeting.
- This report serves as the notification required by the policy.

### **RECOMMENDED MOTION**

- Receive and file the report.

#### **8.3 Reassessment Ordinance: Lot 1, Phillips Rock Road Addition**

#### **BACKGROUND:**

- The owner of Lot 1, Phillips Rock Road Addition has applied to split the lot into three separate parcels to facilitate commercial development.
  - Because there is an existing special assessment assessed to this lot, a re-spread agreement is necessary to reassess the specials to the new parcels.
- Installation of the existing infrastructure resulted in special assessments to the property. A re-spread agreement has been crafted to re-assess the existing special assessments to the new parcels.

#### **FINANCIAL/SUSTAINABILITY CONSIDERATIONS:**

- Re-spreading existing special assessments to the three parcels will not result in any additional costs to the City.

#### **LEGAL CONSIDERATIONS:**

- A re-assessment ordinance is necessary to specify how existing special assessments originally assessed to a single lot will be spread to the three parcels.

#### **RECOMMENDED MOTION**

- Adopt an ordinance to re-assess existing special assessments apportioned to Lot 1, Phillips Rock Road Addition; authorize the Mayor to sign; and direct staff to record the re-spread agreement.

**Nick Engle moved, seconded by Wayne Molt, Jr., to approve the Consent Agenda, as presented.**

<b>RESULT:</b>	Carried
<b>MOVER:</b>	Nick Engle
<b>SECONDER:</b>	Wayne Molt, Jr.
<b>AYES:</b>	Kristi Truitt, Mike Neel, Elizabeth Stanton, Nick Engle, Jenny Webster, Rick Coleman, Chris Unkel, and Wayne Molt, Jr.

## **9 NEW BUSINESS**

#### **9.1 2024 Annual Comprehensive Financial Report & Audit**

**Megan Pater, Finance Director**, introduced **Kayla Williams, BT&Co.**, who gave the agenda report.

#### **BACKGROUND:**

- Again this year, the Annual Comprehensive Financial Report is presented with the 2024 audit.
  - At year-end 2024, assets exceeded liabilities by \$200,900,679.

- Of this amount, \$23,412,655 of unrestricted net position may be used to meet the City's ongoing obligations.
- The City's total net position increased by \$8,603,897 from 2023.
- The General Fund balance at the end of 2024 was \$13,274,190, which was 62.5% of fund expenditures.
- The Annual Comprehensive Financial Report includes basic financial statements, statistical reports, and additional data in the notes to the financial statements.
  - The statistical section provides a broad range of financial and demographic information useful in assessing a government's economic condition.
- The firm of BT&Co. conducted the audit of the City's financial statements for the year ending on December 31, 2024.
  - The independent auditor's report can be found behind the Financial Management tab.
- Kayla Williams, BT&Co. Principal, will attend the meeting to review highlights of the audit and answer questions.

#### **FINANCIAL/SUSTAINABILITY CONSIDERATIONS:**

- In addition to the City's audit:
  - An audit of 2024 expenditures of STAR Bond proceeds is required to determine whether the funds were used only for authorized purposes.
    - No exceptions were found. An annual review is required until all bond proceeds are disbursed.
  - A 2024 audit of El Paso Water Company was completed and the financial statements and a report to the Board of Directors are presented.
  - A 2024 Examination of Compliance for the ARPA (American Rescue Plan Act) funds was completed and a report is presented.

#### **LEGAL CONSIDERATIONS:**

- KSA 75-1122 requires an annual audit of the books and financial records of the City.
- The audit firm selected is qualified pursuant to Kansas law to perform municipal audits.

#### **POLICY IMPLICATIONS:**

- A key duty of the Governing Body is oversight of financial affairs, and a primary tool in performing the oversight is the annual audit and financial report.
- The report will be placed on the City's website to provide easy access to Derby residents and users of the information.

#### **RECOMMENDED MOTION**

- Receive and file the reports.

**Kiel Mangus, City Manager**, thanked Ms. Williams and her team for their efforts on the audit. This was Ms. Pater and the finance staff's third year doing the audit. Their first year, we unfortunately were hacked as an organization which caused an immediate bad mark on the audit. The second year, they learned a lot through what was a more regular audit process. This year, they did great and continue to adapt, learn, and improve each year. That is a testament to their dedication and efforts.

**Council Member Kristi Truitt** added her congratulations to Ms. Pater on a job well done. You've been very transparent with Council, offering regular updates and reports on the City's financial picture. Everyone in this room should rest assured we are in good hands and staff operates with the utmost transparency about where our tax dollars are spent.

**Kristi Truitt moved, seconded by Wayne Molt, Jr., to receive and file the reports.**

<b>RESULT:</b>	<b>Carried</b>
<b>MOVER:</b>	Kristi Truitt
<b>SECONDER:</b>	Wayne Molt, Jr.
<b>AYES:</b>	Kristi Truitt, Mike Neel, Elizabeth Stanton, Nick Engle, Jenny Webster, Rick Coleman, Chris Unkel, and Wayne Molt, Jr.

- 9.2** Zone Change: Lots 1 and 2, Block F, The Oaks Addition (B-1 "Office Business District" and B-2 "Neighborhood Business District" to B-3 "General Business District")

**Scott Knebel, City Planner**, gave the agenda report, noting Trey Hart, Mainland Retail Acquisitions, LLC, and Jay Cook, Baughman Company, P.A., were in attendance representing the applicant.

**BACKGROUND:**

**General Location:**

- North of Meadowlark Blvd. and west of Rock Rd. (Location Map attached).

**Applicant:**

- Property Owners: Nancy Lusk, McBride Farm, LC
- Contract Purchaser: Trey Hart, Mainland Retail Acquisitions, LLC
- Agent: Jay Cook, Baughman Company, PA

**Background Information:**

- The 4.26-acre subject property is platted as Lots 1 and 2, Block F, The Oaks Addition and is located north of Meadowlark Blvd. and west of Rock Rd.
- Lot 2 of the subject property is zoned B-1 "Office Business District" and Lot 1 of the subject property is zoned B-2 "Neighborhood Business District".
- The applicant proposes to develop the subject property with a Tractor Supply home improvement center, which requires the property to be rezoned to B-3 "General Business District" (Proposed Rezoning Exhibit attached).

- The B-3 district is intended to group the more intensive retail merchandising activities of the City into concentrated areas. The uses permitted in this district are intended to serve the shopping needs and activities of the City's residents and the residents of Derby's retail trade area.
- Typical uses in the B-3 district include retail, restaurant, convenience store, vehicle repair, office, medical office, and service businesses.
- Development in the B-3 district must adhere to the Design Criteria of the Zoning Regulations as determined by the Planning Commission through Site Plan Review.
  - The Planning Commission will review further details pertaining to the site layout, traffic impacts, building design, landscaping/screening, parking, signage, drainage, and other site elements during Site Plan Review.
- The applicant also proposes to designate an outdoor area for equipment rental and sales and to increase the permitted size of the outdoor display areas.
  - These uses require approval of a Special Use and an Exception.
  - On May 1, 2025, the Planning Commission recommended approval of a Special Use to permit equipment rental and sales in conjunction with a home improvement center subject to conditions (Planning Commission Minutes Excerpt attached).
  - Because the special use request is void if the zone change is denied, the City Council is scheduled to consider the Special Use request later in this meeting.
  - On May 1, 2025, the Board of Zoning Appeals approved an Exception to increase the permitted size of the outdoor display area subject to City Council approval of a zone change to B-3 (Board of Zoning Appeals Minutes Excerpt attached).
- The Planning Commission held the required public hearing for the zone change request on May 1, 2025.
  - Four people spoke in opposition to the request and cited the following concerns.
    - Negative environmental impacts on wildlife habitat and carbon emissions along with potential pollution of the creek bordering the subject property.
    - Increased traffic, including semi-truck traffic, creating additional noise, additional traffic in the neighborhood, and increased congestion and decreased safety on Meadowlark Blvd. and Rock Rd.
    - The proposed home improvement center should be located in a different commercial area not near single-family homes, such as along the K-15 corridor.
    - Additional time is needed to review the requested zone change because notices of the public hearing were not received in the mail.
    - Property values of single-family homes will decrease because they will be near a commercial use.

