

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

From: Justin M. Waggoner, Assistant County Counselor

Date: September 5, 2017

Re: Review of Derby Service Plan – Derby Res. No. 33-2017

Summary

The plan complies with statutory requirements.

Introduction

Under County Resolution No. 109-2012, 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 (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 are 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:

- (1) Directing the County Counselor to notify the city regarding any comments the Board has regarding the plan;
- (2) Directing the County Counselor to prepare a resolution stating findings made by the Board regarding the plan; or
- (3) 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 two parcels, both of which are adjacent to current city limits.

A public hearing has been set for October 10, 2017, 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.

#### Review of Service Plan 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 substantially complies with this requirement. However, the sketch does not indicate land use or zoning for the properties, but instead only includes an aerial photograph.*

**(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 complies with this requirement.*

**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 complies with this requirement.*

**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 complies with this 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 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 complies with this requirement.*

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

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

*Yes, the City is proposing to annex public right of way that includes 87<sup>th</sup> Street South.*

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

*County staff has not indicated that any overlap will exist after annexation.*

**Conformance with the Comprehensive Plan.**

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

*The Wichita-Sedgwick County Metropolitan Area Planning Department (MAPD) staff reviewed the proposed annexation and intends to report to the Wichita-Sedgwick County Metropolitan Planning Commission that both parcels are all located within the City of Derby 2035 Urban Growth Area as designated in the Community Investments Plan 2015-2035.*