

**Office of the County Counselor**  
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To: Board of County Commissioners

From: Jon P. Von Achen, Assistant County Counselor

Date: December 21, 2015

Re: Review of Derby Service Plan – Derby Res. No. 30-2015

Under County Resolution No. 190-12, upon notice of a proposed unilateral annexation by a city, and receipt of the plan for extension of municipal services, the plan is distributed to you and various county departments for review and comment. Following receipt of comments, a report is to be presented to the Board at their next available meeting.

A copy of the service plan has been sent to the township where the properties proposed for annexation are located (Riverside).

The purpose of the review by the Board is to ensure that, when the Board holds the required post-annexation hearing three years after the effective date of the annexation, the Board can determine whether or not the city has provided services in accordance with the plan.

In reviewing the plan, the Board may consider:

- Whether the plan substantially complies with the statutory plan requirements;
- Whether the city is also annexing any adjoining right of way;
- Whether there is any public services overlap after the annexation; and
- Whether the proposed annexation conforms to the comprehensive plans adopted for the area.

The Board, in reviewing the plan, may take such action in open meeting deemed appropriate, including but not limited to:

- Directing the County Counselor to notify the city regarding any comments the Board has regarding the plan;
- Directing the County Counselor to prepare a resolution stating findings made by the Board regarding the plan; or
- Directing a county representative to attend the city's public hearing on the proposed annexation to present testimony regarding the plan.

The City of Derby proposes to annex one platted subdivision (63 residential properties). The plat is adjacent to current city limits. The property is generally described as:

“Huckleberry Addition” to Sedgwick County, Kansas, including all Lots, Blocks, Streets and Reserves platted therein, said plat being located within the Southeast Quarter (SE/4) of Section Thirty-five (35), Township Twenty-eight (28) South, Range One (1) East of the Sixth Principle Meridian, Sedgwick County, Kansas, said plat containing the following property, to wit:

All of Lots 1 through 30, inclusive, Block A, TOGETHER with all Lots 1-6, inclusive, Block B, TOGETHER with all of Lots 1 through 15, inclusive, Block C, TOGETHER with all of Lots 1 through 12, inclusive, Block D, TOGETHER with all of Reserves A, B, and C, TOGETHER with all other public rights-of-way, all in Huckleberry Addition, Sedgwick County, Kansas;

Said lands being generally located east of the Arkansas River and west of K-15 Highway and platted as “Huckleberry Addition” with an entrance near the intersection of Oliver Street and 69<sup>th</sup> Street South (Red Powell Drive).

A public hearing has been set for January 12, 2016, at the city council meeting room, at 6:30 p.m.

The city is required to substantially comply with the requirements of the statute regarding service plans.

Substantial compliance requires compliance in respect to the essential matters necessary to assure every reasonable objective of the statute. *Sabatini v. Jayhawk Construction Co.*, 214 Kan. 408, Syl. ¶ 1, 520 P.2d 1230.

Per the discussion below, in my opinion, the plan substantially complies with the statutory requirements.

**I. CONFORMANCE WITH THE REQUIREMENTS FOR SERVICE PLANS SET OUT IN K.S.A. 12-520B**

The report should include:

**(1) A sketch clearly delineating the land proposed to be annexed and the area of the city adjacent thereto to show the following information:**

**(A) The present and proposed boundaries of the city affected by such proposed annexation;**

**(B) the present streets, water mains, sewers and other city utility lines, and the proposed extension thereof; and**

**(C) the general land use pattern in the areas to be annexed.**

*The plan shows the present and proposed boundaries of the city; the present and proposed streets, water mains, sewers and other city utility lines, with proposed extensions.*

*The plan provides a textual summary of the general land use pattern of the area, and an overhead satellite map is provided showing the current residences and detention ponds.*

**(2) A statement setting forth a plan of sufficient detail to provide a reasonable person with a full and complete understanding of the intentions of the city for extending to the area to be annexed each major municipal service provided to persons and property located within the city and the area proposed to be annexed at the time of annexation and the estimated cost of providing such services.**

*The plan, taken as a whole, generally provides sufficient detail to allow a reasonable person to fully and completely understand the city's intentions extending services to the area to be annexed.*

**The plan shall state the estimated cost impact of providing such services to the residents of the city and the residents of the area proposed to be annexed.**

*The plan provides this statement of estimated costs.*

**The plan shall state the method by which the city plans to finance the extension of such services to such area. Such plan shall include a timetable of the plans for extending each major municipal service to the area annexed.**

*The plan provides the timetable of providing services, and how the extension of services would be financed. This complies with the statutory requirement.*

**The plan shall state the means by which the services currently provided by a township or special district in the area to be annexed shall be maintained by the city at a level which is equal to or better than the level of services provided prior to annexation.**

*The statute refers to services provided by a township or special district, so it appears to only apply to services provided by the township, the fire district, the rural water district and the library district. The plan substantially complies with this requirement.*

**The plan shall state those services which shall be provided immediately upon annexation and those services which may be provided upon petition of the landowners to create a benefit district.**

*The plan meets this requirement.*

## **II. ADDITIONAL FACTORS TO BE CONSIDERED**

**Whether the city is annexing any public right of way adjoining the land annexed.**

*The city is annexing all of the public right-of-way within Huckleberry Addition. Portions of Oliver Street immediately adjacent to and providing access to the addition are not proposed to be annexed.*

**Whether the proposed services overlap service areas of other governmental entities.**

*No overlap will exist after annexation.*

**Conformance with the Comprehensive Plan.**

*The annexation conforms to the comprehensive plans for the area.*

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