- The safety of the hike and bike path along Meadowlark Blvd. will be negatively impacted.
  - Derby's plans call for the preservation of open space.
  - Drainage from the project will flood nearby properties.
  - Increased crime from the development.
- The applicant spoke at the public hearing to address the concerns and provided the following information.
  - The environmental impact of the project will be assessed by the Kansas Department of Health and Environment as part of the construction process.
  - The design of the site with two access points and new turn lanes to the primary access point will mitigate negative impacts from traffic, including semi-truck traffic, which will be limited to four to five trucks per week.
  - Tractor Supply has conducted an extensive market analysis and has determined that the proposed location is the best location for their business.
  - The ownership notification list was prepared by a licensed abstractor in accordance with the requirements of State law.
  - There is no study that conclusively states that a certain type of development either increases or decreases surrounding property values.
  - The project does not impact the retention pond or golf course, which will remain as open space in the area.
  - Drainage will be reviewed during Site Plan Review, and the intention is to keep as much existing vegetation as possible.
- At the conclusion of the public hearing, the Planning Commission voted (6-3) to recommend approval of a zone change from B-1 "Office Business District" and B-2 "Neighborhood Business District" to B-3 "General Business District".
  - The Planning Commission recommendation is based on the findings of fact stated in the attached Planning Commission Minutes Excerpt.
  - The following are key findings of fact stated in the minutes that support the recommendation for approval.
    - The subject property is located along a regional commercial corridor.
    - The property has remained undeveloped as zoned (B-1 and B-2) for over 25 years, and in the same time period, commercial development along the Rock Rd. corridor has exploded on properties zoned B-3
    - Changing the zoning of the subject property to B-3 would extend the B-3 zoning on the northwest corner of Meadowlark Blvd. and Rock Rd. to approximately 1,200 feet deep from Rock Rd., which is consistent with the existing zoning pattern along the Rock Rd. corridor in this area.
    - The subject property is separated from existing residential areas by Meadowlark Blvd. to the south and by a detention pond and golf course to the north and west.

- The specific commercial development standards for the subject property will be determined through Site Plan Review, which is required for all new commercial developments.
  - The impact of the proposed zone change on community facilities is anticipated to be minimal, as the proposed commercial uses do not impact community facilities to a significantly greater extent than the lower-intensity commercial uses currently permitted on the property.
    - The primary impact on community facilities is from increased traffic. Improvements needed to address the increased traffic, such as potential left-turn lanes or accel/decel lanes, will be determined through Site Plan Review.
- Subsequent to the public hearing, those opposing the zone change request submitted the attached rebuttal to the findings of fact adopted by the Planning Commission. The rebuttal cites the following concerns.
  - An insufficient buffer is provided from the subject property to nearby residential areas and no other area in the City has such a limited buffer from B-3 zoning.
  - Increased traffic will create congestion and unsafe conditions.
  - The project will negatively impact the environment, and nothing is being done to assess and mitigate the impacts.
  - Tractor Supply stores typically locate in rural, agricultural and industrial areas and, therefore, should not be located on the subject property.
  - Property values will be negatively impacted by traffic and environmental impacts.
  - The Tractor Supply will negatively impact the nearby Stutzman's Garden Center.
  - The rebuttal cites numerous requirements of various sections of a Derby Unified Land Development Code.
- Staff has analyzed the Rebuttal and offers the following information.
  - The zoning pattern of Derby has numerous examples of B-3 zoning directly sharing a property line with residential uses. Derby Marketplace is the closest example to the subject property although numerous residential lots in Broadmoor Hills are already adjacent to B-3 zoning with less buffer distance.
  - Exhibit A of the Protestor's Rebuttal states that the proposed Tractor Supply will generate 6,200 trips per day. The rebuttal correctly states the traffic generation rate for the proposed Tractor Supply; however, the rebuttal incorrectly inflates the traffic generation rate of the proposed Tractor Supply by a factor four and then increases it again by a factor of two.
    - It appears these increases are based on statements in the Planning Commission findings of fact regarding B-3 uses generating as much as four times more traffic than B-1/B-2 uses and the home improvement center generating as much as two times more traffic than B-1/B-2 uses.

- Those statements were based on an assumption of a traffic generation rate of 10-15 trips per day per 1,000 square feet for B-1/B-2 uses compared to B-3 uses that generate as much as 60 trips per day per 1,000 square feet and a home improvement center that generates approximately 25 trips per day per 1,000 square feet.
- Staff estimates that the proposed Tractor Supply will generate approximately 750 trips per day, which is confirmed by the estimated daily customer counts provided by Tractor Supply.
- Environmental impacts are assessed through the Site Plan review process as they require specific information about the development that is unknown when considering a zone change. The zone change could permit a wide variety of potential uses--any use found in B-3 zoning. The rebuttal inaccurately implies that the project will be developed without conducting required environmental assessments.
- The rebuttal provides a few examples of Tractor Supply stores but does not cite other examples of Tractor Supply stores that are similarly situated near residential neighborhoods like the proposed location such as Lee's Summit and Independence, Missouri. Tractor Supply has indicated that the site was selected based on an extensive analysis.
- The rebuttal's analysis of property value impacts is based on the faulty assumptions regarding traffic generation and an incorrect assumption that the property will be developed with no environmental mitigation.
- The owner of Stutzman's Garden Center attended the public hearing and signed up to speak. When given the opportunity to speak, the owner of Stutzman's declined to speak at the public hearing.
- Derby's Zoning Regulations govern review of the applicant's requests. Staff could not locate the cited regulations, and the cited regulations are not regulations of the City of Derby, Kansas.

#### **FINANCIAL/SUSTAINABILITY CONSIDERATIONS:**

- Development of the property as proposed will result in an increase in the taxable value of the property; and consequently, an increase in property tax revenue.
- Infrastructure necessary to serve the development is in close proximity to the site and can reasonably be extended.
- Financial guarantees for infrastructure necessary to serve the site and associated cost sharing will be determined through Site Plan Review.

#### **LEGAL CONSIDERATIONS:**

- All conditions precedent to the Council's consideration of this requested zone change have been satisfied, including notification of surrounding properties in accordance with state law.

- Protest petitions were filed with the City Clerk within the statutory 14-day protest period following the public hearing.
- Protest petitions were received from owners of 10 properties.
  - Five of the protest petitions were received from properties located within the statutory notification area and represent 10.26% of the land area within the statutory notification area (Protest Petition Map attached).
  - Because the protest petitions represent less than 20% of the land area within the statutory notification area, a three-fourths majority vote is not required to approve the zone change.
- Rezoning a specific tract of land is a quasi-judicial proceeding and requires disclosure of *ex parte* communications.
- In accordance with state law, the Council may take one of the following actions when considering adoption of the requested zone change.
  - Adopt the recommendation of the Planning Commission and approve the zone change via ordinance by a majority vote of the City Council (5 votes).
  - Override the Planning Commission by two-thirds majority vote of the City Council membership (6 votes) and modify or disapprove the zone change. If this option is selected, the City Council must adopt findings of fact in support of modification or disapproval.
  - Return the recommendation to the Planning Commission with a statement specifying the basis for the Council's failure to approve or disapprove by a majority vote of the City Council members present.
- The attached zone change ordinance has been reviewed and approved by the City Attorney.

#### **RECOMMENDED MOTION**

- Adopt an ordinance changing the zoning district classification of the subject property from B-1 "Office Business District" and B-2 "Neighborhood Business District" to B-3 "General Business District" based on the Planning Commission's findings of fact and instruct the City Clerk to publish the ordinance after adoption.

**Mayor Mark Staats** asked Council to disclose any *ex parte* communications regarding this zone change.

**Mayor Staats** said there has been community-wide interest in this item. I have received numerous emails opposing the project, all but one of those were from residents in the Broadmoor Hills area. Reasons shared for opposition have been the proximity to residential area, traffic concerns, and the belief there is a better location for a big box store; much the same as what we heard earlier tonight. There have been various social media posts on the topic: some for, some against. Late this afternoon I received an email related to a change.org petition that has several online signatures with information related to the rebuttal submitted by neighbors and included in the agenda packet. I have fielded one phone call against the zone change. Noting the interest and comments, I went by the site and took time to look it over personally to help visualize the proposed changes and development. I have also had several conversations with people

who were indifferent to the proposed zone change, not caring one way or the other. Finally, late this afternoon, I also received one email from a resident who does not live in the Broadmoor Hills area who expressed support for the zone change.

**Council Member Wayne Molt, Jr.** reported multiple conversations, emails, and calls on the topic. I believe all of Council was included on several of the emails received. I also stopped by the proposed site today for an in-person look and to consider the matter.

**Council Member Rick Coleman** reported the same level of communication.

**Council Member Jenny Webster** reported receiving several emails, but no phone calls or in-person contacts. I drive by this area daily and am very familiar with the site.

