

## CITY COUNCIL PROCEEDINGS

March 10, 2004

The City Council of the City of David City, Nebraska met in open public session in the meeting room of the City Office, 557 4th Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner-Press on March 4, and an affidavit of the publisher is on file in the office of the City Clerk. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agenda which is a part of these minutes. The advance notices to the Public, Mayor and Council members conveyed the availability of the Agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection during regular office hours. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Stephen Smith, Council members Gary L. Kroesing, Mark Kirby, Gary Smith, Ted Lukassen, Nick Hein, and Bill Schatz, City Administrator Jeff Fiegenschuh, City Attorney Jim Egr, Police Chief Stephen Sunday and Chere' Massey, Electric Supervisor Tim Kovar, Water/Sewer Supervisor Jim Kruse, WA/SE employee Gary Janicek, Electric Plant Supervisor John Kabourek, Banner-Press Editor Larry Peirce, Sam Armstrong, Kelly Danielson, Roger Helgoth of Jacobson Helgoth Consultants, Board Chairperson Bill Voboril of Bruno, Richard Sabata, Jim Vandenberg, Jodi Prochaska of Scow, Rief, Kruse, & Schumacher, Deputy Director Jeff Christensen of the Northeast Nebraska Economic Development District, and City Clerk-Treasurer Joan E. Kovar.

The meeting opened with the Pledge of Allegiance.

The minutes of the February 11<sup>th</sup>, and March 1<sup>st</sup>, 2004 meetings of the Mayor and City Council were approved upon a motion by Council member Hein and seconded by Council member Smith. Voting YEA: Council members Hein, Schatz, Kirby, Lukassen, Smith, and Kroesing. Voting NAY: None. The motion carried.

Mayor Smith asked for Petitions, Communications and Citizens' Concerns in addition to those contained in the Agenda packets. There were no petitions, communications, or citizens' concerns.

Mayor Smith asked for consideration of claims. Council member Kirby made a motion to authorize the payment of claims. Council member Kroesing seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Mayor Smith called for Committee and Officers' Reports in addition to those written reports contained in the Agenda packet.

City Administrator Jeff Fiegenschuh reported the following:

- The Community Growth Workshop sponsored by Olsson Associates will be held on Wednesday, April 7<sup>th</sup>, at 7:00 p.m. in the RC&D Office, 402 5<sup>th</sup> Street, David City.
- Swimming pool manager interviews will be conducted tomorrow, March 11<sup>th</sup> at the City Office. Rachelle Birkel is scheduled at 6:00 p.m., and Mary Ann Mattingly at 6:30 p.m..
- A Housing Development meeting will be held on Monday, March 15<sup>th</sup> at 6:00 p.m., at the City Office

City Attorney Egr reported that he has secured the certificate as to title to project site, warranty deed, real estate transfer statement, partial deed of reconveyance, and title insurance

for the tract of land located in the S½ of the SW¼ of Section 17 T15N R3E of the 6<sup>th</sup> P.M., Butler County, Nebraska, being purchased from Joe L. and Marcia L. Sabata for the proposed water tower site.

Water/Sewer Supervisor Jim Kruse asked the Council if he could advertise for a Waste Water Operator. The Council stated that this was budgeted for, so yes it was OK. Kruse hopes to have someone hired by May 1, 2004. Kruse stated that the water level is about 5' - 6' below normal.

Mayor Smith scheduled a Committee of the Whole meeting for Monday, March 29, 2004, at 6:00 p.m. in the City Office meeting room.

Council member Kroesing made a motion to accept the Committee and Officers' Reports as presented. Council member Lukassen seconded the motion. Voting YEA: Council members Smith, Schatz, Lukassen, Hein, Kirby, and Kroesing. Voting NAY: None. The motion carried.

