

Office of the County Counselor

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To: Board of County Commissioners

From: Robert W. Parnacott, Assistant County Counselor

Date: February 28, 2014

Re: Review of Derby Service Plan – Derby Res. No. 1-2014

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 two townships where the properties proposed for annexation are located (Gypsum and Rockford).

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 six tracts (4 residential, 1 commercial and 1 vacant) in four different areas; all are adjacent to current city limits. The properties are generally described as:

- Tract 1: South of 55th St. S. approximately ½ mile west of Woodlawn (4.71 acres)
- Tract 2a/2b: Northeast corner of Patriot Ave. (63rd St. S.) and Rock (a 1.15 acre tract and a .70 acres tract)
- Tract 3a/3b: East of Rock approximately ½ mile north of Chet Smith Ave. (87th St. S.) (a 2.76 acre tract and a 4.89 acre tract)
- Tract 4: North of Chet Smith Ave. approximately ¼ mile east of Rock (a 1.85 acre tract).

A public hearing has been set for April 8, 2014, 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.

Although the plan provides a textual summary of the general land use pattern of the area, it does not provide a sketch showing the general land use pattern. However, because the textual summary provided shows the general land use patterns of the area, this meets the “reasonable objectives” of the statute, and therefore the service plan substantially complies with the sketch requirement.

(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. Comments received from MAPD staff recommend the City should also provide information to the property owners regarding whether the City or the property owner has the responsibility for any costs related to the extension of city water services to properties currently served by the rural water district. MAPD staff also recommends the City should inform the property owners regarding any storm water utility fees that would be charged to the properties. Finally MAPD staff believes the plan should clarify the cost implications for commercial properties regarding the ratio used based on comparisons of the impervious area of a commercial parcel to a residential parcel.

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 not annexing any public right of way adjoining the lands proposed for annexation. The city has previously annexed some of the right of way adjoining the parcels.

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.