**Council Member Chris Unkel** likewise reported only receiving emails regarding the zone change.

**Council President Nick Engle** reported receiving the same emails as other members. I, too, travel Meadowlark on a daily basis.

**Council Member Elizabeth Stanton** reported in addition to the all-Council emails, I had one in-person conversation, but it was on how the process works, not discussing a position either for or against the zone change. I responded to most of the emails when received, just to thank residents for their input and to let them know their voices matter.

**Council Member Mike Neel** reported receiving and reading all the emails, although I did not reply to any.

**Council Member Kristi Truitt** reported no *ex parte* communications beyond the emails shared with all Council.

**Jacque Butler, City Attorney**, shared that the majority of the emails received had been added to the agenda packet earlier today, which was republished so they are included in the official record.

**Mayor Staats** ended *ex parte* reporting by clarifying all but one email received was against the zone change. I also did not respond to any emails, but instead forwarded them to the City Manager for inclusion in the packet and in order to keep the process as transparent as possible.

**Mr. Molt** thanked Mr. Knebel and staff for answering all my questions as they came up on this. Most of the feedback I received from residents was negative, but I still appreciate the opportunity to hear you, it is an important part of the process. I read every email and studied every attachment included. Thank you for taking the time to let us know your thoughts. In 2013 I purchased my home in

The Oaks. We were set to close on Thursday and on that Tuesday evening, there was a zone change before Council to allow apartments to be built. Wednesday morning, I was flooded with calls telling me I should pull out of the purchase because the property value was going to go down, crime was about to increase, and all the other usual talking points around change. I did my due diligence and looked into what was proposed. At the end of the day, the apartments are nice units. What I learned from that experience is that speculation created fear which just snowballed into envisioning slumlords, rampant crime, unmanageable traffic flow, and other issues that never came to pass. In fact, over the past decade, our property value has skyrocketed. Today I can say the apartments had zero negative impact on my home's value, quite the opposite occurred. I think my perception of the change at the time, along with others, was bigger than it really was. I'd like to look at the positives that come from a new business in Derby. I have a question, the local rental option I see when I go onto Tractor Supply Company's website is trailers. Without jumping ahead into the next agenda item, I did see there is a list of other rental items. Are they planning to expand what they normally offer as far as rentals?

**Scott Knebel, City Planner**, replied that will be addressed when I present the next item.

**Mr. Molt** said I personally go to Haysville when I need to rent equipment because there isn't an option to do so anywhere in Derby. If there is an option to rent locally and support a Derby business, I definitely want to do so. The report notes the potential for adding 25 or more full-time jobs to the Derby economy. The size of this store in comparison to their other locations seems smaller. I do frequent some of the other area Tractor Supply stores, so it would be a welcome local option. Currently, this is an undeveloped lot that has to be maintained; putting something in there will help make sure it is properly maintained. We've heard a lot of talk about traffic increasing and how that will affect pedestrian and bicycle traffic. I've recently begun regularly running and riding my bike more in this same area. While I understand the concerns and risks of adding a new drive, the reality is no matter what develops here, it will increase traffic compared to the empty lot and thus pose a risk. If this does move forward, during site plan review we need to make sure our sidewalks are not blocked by cars and that safety measures are taken. Finally, it was noted that Tractor Supply Company conducted a market analysis determining this was a good location for them. We live in a free market society in which winners are chosen by the consumer. Whatever develops here, their success or failure depends on consumer support. I do not believe government should have a hand in picking winners and losers or who can build where.

**Mr. Unkel** commented it is nice to see so many people in attendance, but no one seems to care about Council meetings until something is built in their backyard. I echo Mr. Molt's thoughts on the statements that this business would do better in a different location. If you are a private business that wants to invest \$5 million in this location, it's not our place to tell you to pick somewhere else. Tractor Supply Company may be deterred later on in the site plan review process and decide not to pursue this further. Tonight, all we are deciding is whether or not to allow the

zone change. Ironically, we receive complaints constantly that property values, and thus property taxes, continue to rise. Now we are receiving complaints that property values may go down. Decisions like this are never an easy or a fun thing. I'm almost always in favor of growth when it is done responsibly. No one could foresee this level of expansion and growth 20 or 25 years ago. It is always hard for Council to make these decisions; we don't want to upset residents or have them feel they are not heard. I have been in Derby my whole life, much like several who spoke tonight. My home is near Chet Smith and Rock Rd. When the Walmart Marketplace was proposed, it felt like the end of the world. However, as part of growing responsibly, the City put certain restrictions on Walmart's request to build. It was not as big a deal as I thought it would be, and now I'm in there several times each week and like having it so near. My point is everything changes, and that is not always easy. When I built my home 23 years ago, nothing was around it, so it was hard to see new development come in. Derby grows responsibly and we have top staff in their fields to guide that growth with our community's best interest in mind, even when it may be hard to see. I'm glad to see everyone here tonight, and I want to encourage you to stay involved throughout the next steps in this process, if the zone change is approved. Keep coming to Council and Planning Commission meetings, being heard. Everything shared tonight was well-prepared and respectfully presented. Thank you for that. Zone changes are the hardest thing we ever deal with. I am in favor of this zone change.

**Chris Unkel moved, seconded by Wayne Molt, Jr., to adopt an ordinance changing the zoning district classification of the subject property from B-1 "Office Business District" and B-2 "Neighborhood Business District" to B-3 "General Business District" based on the Planning Commission's findings of fact and instruct the City Clerk to publish the ordinance after adoption.**

**Mr. Neel** admitted I have some thoughts, comments, and maybe even rhetorical questions on this item. Sometimes I feel zoning allows what can be built, not the Council. Is it different if a two- or three-story office building goes in here that employs 100 people? That kind of development is allowed in the B-1 and B-2 zoning already, would generate more traffic, and result in a large structure on the site. I was traveling this week and happened to drive by a Tractor Supply Company location in the Overland Park area. I almost did a double take because I did not expect it to look that nice. It was all stone and brick and super-nice. I feel the same as Mr. Molt and Mr. Unkel, we really appreciate everyone being here and being involved in the process. I encourage and challenge you to get involved with something you are excited about, be it one of our advisory boards or just coming to more meetings. It is great to see a room full of people; it is unfortunate that it only seems to happen when there's a contentious item. It would be great to have you attend and let us know what you think we are getting right. I live near this area as well, so would see this regularly if it passes. As Mr. Unkel said, this is a challenging issue and one of the hardest decisions your City Council is asked to make. Our perception is our reality, much like your own perception is your reality. Think about the other options it could be. It has been zoned for B-1 and B-2 for many years now. I'm not in a place to say what business should or should not go there. I do enjoy some of the growth Derby is having and appreciate the

businesses that choose Derby over other options they have. Likewise, I want our residents to want and to enjoy being here and calling Derby home.

**Mr. Engle** said thank you to all the comments shared thus far, both from audience and from the bench. These items are definitely difficult and quite frankly as a Council, we are not supposed to consider the future occupant in determining how to vote on a zone change. The only thing we are allowed to consider is does B-3 belong on this property. We cannot base our decision solely on public input, rather we are legally required to base the decision on multiple findings of fact. Is that correct?

**Ms. Butler** replied yes. You are supposed to look at all the golden factors and the factors contained within Derby's zoning regulations. Generally speaking, one factor standing alone cannot be your basis for approval or denial of a zone change.

**Mr. Knebel** clarified the statute goes on to say neighborhood opposition cannot be the only finding used in the decision.

**Mr. Engle** said thank you, that is what I thought I remembered from other zone change items. So, does B-3 fit this particular plot of land? I pulled up the list of possible businesses allowed in our B-3 zone, and in my opinion most would be perfectly fine while a handful, honestly, would be a bit terrifying, such as an 80-foot radio tower. That is why we must weigh the potential consequences of whatever goes in this B-3 district, will our site plan review process be stringent enough to mitigate any potential risks. I will admit I do not believe time of vacancy is a sufficient factor on its own to justify a zone change. Is there a difference regarding screening and landscaping requirements between a B-1 or B-2 district and B-3?

**Mr. Knebel** replied it depends on the use. Outdoor display of merchandise is to be totally obstructed from view from residential areas by screening of some type, whether by landscaping or fencing or a combination of the two. The exception that was granted by the Board of Zoning Appeals requires that all outdoor storage be screened on the south with solid visual screening. The north side did not specify what type of screening, so that will need to be addressed during site plan review. Screening of the loading dock area is also required; this is typically done with a masonry wall. To the east, they are required to provide landscaping for at least a partial screening even from the adjacent commercial properties.