The Brahmsteadt property located at 988 E Street was discussed. City Attorney Jim Egr reported that this property was previously owned by Dennis & Jeanette Babbs who sold this on a land contract to Curtis Brahmsteadt. Babbs had a loan on the property with 1<sup>st</sup> Tier Bank, now U.S. Bank which Egr got released on February 25, 2004. Fundco paid the back taxes for 2000, 2001, and 2002, but Egr visited with them and they have released everything. The remaining problem is with City Financial, who is the biggest lending company, who want an abstract certificate before releasing anything. City Attorney Egr advised the Council not to accept any bids to clean up the asbestos from the Curtis Brahmsteadt house at this time.

Council member Hein made a motion to table consideration of the Brahmsteadt property to the April 14<sup>th</sup> council meeting. Council member Schatz seconded the motion. All of the council members were present, all voted YEA, and the motion carried.

Police Chief Sunday introduced Chere' Massey who is certified through the Lincoln Police Department. Chere' graduated from Union College in Lincoln with a Bachelor of Science Degree in Health & Human Performance, is married and her husband is an electrician working in Lincoln. If approved by the Mayor and Council, she will start work on Friday, March 12, 2004 and will go through orientation with Police Chief Sunday to start with.

Council member Schatz made a motion to appoint Chere' Massey as a police officer. Council member Lukassen seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. City Attorney Egr presented the Oath of Office as a police officer to Chere' Massey.

Council member Kirby made a motion to pass and adopt Resolution No. 9 - 2004. Council member Kroesing seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. Resolution No. 9 - 2004 was passed and adopted as follows:

**RESOLUTION NO. 9 - 2004**

WHEREAS, the City of David City has an interest in the health and welfare of the youth of the community. That the City of David City has a desire to be pro-active towards addressing the issues that can affect the health and welfare of our youth.

WHEREAS, the Mayor and Chief of Police for the City of David City are members of the Butler County Community Coalition, a non-profit organization established in part, to address youth risk and protective factors within all of Butler County, including the City of David City.

WHEREAS, the Butler County Community Coalition is seeking grant funding from the Nebraska State Incentive Cooperative Agreement (SICA). The grant funding to be used to further the efforts of the Coalition in its goal of reducing risk and increasing protective factors within the City of David City and Butler County.

WHEREAS, the Butler County Community Coalition has formed a mission for this effort, to-wit: "To develop and sustain a research-based, community-centered substance abuse prevention system in order to improve the mental and physical well-being of the youth in our county because we believe that all youth are entitled to grow up and be nurtured in a wholesome, inclusive environment so that they can reach their full potential."

THEREFORE, BE IT RESOLVED THAT the Mayor and City Council for the City of David City do hereby give their support to the Butler County Community Coalition's efforts to apply for grant funding so as to further its on-going efforts to identify and address youth risk and protective factors within the City of David City and Butler County, Nebraska.

Passed and approved this 10<sup>th</sup> day of March, 2004.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Hein made a motion to advance to agenda item #18 - Presentation of the General Audit as prepared by Scow, Rief, Kruse, & Schumacher, P.C.. Council member Kirby seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Jodi Prochaska of Scow, Rief, Kruse, & Schumacher, P.C., presented the financial statement and reported that they issued a clean opinion. Jodi stated that a reportable condition does exist

involving the internal control over financial reporting and its operation. The City has inadequate control over cash transactions which exists because there is inadequate segregation of duties due to limited personnel. This is a reportable condition for a lot of small municipalities. Jodi also reported that with the implementation of GASB 34, the look of the financial report will change drastically.

Council member Lukassen made a motion to accept the General Audit /Combined Financial Statements for the year ended September 30, 2003 together with the independent Auditors' Report as prepared by Scow, Rief, Kruse, & Schumacher, P.C.. Council member Smith seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Kroesing made a motion to accept the proposed city lease with the David City Golf Club. The changes/additions are listed in bold print. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

#### **CITY LEASE**

THIS AGREEMENT, made and entered into this 10<sup>th</sup> day of March, 2004, by and between the CITY OF DAVID CITY, NEBRASKA, of the County of Butler, State of Nebraska, hereinafter referred to as the First Party and the DAVID CITY GOLF CLUB, a Corporation, at David City, Butler County, Nebraska, hereinafter referred to as the Second Party.