**Mr. Engle** asked regarding differences between current and proposed zoning, will we need to adapt or update the hike and bike path going in front of the location?

**Mr. Knebel** said no. Any development going in this site will generate traffic; it is just a question of how much. The alignment and width of that path will not be impacted by the traffic. What will be impacted are the existing intersections, which will require new design since we are introducing additional driveways across them. Overall, I do not see it rendering the pathway unusable.

**Mr. Engle** said I am already concerned about the number of vehicles in this area currently. I see potential for the developer to provide a widened road and add turn lanes to help alleviate issues we are already experiencing. Will that be done prior to them putting their business in here?

**Mr. Knebel** said the way it is worded is they have the option to build that out as part of the project at the same time. Their other option would be to conduct a traffic impact analysis to come up with a very detailed approach to what improvements would need to be made. My experience is that results of such an analysis would require much more than the 2 lanes we are requesting and would likely cause a delay.

**Mr. Engle** said am I right in understanding if they opt for the study, they'd go ahead and build and then wait to implement changes the study shows?

**Mr. Knebel** confirmed that is correct.

**Mr. Engle** asked what about added noise from a B-3 zone? Do we have data or comparisons to show what the change in noise level might be?

**Mr. Knebel** said given the location, likely any of the noise would not exceed the threshold of background noise, which would be Meadowlark Blvd. The background noise level in this area is already pretty high, which in turn increases what the percentage of noise above the background noise is. Yes, a new business will bring added noise, but not to a level that would rise beyond the percentage allowed above the background noise.

**Mr. Coleman** said someone earlier mentioned Atwoods, but they are zoned as B-5 commercial which has far less restrictions than B-3, correct?

**Mr. Knebel** replied yes. Also, Atwoods is approximately 70,000 square feet. The proposed Tractor Supply is a little over 20,000 square feet. Atwoods zoning allows it to have outdoor displays and merchandise up to 100% of their store floor area, and the outdoor display does not require any screening.

**Ms. Stanton** said four years ago I ran for this seat, and I believed it was my duty to listen to my constituents and do what they want, rather than what Elizabeth wants. In a situation like this, it is a bit disheartening for someone like me who lets their heart and emotion lead them not to vote based upon that emotion. It has been mentioned a few times from the bench tonight that we desire to see more people get involved and take an active role in our community. Guess what? This is an election year, and four of these seats are on the ballot. Two years ago, four of our Council members ran unopposed, so they ran an election, not a true campaign. This year, it looks as if we will have three of the four seats again running unopposed. As others have said, it is great to see so many faces in the audience tonight; it can be very discouraging to speak only to one another in an empty room on most Council nights. When people do not run for office or don't

show up to our meetings, I don't think it shows we are doing a great job and everyone wants to maintain the status quo. I encourage our citizens to become more involved, by attending Council or Planning Commission meetings, or even by running for office.

**Mayor Staats** asked does B-2 zoning allow for multi-family housing, like apartments?

**Mr. Knebel** confirmed it does. Multi-family housing includes duplexes, 3- and 4-unit dwellings, or more traditional apartments, like The Trails.

**Mayor Staats** asked how big a multi-family facility could go in there?

**Mr. Knebel** said both B-1 and B-2 allow for 25 units per acre, so this particular site could house up to around 100 units, which could be up to 4 stories high.

**Mayor Staats** commented I also saw restaurants as another option in B-2. So as currently zoned, we could see another restaurant added to this area.

**Mr. Knebel** clarified B-2 allows restaurants without drive-through facilities up to 8,000 square feet. B-1 zoning does not allow restaurants.

**Mayor Staats** asked would such a restaurant typically generate more or less traffic than the proposed Tractor Supply store?

**Mr. Knebel** said the traffic generated from a specialty retail store, such as Tractor Supply, and a restaurant are quite comparable.

**Mayor Staats** asked could a strip mall be built in B-1 or B-2 zoning?

**Mr. Knebel** replied B-2 zoning would allow it, but there could be no drive-through facilities or convenience stores included and no one facility is more than 8,000 square feet.

**Mayor Staats** said we don't have a lot of control or say over what goes in there, although a permit would be required for the build out of a strip mall. The businesses within the facility can change out frequently, as we have seen in some other locations. Could these include check cashing places, tattoo parlors, CBD stores, and such?

**Mr. Knebel** said yes. We have added additional requirements for check cashing businesses into our zoning regulations, but anything considered a retail store or service business is allowable in a B-2 zoning district.

**Mayor Staats** said the photos shared earlier of a current Tractor Supply Company location showed a lot of trailers, cattle gates, and pallets of other products. Would the store at this location look like this, or be more like what Council Member Neel reported seeing in Overland Park?

**Mr. Knebel** requested to see the photos and responded that none of what is shown in these would be permissible by our development standards.

**Mayor Staats** noted those standards were just presented to Council a few weeks ago at a meeting for approval, correct?

**Mr. Knebel** confirmed yes, we try to review and update our standards annually to address issues that have arisen or items that may need additional clarity.

**Mayor Staats** said comments have been made about large vehicles and tractors; will tractors actually be coming and going from this site?

**Mr. Knebel** said tractors cannot be sold here, but I suppose if someone wanted to drive their tractor to or from the store, they could do so. Vehicle engine repair uses are permitted within the B-3 district, but I am uncertain those services are even offered by Tractor Supply Company.

**Mayor Staats** said if the zoning change passes, there still must be a site plan review process. Do the neighbors have a say in those proceedings? Can they have input during the process?

**Mr. Knebel** said anyone is welcome to comment on site plans, although it is not a process that includes a public hearing. If someone concerned about the project wants to take the time to review the plans and offer their comments, we welcome the input.

**Ms. Truitt** said I only have one question; it is regarding lighting, which was mentioned several times. This may be something that is addressed during site plan review, but is there any difference in light requirements from a B-2 to a B-3 zone? It was mentioned the hours for these stores can be until 9:00 p.m., so will there be any way to mitigate bright lights to the neighboring area?

**Mr. Knebel** said no difference between B-2 and B-3. One of the things we look at during site plan review is a photometric analysis of the applicant's lighting plan. We limit the height of light poles to 25 feet. The photometrics tell us how much of the ground is lit below the light, and we require some sort of shielding so the ground area lit from artificial lighting will end as close to the property line as possible.

**Mr. Engle** said can you remind me what accountability measures we have in place to make sure our design requirements are met and kept?

**Mr. Knebel** said as far as the outside elements and display are concerned, Code Enforcement will monitor that standards are kept. If it is determined conditions of the approval are violated repeatedly, we can revoke their zoning approvals.

**Ms. Stanton** thanked Mr. Knebel and staff for the extensive work done on this item addressing the concerns raised from the community. Thank you again to everyone in the community who came this evening or emailed and called us with your thoughts; your voices matter. If you'd like to file to run for election, you have until Monday, June 2 to do so.

**Mr. Knebel** said thank you for that. I know in my role up here presenting the item, it can seem I'm advocating for the applicant, but I can assure you that is not the case. In fact, if you asked them, you'd hear that is not at all how they view me through this process.

**Ms. Webster** said I thank everyone on the bench for the time they've given to this issue, including the study of the materials and the questions we've asked behind the scenes. All that goes into deciding these matters is not always known or seen by the public, but we all take our responsibility seriously, giving each item our due diligence before voting. Thank you to Mr. Knebel and his team. You are just presenting the facts to us clearly, as it is your job to do. Mr. Engle shared earlier that we are not to arrive at the meeting with our minds made up, but to come ready to hear the presentations and vote based on the facts, not our emotions, even though we care deeply about each of you. This is the hardest part of being on Council. Our decisions affect everyone, not just those of us sitting on the bench.

**Mayor Staats** said if we do a right turn lane for westbound Meadowlark, will the cutout be from their property?

**Mr. Knebel** clarified there is plenty of room in the existing right of way for widening the street and adding turn lanes.

**Mayor Staats** asked would that be only on the neighborhood side of the street? Would the developer share in the cost of widening the road?

**Mr. Knebel** said although the widening of Meadowlark has not yet been designed, it would be odd to only build out on one side of the street. I expect existing right of way areas on both sides of Meadowlark would be utilized for the project. The developer will be fully responsible for designing, constructing, and paying for the widening of the road. Alternatively, they have the option to pay for a traffic analysis and implement the required findings of said study.

**Mayor Staats** said how strict is Derby compared to other cities in our region regarding design standards and our site plan review?

**Mr. Knebel** said we are on the strict end of the scale for our development standards in this market.

**Mayor Staats** commented so, it is possible as we move into the site plan review process, this applicant could decide not to proceed because of the restrictions

and requirements. Then this property would remain as B-3 for another project to come in.

**Mr. Knebel** said if the zone change to B-3 passes, it is a permanent change, yes.

**Ms. Webster** said if this project does not happen and the property stays as B-3, no matter what goes in here would still require the full site plan review process.

**Mr. Knebel** said that is correct.

**Ms. Webster** asked could the site be changed back to B-1 and B-2 zoning later?

**Mr. Knebel** said City Council has the authorization to initiate a zone change for a property at any time with a majority vote.

**Mayor Staats** noted between Public Forum and Council question on this item, we have had two hours of discussion which is your local government at work. This is the process, and we appreciate everyone who has participated. As Ms. Stanton said earlier, we like to see people getting involved and we encourage you to do so even when it is not related to something in your own neighborhood. Elections are coming up and serving can be a challenge at times, but it is worth it. As a City, we have to make zoning decisions based on facts and also consider long-term planning. Kansas Law states we cannot take into consideration the proposed tenant or the popularity of the project. If we were to deny a zoning request without sound factual basis, the City of Derby could face a potential lawsuit. As a governing body, we are committed to making a fair, responsible, and legally sound decision. Our rigorous site plan review process ensures development is done the right way with traffic, drainage, and neighborhood impact carefully managed.

**Kiel Mangus, City Manager**, added I appreciate all the public comments, the thoughtful discussion from Council, and the great job Mr. Knebel and our Planning staff have done throughout the process.

<b>RESULT:</b>	<b>Carried</b>
<b>MOVER:</b>	Chris Unkel
<b>SECONDER:</b>	Wayne Molt, Jr.
<b>AYES:</b>	Kristi Truitt, Nick Engle, Jenny Webster, Chris Unkel, and Wayne Molt, Jr.
<b>NAYS:</b>	Mike Neel, Elizabeth Stanton, and Rick Coleman

**Mayor Mark Staats called for a brief recess and reconvened the regular meeting at 9:08 p.m.**

**9.3** Special Use: Equipment Rental and Sales on Lots 1 and 2, Block F, The Oaks Addition

**Scott Knebel, City Planner**, gave the agenda report.

**BACKGROUND:**

**General Location:**

- North of Meadowlark Blvd. and west of Rock Rd. (Location Map attached).

**Applicant:**

- Property Owners: Nancy Lusk, McBride Farm, LC
- Contract Purchaser: Trey Hart, Mainland Retail Acquisitions, LLC
- Agent: Jay Cook, Baughman Company, PA

**Background Information:**

- The 4.26-acre subject property is platted as Lots 1 and 2, Block F, The Oaks Addition and is located north of Meadowlark Blvd. and west of Rock Rd.
- The applicant proposes to develop the subject property with a Tractor Supply home improvement center, which requires the subject property to be rezoned to B-3 "General Business District".
  - The applicant has requested a Zone Change to B-3 "General Business District," which is being considered by the City Council on the same agenda as the Special Use application.
- This Special Use request is to allow an outdoor area for equipment and rental sales, and a separate Exception request was made to increase the permitted size of the outdoor display areas.
- A Special Use is an identified use in a zoning district which requires special approval to allow for consideration of supplemental conditions designed to promote compatibility of the use with the surrounding property, the neighborhood and the applicable zoning district. Special uses are not permitted outright because they may have the potential of creating an adverse effect upon nearby properties or upon the character and future development of the area.
  - Because equipment and rental sales require B-3 baseline zoning, if the City Council does not approve the requested B-3 zoning, then the Special Use application cannot be approved.
  - A 3,000 sq. ft. trailer/equipment display area is proposed to be located outdoors adjacent to the fenced outdoor display area (Site Plan attached).
  - The applicant also proposes to increase the permitted size of the outdoor display areas.
    - On May 1, 2025, the Board of Zoning Appeals approved an Exception to increase the permitted size of the outdoor display area subject to City Council approval of a zone change to B-3.
- The Planning Commission held the required public hearing for the Special Use request on May 1, 2025 (Planning Commission Minutes Excerpt attached).
  - One person spoke in opposition to the request and cited the following concerns:
    - Negative environmental impacts.
    - Increased traffic, including semi-truck traffic.
- At the conclusion of the public hearing, the Planning Commission voted (7-2) to recommend approval of a Special Use for equipment rental and sales to B-3 "General Business District".

- The Planning Commission recommendation is based on the findings of fact stated in the attached Planning Commission Minutes Excerpt.
- The Planning Commission recommends that the Special Use be subject to the following conditions:
  - The subject property shall be rezoned B-3 "General Business District" or the Special Use is null and void.
  - Equipment rental and sales is permitted only in conjunction with a home improvement center and is not a permitted standalone use of the property.
  - Equipment rental and sales is limited to a 3,000 square foot area that shall be located in general conformance with the location shown on Site Plan B presented to the Planning Commission.
  - Equipment permitted to be rented/sold shall be limited to: hand operated equipment/tools; non-trailer mounted generators, air compressors, pumps, or similar equipment; lawn mowers; portable equipment mixers with a maximum capacity of 9 cubic feet; vertical lifts not exceeding 25 feet in working height; lawn and garden tractors not exceeding 30 horsepower; light construction equipment not exceeding 30 horsepower; trucks/motor vehicles not exceeding a gross vehicle weight of 14,000 pounds; moving trucks/vans with a bed length not exceeding 10 feet; trailers not exceeding 12 feet in length; and similar equipment.
  - Heavy construction and farm equipment is prohibited from being rented/sold, including earth movers, graders, bulldozers, dump trucks, combines, tractors, or similar equipment exceeding 30 horsepower.
  - The subject property shall complete the Site Plan Review process by the Planning Commission prior to the operation of equipment rental and sales, including guaranteeing traffic improvements necessary to support the proposed use.
  - The Special Use shall comply with all other applicable zoning and building code requirements of the City.
- Subsequent to the public hearing, individuals opposed to the Special Use request submitted the attached rebuttal to the findings of fact adopted by the Planning Commission. The rebuttal identifies the following concerns:
  - An insufficient buffer is provided from the subject property to nearby residential areas and no other area in the City has such a limited buffer from B-3 zoning.
  - Increased traffic will create congestion and unsafe conditions.
  - The project will negatively impact the environment, and nothing is being done to assess and mitigate the impacts.
  - Tractor Supply stores typically locate in rural, agricultural and industrial areas and, therefore, should not be located on the subject property.
  - Property values will be negatively impacted by traffic and environmental impacts.

- The Tractor Supply will negatively impact the nearby Stutzman's Garden Center.
  - The rebuttal cites numerous requirements of various sections of a Derby Unified Land Development Code.
- Staff has analyzed the Rebuttal and offers the following information:
  - The zoning pattern of Derby has numerous examples of B-3 zoning directly sharing a property line with residential uses. Derby Marketplace is the closest example to the subject property. Additionally, numerous residential lots in Broadmoor Hills are already adjacent to B-3 zoning with less buffer distance.
  - Exhibit A of the Rebuttal states that the proposed Tractor Supply will generate 6,200 trips per day. The rebuttal correctly states the traffic generation rate for the proposed Tractor Supply; however, the rebuttal incorrectly inflates the traffic generation rate of the proposed Tractor Supply by a factor four and then increases it again by a factor of two.
    - It appears these increases are based on statements in the Planning Commission findings of fact regarding B-3 uses generating as much as four times more traffic than B-1/B-2 uses and the home improvement center generating as much as two times more traffic than B-1/B-2 uses.
    - Those statements were based on an assumption of a traffic generation rate of 10-15 trips per day per 1,000 square feet for B-1/B-2 uses compared to B-3 uses that generate as much as 60 trips per day per 1,000 square feet and a home improvement center that generates approximately 25 trips per day per 1,000 square feet.
    - Staff estimates that the proposed Tractor Supply will generate approximately 750 trips per day, which is confirmed by the estimated daily customer counts provided by Tractor Supply.
  - Environmental impacts are assessed through the Site Plan review process as they require specific information about the development that is unknown when considering a zone change or special use, which could permit a wide variety of potential uses. The rebuttal inaccurately implies that the project will be developed without conducting required environmental assessments.
  - The rebuttal provides a few examples of Tractor Supply stores but does not cite other examples of Tractor Supply stores that are similarly situated near residential neighborhoods like the proposed location such as Lee's Summit and Independence, Missouri. Tractor Supply has indicated that the site was selected based on an extensive analysis.
  - The rebuttal's analysis of property value impacts is based on the faulty assumptions regarding traffic generation and an incorrect assumption that the property will be developed with no environmental mitigation.
  - The owner of Stutzman's Garden Center attended the public hearing and signed up to speak. When given the opportunity to

- speak, the owner of Stutzman's declined to speak at the public hearing.
- Derby's Zoning Regulations govern review of the applicant's requests. Staff could not locate the regulations cited in the rebuttal, and the cited regulations are not regulations of the City of Derby, Kansas.