WITNESSETH: that the said Party of the First Part has this day leased unto the Party of the Second Part the following described premises, to-wit:

A Tract of land in the South Half (S ½) of the Northeast Quarter (NE 1/4) of Section Thirty (30), Township Fifteen (15), North, Range Three (3), East of the 6th P.M., Butler County, Nebraska, more particularly described as follows:

Commencing at the Southeast (SE) corner of said Northeast Quarter (NE 1/4); thence, West along the south line of said Northeast Quarter (NE 1/4) to the Southwest (SW) corner of said Northeast Quarter (NE 1/4); thence, North 730.5 feet along the West side of said Northeast Quarter (NE 1/4); thence, East 984 feet on a line parallel to and 454 feet South (S) of the South side of Kansas Street; thence, South 226 feet along the East line, extended, of 7th Street; thence, East 680 feet on a line parallel to and 680 feet South (S) of the South side of Kansas Street to a point on the West line, extended of 9th Street, which point is 760 feet South (S) of the Southeast (SE) corner of Block Twelve (12), Miles Sixth Addition; thence, North 127 feet along said West side, extended, of 9th Street; thence, Northeasterly 647.5 feet to a point 159 feet South of the North (N) line of Kansas Street; thence, Easterly to a point on the East (E) section line of Section Thirty (30), which point is 161.83 feet South of the intersection of section line and the North (N) line, extended, of Kansas Street; thence, South 1010.1 feet along the East (E) line of said section Thirty (30), to the point of beginning; said tract contains 41.65 acres more or less.

For a term of one year from the 1st day of April, 2004, to the 31st day of March, 2005, for the sum of ONE (\$1.00) DOLLAR.

LESSEE agrees to execute and fulfill all State, County or City Ordinances or acts applicable to said premises for the purposes for which it is being used, and all requirements of any federal, state, county or city board of health, sanitary and police departments for the correction and prevention and abatement of nuisances in or upon or connected with said premises during the said term at Lessee's expense and said Lessee shall at all times carry the necessary insurance in order to protect the Lessor or assigns, from any claims for damages that might arise during the occupancy of said land by Lessee.

That Lessee shall not assign this agreement or sublet the premises or any part thereof or make any alteration in the premises except as may be mentioned herein, without consent of the Lessor in writing, or permit or suffer same to be occupied for any business or purpose other than that purpose for which the lease is made.

Said property shall be used as a golf course.

~~Public access to, and use of the park lakes, shall not be denied or restricted.~~

**Public access on the south side of the west lake (the lake located between Park Drive and Highway 15) shall be open all year from the island tee box to the west. The following signs will be posted:**

**"Fish at Your Own Risk"  
"Golfers have the right-of-way"**

**A "No Trespassing" sign will be posted on the Island in the west lake.**

**During "Youth" fishing events, the #7 tee box will be located closer to the fairway.**

**During October 1<sup>st</sup> through March 31<sup>st</sup> the area on the south side of the west lake, from the tee box island to the East, shall be open to the public for fishing. As previously stated the following signs will be posted:**

**"Fish at Your Own Risk"  
"Golfers have the right-of-way"**

Lessee also agrees to keep said property free and clear from all liens or encumbrances and shall return said property to Lessor upon the termination of this agreement free of any encumbrances whatsoever and in as good a condition as the premises are at this time.

Upon termination of this lease all improvements of any permanent nature, such as buildings, shrubbery, trees, et cetera, shall remain upon said property and become the property of Lessor.

As further consideration for this Lease, Lessee will purchase and pay for an adequate insurance policy for fire, extended coverage and vandalism on the clubhouse, payable to Lessor.