### **FINANCIAL/SUSTAINABILITY CONSIDERATIONS:**

- Development of the property as proposed will result in an increase in the taxable value of the property; and consequently, an increase in property tax revenue.
- Infrastructure necessary to serve the development is in close proximity to the site and can reasonably be extended.
- Financial guarantees for infrastructure necessary to serve the site and associated cost sharing will be determined through Site Plan Review.

### **LEGAL CONSIDERATIONS:**

- All conditions precedent to the Council's consideration of this requested Special Use have been satisfied, including notification of surrounding properties in accordance with state law.
- Protest petitions were filed with the City Clerk within the statutory 14-day protest period following the public hearing.
  - Protest petitions were received representing 10 properties.
  - Five of the protest petitions were received from properties within the statutory notification area and represent 10.26% of the land area within the statutory notification area (Protest Petition Map attached).
    - Because the protest petitions represent less than 20% of the land area within the statutory notification area, a three-fourths majority vote is not required to approve the Special Use.
- Granting a Special Use on a specific tract of land is a quasi-judicial proceeding and requires disclosure of *ex parte* communications. It is treated like a zone change.
- In accordance with state law, the Council may take one of the following actions when considering adoption of the requested special use.
  - Adopt the recommendation of the Planning Commission and approve the Special Use via ordinance by a majority vote of the City Council (5 votes).
  - Override the Planning Commission by two-thirds majority vote of the City Council membership (6 votes) and modify or disapprove the Special Use. If this option is selected, the City Council must adopt findings of fact in support of modification or disapproval.
  - Return the recommendation to the Planning Commission with a statement specifying the basis for the Council's failure to approve or disapprove by a majority vote of the City Council members present.
- The attached ordinance has been reviewed and approved by the City Attorney.

### **RECOMMENDED MOTION**

- Adopt an ordinance granting a Special Use for equipment rental and sales in the B-3 "General Business District" based on the Planning Commission's findings of fact and instruct the City Clerk to publish the ordinance after adoption.

**Council Member Mike Neel** asked why is the equipment rental and sales area to the east, rather than to the north, which would be the back of the building site?

**Scott Knebel, City Planner**, replied the north side has functionally insufficient room, and the applicant requested the east side.

**Mayor Mark Staats** asked for Council to report any *ex parte* communications regarding the special use request item. All members of the bench reported the same communications as with the previous zone change item, with no additions.

**Council President Nick Engle** said the report shows a list of equipment rentals allowed by our regulations, but Tractor Supply Company will only offer one trailer for rental.

**Mr. Knebel** clarified the list is not from Tractor Supply Company; it is directly out of our zoning regulations. The statement from the applicant to Planning Commission at the Public Hearing was that most of the trailers would be for sale, with only one intended for rental use.

**Mr. Engle** said although that is the plan, at any time, they could rent out any of the equipment listed in our regulations for this use without acquiring any additional approvals?

**Mr. Knebel** confirmed they could.

**Council Member Wayne Molt, Jr.** said if they wanted to begin renting additional items that are not on the list, what would they do?

**Mr. Knebel** said they'd have to go through this same process for an amendment.

**Council Member Rick Coleman** asked if the pink area on the map is where Tractor Supply Company requested a space for equipment rental and sales, and the Planning Commission said this is where it can go?

**Mr. Knebel** said that is correct.

**Mr. Coleman** said I don't see why they could not store rental items anywhere in their outdoor, fenced area they choose.

**Mr. Knebel** clarified, the request for an outdoor equipment rental and sales area was proposed by Tractor Supply Company for the size and in the location shown on the map.

**Mr. Engle** asked was the original request for it to be on the west side of the property?

**Mr. Knebel** noted the initial proposal from the applicant was a flipped version of the entire site, but staff did not support that version because it did not meet our development standards.

**Mr. Engle** said if I read the report correctly, the solid visual screening will then be on the east side of the site, with additional requirements beyond our usual design codes.

**Mr. Knebel** said there are no additional requirements, but the advantage to placing the equipment rental here is it will more easily be fully blocked visually from neighboring residential properties.

**Nick Engle moved, seconded by Rick Coleman, to adopt an ordinance granting a Special Use for equipment rental and sales in the B-3 "General Business District" based on the Planning Commission's findings of fact and instruct the City Clerk to publish the ordinance after adoption.**

<b>RESULT:</b>	Carried
<b>MOVED:</b>	Nick Engle
<b>SECONDER:</b>	Rick Coleman
<b>AYES:</b>	Kristi Truitt, Nick Engle, Jenny Webster, Rick Coleman, Chris Unkel, and Wayne Molt, Jr.
<b>NAYS:</b>	Mike Neel and Elizabeth Stanton

#### 9.4 Rock River Rapids Pool Painting and Slide Surface Coating

**Steve White, Parks Director**, gave the agenda report.

##### **BACKGROUND:**

- This year Rock River Rapids (RRR) will complete its 22nd season of operations.
- To maintain the facility and keep the park amenities safe for riders, a fresh application of fiberglass coatings and paint is periodically needed for all slides, pools and play structures.
  - RRR was last painted in 2018 and the slide gel coats were last restored in 2014.
- The scope of work includes the following:
  - Total refurbishment of the interior and exterior surfaces of the orange, blue and yellow slides, lazy river, lap pool, shallow pool, shallow pool play structure, large splash bucket, small splash buckets, and mushroom.
  - The existing gel coating will be removed and replaced on all interior portions of the slides.
  - The green slide is in new condition (since it was installed just a few years ago) and will receive a buffing, waxing, and polishing of the interior only.

- This work is completed every 5-10 years as determined by use and condition after an inspection is done each year.
- A Request for Proposals (RFP) was published April 3 on the City's website.
  - The facility was open and available for all interested vendors to inspect and obtain measurements for all surfaces proposed for coatings.
- Eight proposals were received with the following results:

<u>Company</u>	<u>Pools</u>	<u>Slides</u>	<u>Total</u>
Wildcat Painting	\$125,000	No Bid	\$125,000
Amusement Restoration	\$378,071.25	\$140,323	\$518,393.75
Safe Slide Restoration	\$752,313	\$159,684	\$911,997
Slide Guys	No Bid	\$186,812	\$186,812
RAW Custom Coatings	No Bid	\$188,578	\$188,578
Slide Rite	\$265,000	\$67,000	\$332,000
Landmark Aquatic	\$380,665	\$249,335	\$630,000
Markleys Precision Company	\$352,400	\$225,750	\$578,750

- Wildcat Painting submitted the proposal most beneficial to Derby for the painting of the pools, play structure, and buckets.
  - Wildcat Painting's proposal is the most cost-effective proposal for this portion of the services and Wildcat Painting has previously completed successful and acceptable work at RRR.
- Amusement Restoration Companies provided the most beneficial proposal for the work on the slides.
  - While not the lowest cost proposal, Amusement Restoration Companies received favorable reference checks and satisfied City staff that it was best able to meet the proposal requirements and the needs of the City.
  - The vendor submitting the proposal with the lowest price for the slide work had unfavorable responses from a reference raising questions about its ability to complete the work in a satisfactory manner and honor the warranty required by the contract.
- Staff contacted references for the recommended vendors and received favorable results regarding the quality of work, timeliness, and ability to stay within budget.

#### **FINANCIAL/SUSTAINABILITY CONSIDERATIONS:**

- The 2025 CIP budget includes \$250,000 for the scope of work outlined above at RRR.
- The combined total cost for the recommended proposals is \$265,323.
  - The total cost is above the estimated budget of the project by \$15,323.
  - Funds are available in the RRR line-item maintenance budget to cover the \$15,323 overage.

## **LEGAL CONSIDERATIONS:**

- Requests for proposals provide the City with flexibility in considering factors outside of low cost in the award of projects.

## **RECOMMENDED MOTION**

- Authorize the City Manager to enter into an agreement with Wildcat Painting for the painting of pools, play structure(s), and buckets in the amount of \$125,000 and authorize the City Manager to enter into an agreement with Amusement Restoration Companies, LLC for slide refurbishment in the amount of \$140,323.

**Council Member Mike Neel** said is this work planned for after the current season?

**Steve White, Parks Director**, said yes, it is slated to begin August 18.

**Council President Nick Engle** said how often do these items come up on the maintenance rotation schedule.

**Mr. White** replied the last time we coated the pools was 2018 and the interior coating of slides was last done in 2014. The exterior of slides was also done in 2018.

**Kiel Mangus, City Manager**, said a few different times over the last four or five years, we have had discussions involving Rock River Rapids, such as fee increases, the purchase of the green slide, and electrical issues with the slides. When looking at those items, we mentioned upcoming pool maintenance projects. We won't fully gel coat the new slide this year, will we?

**Mr. White** said no, it is still in good shape, so we'll just buff, wax, and polish it up.

**Mr. Engle** asked why do we do this type of maintenance at the end of summer rather than early in spring before the season starts?

**Mr. White** said spring temperatures can stay cooler longer, which affects the ability for the paint to cure prior to when we fill the pool near the end of April or beginning of May.

**Mr. Engle** said I was curious how badly the winter temperatures affect this treatment.

**Mr. Mangus** noted the gel coating on the interior of the slides are not as impacted as the exteriors. Painting is affected more by the UV rays of the sun than temperatures. Due to staffing needs and other factors, we close the waterpark when school starts back up even though often times "swimmable" weather lingers well into September. Those warmer temperatures after the season ends allows us the perfect time to make these paint-related repairs.

**Nick Engle moved, seconded by Jenny Webster, to authorize the City Manager to enter into an agreement with Wildcat Painting for the painting of pools, play structure(s), and buckets in the amount of \$125,000 and authorize the City Manager to enter into an agreement with Amusement Restoration Companies, LLC for slide refurbishment in the amount of \$140,323.**

**Council Member Elizabeth Stanton** asked does the paint help protect the integrity of the slides and pool over those winter months?

**Mr. White** said coatings are always an added protection, no matter the temperatures or season.

<b>RESULT:</b>	<b>Carried</b>
<b>MOVED:</b>	Nick Engle
<b>SECONDER:</b>	Jenny Webster
<b>AYES:</b>	Kristi Truitt, Mike Neel, Elizabeth Stanton, Nick Engle, Jenny Webster, Rick Coleman, Chris Unkel, and Wayne Molt, Jr.

## 9.5 Pavement Management Assessment Report

**Robert Mendoza, Public Works Director**, gave the agenda report.

### BACKGROUND:

- In August 2024, Council approved a comprehensive evaluation and assessment of our streets, sidewalks and ADA ramps.
  - The City contracted with IMS to inspect and deliver the detailed report being presented tonight.
- The City last had an inspection similar to this done back in 2019 by IMS. It is recommended to have these types of inspections done approximately every 5 years.
  - The 2019 study did not include sidewalks or ADA ramps.
- This presentation is an overview of the Pavement and Sidewalk Inspection and Rating process.
  - It will include a high-level review of the data captured, and we will discuss how the data is used in application.
- The scope of work for the report for pavement assessment included all paved streets (128 center line miles of City streets), but excluded K-15 State Highway, concrete streets and unimproved streets and alleys.
  - The scope did not include streets already scheduled for replacement in 2025 or rehabilitated after 2021.
  - This inspection also included structural testing of select collector and arterial streets. This was done to help identify and contrast different construction types and methods used over the past 20 years.
  - The structural testing also helps determine sub-base conditions and better plan future rehabilitation or replacement projects.
- The contractor used the IrisPRO Pave unit for pavement inspections and a smaller modified version for sidewalk inspections.
- Each unit is surrounded with cameras, GPS positioning equipment, laser measuring equipment, 3D imaging equipment and other testing devices to

- measure roughness (RI), surface distresses (SDI) and structural integrity (SI).
- These separate indexes all receive a numerical score based on condition.
- This score combined with the age of the pavement inspected, determine the Pavement Condition Index rating (PCI).
- PCI uses a scored rating system of 1 to 100.
  - 0 - 25 Very Poor
  - 25 - 40 Poor
  - 40 - 50 Marginal
  - 50 – 60 Fair
  - 60 – 70 Good
  - 70 – 85 Very Good
  - 85 – 100 Excellent.
- The study results showed the following:
  - 90% of Derby streets are rated as Marginal to Excellent, and 10% Poor to Very Poor.
  - Derby streets show an overall PCI rating of 72, which is well above the national average of 65, and an improvement from our 2019 rating of 61.
  - These results are a positive testament to the street work completed throughout our City over the last 5 years.
  - Backlog streets % of 10%, which is a decrease of 15% from 2019. Backlog streets are streets within the Poor to Very Poor Ratings (0 to 40). They require total reconstruction measures and receive very little maintenance based on the return on investment. The percentage of backlog streets should be low to manage future reconstruction expenditures, ensure motorist safety and maintain property values.
- The accumulated data from the report is used to build rehabilitation projects based on a variety of factors including:
  - Budget, PCI rating, cost of deferral, pavement strength, pavement type, functional class, planned expenditures and committed projects.
- Similar inspection and rating processes were applied to all sidewalk infrastructure (approximately 109 miles of City sidewalk) to create a Sidewalk Condition Index (SWCI).
- SWCI used a scored rating system of 0-100.
  - 0-25 Very Poor
  - 25-50 Poor
  - 50-75 Fair
  - 75-100 Good
- The sidewalk inspection included surface condition, vertical displacement, separations, excessive cross slope and excessive grade.
  - All parameters are based on the Americans with Disabilities Act Accessibility Guidelines. (ADAAG).
- As with the streets, the SWCI rating indicates the level of service and type of repairs necessary to maintain and improve the sidewalk infrastructure and provides digital data to help develop rehabilitation project schedules.
- Study results for sidewalks showed the following:

- Average sidewalk condition is 45.
- 38.3% of sidewalks rated as fair to good and 14.5% of sidewalks rated as very poor.
- The data from both inspections provide the ability and flexibility to create rehabilitation projects that meet our circumstances. The reports provide the information necessary to prioritize work and manage costs to meet our budgets.
- Staff are currently working with the data to identify future projects which will be identified through the budget process.

### **FINANCIAL/SUSTAINABILITY CONSIDERATIONS:**

- The IMS report anticipates the City spending \$2.3-\$2.5M a year on street maintenance efforts in order to maintain PCI and a reduced backlog.
- The IMS report identifies approximately \$19.1M in sidewalk rehabilitation costs.
  - The City estimates receiving around \$35-36M in Derby Difference Sales Tax Street Funding through the end of the tax in 2034.
  - The City also estimates receiving around \$9M from gas tax in our Special Street Fund to help with street and sidewalk maintenance efforts during that same timeframe.
  - Depending on how sales tax and gas tax come in that would be around \$45-46M in total funding for street and sidewalk maintenance out of those two funding sources.
- Major street rehabilitation projects already completed or underway will account for nearly \$17M of total costs.
  - Projects such as McIntosh, north Rock Road, Woodlawn, K-15 Phase 2, Patriot & Triple Creek, etc.
- Estimated annual other street maintenance projects (mill and overlay, total reconstruction, other surface treatments) we anticipate spending another \$20-24M over the next 10 years.
- This leaves \$3-5M on sidewalk rehabilitation funding available. This is more funding than the City has spent on sidewalks in the past but not enough to address \$19M in sidewalk rehabilitation costs.
  - The City has some General Fund dollars dedicated to sidewalk repair and replacement that will assist as well (in-house work and contracted).
  - Prioritization and optimization will have to occur for sidewalk repair projects.
  - The pavement management model will be updated as street improvements occur. As we get further into the Derby Difference Sales Tax timeline and the model updates occur, there could be more opportunities to shift some funding from street maintenance to sidewalk funding depending on need.

### **RECOMMENDED MOTION**

- Receive and file the report.

**Kiel Mangus, City Manager**, said the improvement in PCI score from 68 to 72 is a testament to the investment the City has made over the past few years

regarding pavement management. Improvements to some of our major arterials, such as Rock Rd., Buckner, and Madison, were achieved through ARPA funding. That financial boost is now gone, but we do have the added Derby Difference in place to allow more projects.

**Council Member Kristi Truitt** said we learned through the budget workshop that most major road repairs are bid by outside contractors, but what about the sidewalk work? Can that be done by our Public Works staff?