IN WITNESS WHEREOF, the Parties to this Agreement have hereunto set their hands in duplicate, the day and year above written.

**CITY OF DAVID CITY, NEBRASKA**

ATTEST:

Mayor Stephen Smith

City Clerk Joan E. Kovar

**DAVID CITY GOLF CLUB,**

President

Secretary - Treasurer

Roger Helgoth of Jacobson Helgoth Consultants, Inc. presented a proposal for professional engineering services to the City of David City.

February 3, 2004

Mr. Jeff Fiegenschuh  
City Administrator  
City of David City  
402 North 5<sup>th</sup> Street  
David City, Nebraska 68632

Re: Professional Engineering Services for Wastewater Reuse Feasibility Study

Dear Mr. Fiegenschuh:

Jacobson Helgoth Consultants, Inc. (JHC) is pleased to present this Proposal for professional engineering services to the City of David City, Nebraska (City). The City is interested in evaluating the feasibility of reusing effluent from the David City Wastewater Treatment Facility (WWTF) as a potential source of irrigation water for the David City Golf Course. This study will address technical feasibility, economic viability and environmental impact. The following tasks constitute our proposed Scope of Services.

**SCOPE OF SERVICES**

Task 1 - Basis of Design for Wastewater Reuse

JHC will evaluate reusing effluent from the David City WWTF as an irrigation source for the David City Golf Course.

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This task will establish the design requirements to use effluent as an irrigation supply for the David City Golf Course and establish flow and disinfection requirements for pumping from the WWTF to the golf course. Preliminary pipe route selection, pipe materials, highway crossing, or other appurtenances will be part of this task. The analysis will also address feasible locations for any control structures, if necessary.

Task 2 - Economic analysis for feasibility

This task will involve the development of cost opinions for any technically feasible alternatives. Additionally, the economic analysis will include cost evaluation for the determination of a new water reuse rate for David City. This evaluation will take into consideration capital cost, interest cost, operating and maintenance cost and other factors. The objective is to determine the best long-term value for David City rate payers.

Task 2 - Deliverables: Letter report in the form of a Design Memorandum (DM): *Feasibility of Effluent Irrigation for David City Golf Course*

Task 3 - Additional Services

Considering a feasible project is determined during the feasibility study, JHC will commence design of the water reuse project upon City authorization for a lump sum fee as an amendment to this scope of services or as an additional task order.

PERSONNEL

Roger M. Helgoth, P.E., will serve as project manager; Jeff Forney, P.E. will serve as project engineer.

SCHEDULE

JHC will initiate services immediately upon your acceptance and execution of this Proposal. Receipt of the executed Proposal will serve as Notice-To-Proceed for Tasks 1 and 2. JHC estimates that it will take approximately one week to complete Tasks 1 and 2.

COMPENSATION

JHC proposes to furnish the professional services described in the Scope of Services for a lump sum fee of \$1,650.

GENERAL PROVISIONS

JHC will initiate services upon your signing the acceptance on this Proposal and returning one copy to us. The second copy is to be retained for your records. Attached and made part of this document as if fully set forth herein are Jacobson Helgoth Consultants' GENERAL TERMS AND CONDITIONS.

We appreciate the opportunity to serve the needs of David City and look forward to continue working with you. Please contact me at 402-697-0701 if you have questions or require clarifications.

Respectfully submitted,  
JACOBSON HELGOTH CONSULTANTS, INC.  
J. Jefferson Forney, P.E.

Approved:

**Roger M. Helgoth**

Roger M. Helgoth, P.E.

The foregoing Proposal is hereby accepted:

CITY OF DAVID CITY, NEBRASKA

By:

Name: Stephen Smith

Title: Mayor

Date: March 10, 2004

March 9, 2004

Mr. Jeff Fiegenschuh  
City Administrator

Re: Professional Engineering Services for Wastewater Reuse Feasibility Study

Dear Mr. Fiegenschuh:

In JHC's original proposal we proposed to deliver the report in one week. It is our intent to complete the proposed tasks in one week from Notice-To-Proceed.