**Robert Mendoza, Public Works Director**, replied we do not do any grinding work in-house. Our staff can do basic removal and replacement repairs, and we focus mainly on the Hike and Bike path or ADA ramps. Larger sections of repairs or those needed due to utility work are contracted services.

**Council Member Rick Coleman** asked do we go to the utility companies who caused the damage and ask them to pay for those repairs? For example, the path to the east of Panther Stadium, has a crack in the middle that continues to worsen due to the utility trucks that use it to reach the towers.

**Mr. Mangus** said when they are working in our Right of Way (ROW), they are supposed to obtain a ROW permit. If they do, we can determine who was working there at what time and reach out to them regarding damages. Although Mr. Mendoza shared the cost for sidewalk repairs from this study comes to \$19 million, there is no way Derby will be able to pay that much for sidewalks over the next 10 years. Right now, we are spending approximately \$150,000 annually on sidewalks. Realistically we may spend more between the \$5 million and \$7 million range. Depending on how Derby Difference funding comes in and if we are doing well with our PCI, some years we may pay a little less on streets and more toward sidewalks. It will be a year-to-year balance between the two.

**Mr. Coleman** added it is not only utility trucks who drive on the sidewalk past the stadium. Every Friday night during a football game, there are cars driving down it, which also tear up the sidewalk creating tripping hazards.

**Mr. Mangus** said we will just have to try to do the best we can to keep vehicles off the area and monitor when it does occur.

**Council Member Wayne Molt, Jr.** said in areas where we know vehicles will drive on sidewalks, are those sections built to a different standard?

**Mr. Mendoza** said yes, you do not use a 4-inch sidewalk for driving surfaces.

**Dan Squires, Development Manager**, said we do require Right of Way permits, but they are a bit harder to track than our other permits which are attached to a specific address. Our staff monitors those permits and when folks call, through the ROW permit, we can see who was where and when. It is not a perfect system, but we do have it in our Right of Way ordinance as well as our franchise

agreements, if they tear up our sidewalks, they have to fix it, or we can withhold future permits until repairs are made.

**Mr. Molt** asked for areas like Mr. Coleman mentioned, which receive a lot of vehicle traffic, should we re-engineer those sidewalks to be stronger?

**Mr. Squires** said we could, but they honestly should not be driving on our sidewalks at all. For actual driveways, we require at least 6 inches of concrete reinforced with wire. Our Hike and bike paths are 10-feet wide so vehicles drive on them more often than regular sidewalks. If there is a valid reason for an area of sidewalk to regularly receive vehicle traffic, when that area is repaired and replaced, we would want to increase the standard.

**Mr. Molt** said when widening my own driveway, the contractor I used made the sidewalk in that area be to the driveway standard to avoid damage, but others in my neighborhood did not take those steps. Now there are cracks to the sidewalks adjacent to the drive. In a case like that, will we require the homeowner to make the needed repairs rather than the City? I'm pretty sure if we had issued permits, the work would have required the reinforcement.

**Mr. Squires** said unpermitted work is difficult to catch and enforce. The City made a policy decision several years ago that all sidewalk repairs would be the responsibility of the city at large. State law allows cities to require the property owner to maintain and repair the sidewalk adjacent to their property. Some communities have adopted a cost-sharing model where 50% is paid by the City and 50% by the homeowner. The challenge is in how to enforce it. Also, those require driveway permits and are a higher standard than a normal sidewalk since they are intended to be driven on.

**Council Member Elizabeth Stanton** noted a couple of years ago when walking along Rock Rd., I encountered a section that had clearly been damaged by a utility truck. There were huge cracks resulting in uneven and unsafe conditions. I texted a picture to the City Manager and very quickly Public Works responded, spray painting it with visual markers to indicate the danger until it could be repaired. While not everyone has the Manager's phone number, we do now have the See-Click-Fix app on which anyone can report an issue directly to our Public Works department. Things like this get attention when we know about them, so this is a great way for the public to help us know where issues exist. People can also call City Hall at any time to report items like this.

**Mr. Squires** agreed that is a great example of using of See-Click-Fix. City staff only have so many eyes to notice problems, and when the public helps bring our attention to things, it helps greatly.

**Mr. Coleman** said for the stadium sidewalk, I don't believe the issue is subcontractors, but rather the owner of the property, in this case it is Verizon. Regardless of who they contract with, it is ultimately their responsibility to repair damages caused by those driving in and out to work on the tower over the last several years.

**Mr. Mangus** said unfortunately in situations like that, the sidewalk is not going to crack when they drive over it, but as it weakens over time from multiple trips, the cracks begin to show up and breaks happen. In addition, sidewalks shift over time and with hard freeze-thaw cycles like we experience, the integrity of the concrete is affected. As Mr. Squires mentioned, in 2018 the decision was made for the City of Derby to take care of all sidewalks, rather than rely on property owners, as many other communities do. If the damaged area is one or two panels, our Public Works can make the repairs in-house. Larger projects with several problems cost a lot more and will require contracted work.

**Council Member Chris Unkel** said with the price tag for sidewalk repairs being around \$19 million, should we reconsider and have only one connecting sidewalk through neighborhoods, rather than always building on both sides of the street? I know some contractors are deterred by that requirement. If we are already facing a \$19 million need, and we have nine new neighborhoods coming in with additional miles of sidewalk, we will never catch up.

**Mr. Squires** said back in the mid-1990s, our development standard became for sidewalks to be on both sides of the street in every residential neighborhood. We also moved them back to the Right of Way line, rather than abutting the curb, which is easier for contractors. I can say we are the envy of many communities with our Hike and bike path and sidewalk system throughout Derby. If you are driving along one of our arterial streets and it is even half-way decent weather, you will see moms with strollers, or people walking their dogs, or taking a jog. We were one of the first to emphasize walkability as a priority component of our community and now you see others following suit. Honestly, the sidewalks put in over the last 15 years are not the problem; it is the sidewalks built to the previous standard that need attention. So, my answer is no, we should not reconsider our code regarding sidewalks; I feel it would be moving backward.

**Mr. Mangus** agreed, stating of course contractors do not want to pay the additional costs of meeting our sidewalk requirements, but our residents use and love our sidewalks.

**Mr. Unkel** said I understand that and agree that we all love sidewalks as a feature of Derby. When we see a large expense like this, however, knowing it will only grow over the years by adding more and more miles, we should step back and rethink ways to better stay on top of the issue.

**Mr. Mangus** said while we cannot address all \$19 million, over the next 10 years, we will make considerable improvements to our sidewalks which will chip away at the \$19 million. We will also be adding new sidewalks which will be to the newer standard and last for a long time before needing repairs. If Council notices the backlog growing and needing more attention, you can reconsider that 2018 decision stating the city-at-large will pay for all sidewalk repairs. In most other communities, if the sidewalk by your home needs repair, the City will make you fix it or fix it for you and pursue reimbursement. While we will never get to zero, we will keep trying to prioritize projects on the backlog list.

**Mr. Unkel** asked could we do something like the Neighborhood Maintenance Grants where the City pays a portion, and the property owner pays a portion?

**Mr. Mangus** said several communities do take that approach and it was discussed when the 2018 change was made; at that time, Council decided against it.

**Mr. Squires** added when property owners are asked to pay the cost of or even a portion of sidewalk repairs, they suddenly don't feel their sidewalk is in such bad shape. This adds to the difficulty of determining what constitutes a problem area. With streets we are now trying to catch and address needed maintenance areas before they move to the level of poor condition, thus investing dimes rather than dollars. Sidewalks are a little different wherein we tend to repair the worst first.

**Chris Unkel moved, seconded by Mike Neel, to receive and file the report.**

<b>RESULT:</b>	Carried
<b>MOVER:</b>	Chris Unkel
<b>SECONDER:</b>	Mike Neel
<b>AYES:</b>	Kristi Truitt, Mike Neel, Elizabeth Stanton, Nick Engle, Jenny Webster, Rick Coleman, Chris Unkel, and Wayne Molt, Jr.

## 10 ADJOURNMENT

**Jenny Webster moved, seconded by Rick Coleman, to adjourn the meeting at 10:15 p.m.**

<b>RESULT:</b>	Carried
<b>MOVER:</b>	Jenny Webster
<b>SECONDER:</b>	Rick Coleman
<b>AYES:</b>	Kristi Truitt, Mike Neel, Elizabeth Stanton, Nick Engle, Jenny Webster, Rick Coleman, Chris Unkel, and Wayne Molt, Jr.

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City Clerk

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Mayor