JHC will initiate services immediately upon your acceptance and execution of the Proposal. Receipt of the executed Proposal will serve as Notice-To-Proceed for Tasks 1 and 2. JHC will complete Tasks 1 and 2 within one week after receiving Notice-To-Proceed.

We appreciate the opportunity to serve the needs of David City and look forward to continue working with you. Please contact me at 697-0701 if you have questions or require clarifications.

Respectfully submitted,

Jacobson Helgoth Consultants, Inc.  
J. Jefferson Forney, P.E.

Council member Schatz made a motion to enter into an agreement with Jacobson Helgoth to conduct a feasibility study to determine if David City can pipe recycled water to the golf course and city park. Council member Lukassen seconded the motion. Voting YEA: Council members Hein, Lukassen, and Schatz. Voting NAY: Council members Smith, Kirby, and Kroesing. The result was a tie vote. Mayor Smith stated that he preferred to see the installation of a well, but would vote YEA so that a feasibility study may be conducted. Mayor Smith broke the tie, voted YEA, and the motion carried.

Mayor Smith declared a ten minute recess at 8:15 a.m.. The meeting reconvened at 8:25 p.m..

Bill Voboril, was present to discuss David City providing water to Bruno. City Administrator Jeff Fiegenschuh reported that the Village Board of Bruno met and decided to proceed with its' water project and that they want to purchase water from David City. The LPNDRD is going to assume the \$165,000 loan from the USDA. This means that Bruno will not have any capital costs associated with this project. This also means that within the next two months David City can receive its \$65,000 check from USDA for Bruno's share of the water tower. The agreement the City had previously signed and approved was reviewed. Council member Hein questioned since the agenda stated "Reconsideration of selling water to Bruno" instead of a "Review of selling water to Bruno" if a vote was needed. City Attorney Egr stated there was not a problem with the agenda listing and a vote was not necessary.

Council Kirby made a motion to approve the Citizen Participation Plan for the CDBG application for street funds. Council member Lukassen seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.



**EXHIBIT C**

**Citizen Participation Plan**  
David City, Nebraska

**A. Participation by Citizens**

All citizens, including low and moderate income citizens, shall be requested and encouraged to participate in the assessment of community issues, problems and needs, the identification of potential solutions, and priority to such issues, problems and needs, as follows:

1. All citizens shall be periodically requested to complete a community needs survey to identify community and neighborhood issues, problems and needs.
2. All citizens shall be notified by publication and posting of all meetings to discuss the identified needs, potential solutions and solution priorities.
3. All citizens, particularly low and moderate-income citizens, shall be afforded the opportunity to serve on the various community improvement task forces established by the City Council.

**B. Access to Meetings, Information and Records**

Notice of public meetings conducted by the City Council and Planning Commission shall be published and posted not later than six (6) days prior to such meetings.

Agendas of all such meetings shall be available at the City Clerk's Office for public inspection.

All meetings where CDBG projects or applications are to be discussed shall be published and posted at least six (6) days prior to such meetings and all information and records concerning such CDBG projects or applications shall be available for public inspection at the Office of the City Clerk.

All meetings will be held at City Office which is accessible to the handicapped.

**C. Specific CDBG Project Information**

All citizens shall be provided with information regarding specific CDBG projects through public meetings and publication of notices which provide all pertinent information regarding any CDBG project including, but not limited to, the following:

1. The amount of CDBG funds expected to be made available to the City for the current fiscal year, including CDBG funds and anticipated program income;
2. The specific range of activities that may be undertaken with CDBG funds;
3. The estimated amount of CDBG funds to be used for activities that will meet the national objective of benefit to low and moderate income persons, and;
4. A description of any proposed CDBG funded activities which are likely to result in displacement of persons along with the City's anti-displacement and relocation plans.

**D. Provisions for Technical Assistance to Citizens**

The City Clerk shall maintain current information of available resources for community improvement efforts and CDBG programs available and provide such information upon request by any citizen or group representing any citizen or group of citizens and the City Clerk shall provide assistance in developing proposals to address issues, problems and needs identified by such citizen or citizens.

**E. Public Hearing on CDBG Activities**

The City shall cause a minimum of two (2) public hearings to be conducted with regard to any CDBG application. One such hearing shall be conducted at the initiation of any such application and a second public hearing shall be held near the completion of any CDBG funded activity to obtain citizen input, comments or opinions with regard to such application(s) and with regard to program or project performance.

The City Clerk shall act as the contact person for all questions, comments or concerns expressed by any citizen with regard to any CDBG program or project and shall forward any such questions, comments or concerns to the City Council at the next regular meeting of the City Council immediately following expression of such questions, comments or concerns. The City Clerk shall also be responsible for transmitting the City Council's response to any such question, comment or concerns to the citizen or citizens expressing the same.

**F. Needs of Non-English Speaking Citizens**

Although it is not anticipated that non-English speaking persons will participate in the citizen participation process, the City Clerk shall make arrangements for oral or written translation of information regarding any CDBG program, application or project upon request by such Non-English speaking persons or representatives of such persons.

**G. Compliance/Grievance Procedures**

The City Clerk shall post a notice at the City Office which provides name, telephone number, address and office hours of the City Clerk for citizens who wish to file a complaint or grievance regarding any CDBG program, project or application.

Individuals wishing to submit a complaint or file a grievance concerning activities of or application for CDBG funds may submit a written complaint or grievance to the City Clerk.

The City Clerk shall present such complaint or grievance to the City Council at the next regular meeting of the City Council, where it shall be reviewed by the Council members. The individual submitting such complaint or grievance shall be notified of such meeting and shall be given the opportunity to make further comments at such meeting. The City Council shall issue a written response to any complaint or grievance within five (5) working days following the meeting at which a response is formulated. Such response shall be mailed to the individual citizen(s) submitting the complaint or grievance by the City Clerk to the last known address of said citizen(s).

In the event the nature of the complaint or grievance is determined to be a matter requiring immediate action, a special meeting of the City Council shall be called to review the matter within ten (10) working days of receipt of such complaint or grievance.

**H. Adoption**

This Citizen Participation Plan is hereby adopted by action of the City Council of the City of David City, Nebraska.

Stephen Smith, Mayor

Attest: Joan E. Kovar, City Clerk

Council member Kirby made a motion to approve the residential anti-displacement and relocation assistance plan for the CDBG application for Street Funds. Council member Smith seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

**EXHIBIT D**

**RESIDENTIAL ANTI-DISPLACEMENT AND  
RELOCATION ASSISTANCE PLAN**

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The City of David City, Nebraska will replace all occupied and vacant occupiable low/moderate income dwelling units demolished or converted to a use other than as low/moderate -income housing as a direct result of activities assisted with Community Development Block Grant (CDBG) funds provided under the Housing and Community Development Act of 1974, as amended.

All replacement housing will be provided within three years of the commencement of the demolition or rehabilitation relating to conversion. Before obligating or expending funds that will directly result in such demolition or conversion, the City of David City, Nebraska, will make public and submit to DED the following information in writing:

1. A description of the proposed assisted activity;
2. The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than as low/moderate-income dwelling units as a direct result of the assisted activity;
3. A time schedule for the commencement and completion of the demolition or conversion;
4. The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units;
5. The source of funding and a time schedule for the provision of replacement dwelling units; and
6. The basis for concluding that each replacement dwelling unit will remain a low/moderate-income dwelling unit for at least 10 years from the date of initial occupancy.

The City of David City, Nebraska will provide relocation assistance, according to either the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (49 CFR Part 24) or 24 CFR 570.496a(c) to each low/moderate-income family displaced by the demolition of housing or by the conversion of a low/moderate-income dwelling to another use as a direct result of assisted activities.

Consistent with the goals and objectives of activities assisted under the CDBG program, the City of David City, Nebraska will take the following steps to minimize the displacement of persons from their homes:

1. Maintain current data on the occupancy of houses in areas targeted for CDBG assistance.
2. Review all activities prior to implementation to determine the effect, if any, on occupied residential properties.
3. Include consideration of alternate solutions when it appears an assisted project will cause displacement, if implemented.
4. Require private individuals and businesses to consider other alternatives to displacement causing activities, if they are requesting CDBG assistance.

Signed:

Title: Mayor Stephen Smith

Date: March 10, 2004

Subscribed in my presence and sworn to before me.

Notary Public (Not required if on letterhead)

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The following letters were received concerning paving improvements:

*March 1, 2004*

*RE: Bond Issuance and Underwriting for Street Improvements*

*You have advised us that the City of David City has been engaged in identifying areas of the City, which would qualify for Community Development Block Grant Funds (CDBG) for street improvement projects. My understanding is that based on income levels of residents, certain areas of the City would qualify for CDBG funds to pay that portion of improvement project costs which would customarily fall upon the benefitting abutting properties. The City would utilize the appropriate legal authority through a street improvement district, or districts, to create the project area, let bids and contract for the construction of improvements and issue notes and/or bonds to finance that portion of the total project costs which would typically constitute the general obligation portion of a street project.*

*We are additionally advised that the City might expect to borrow around \$300,000 to pay the City's general obligation costs for intersection improvements, storm drainage, improvements abutting City property and other costs normally considered a general obligation expense.*

*Given the financial posture of the City of David City and the City's flexibility in financing the proposed street improvements, we would be able to promptly provide needed financing in an amount of not less*

than \$300,000, representing the City's estimated needed locally provided portion of funds for the proposed improvements. Further, if necessary, short-term bond or grant anticipation note financing is available if needed to expedite the City's projects.

The City would need to retain engineering services, would need to create districts or projects if appropriate and follow statutory authority in order for us to obtain a qualified approving opinion as to the financing from a bond attorney acceptable to us. In the absence of creating a series of street improvement districts, the City would, it would appear to me, be able to use the mechanism of Highway Allocation Pledge Fund bonds or notes. Once the legal authority for a borrowing is in place, we can deliver funds in about a 30-day time frame, to allow for the initiative referendum period.

Sincerely,  
Philip Lorenzen, First Vice President  
Kirkpatrick, Pettis, Smith, Polian Inc.

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March 4, 2004

Proposed CDBG Paving Improvements - David City, Nebraska

At the City's request, we conducted a field observation of the streets you had listed for the above-referenced project. According to Jim McDonald, Street Superintendent, the existing street surfacing is either a 2 or 2.5 inch asphalt surface which was placed in the early 1990's, or simply years of armor coat build-up.

Many of the blocks of paving do not have curb and gutter or storm sewers, thus, drainage is poor. When we conducted the site visit we could see the edges pumping under the traffic loads that were passing. This is causing the edges of the streets to break up and allowing more moisture to get under the asphalt surfacing. This results in reduced stability of the subgrade. The city is currently spending a considerable amount of time and money tarring cracks and fixing portions of the streets which, in my opinion, have reached their useful life expectancy. Our recommendation for repairing these streets is to mill the existing surface, construct any drainage system that may be required, overexcavate and recompact the subgrade, construct a curb and gutter section, and then place asphalt surfacing.

Some of the blocks have existing curb and gutter and are also experiencing spalling and breaking up of the existing asphalt surfacing. Most of the breakup is occurring near the existing curb and gutter sections. This is a major concern because if it continues, moisture will continue to seep through the cracks and begin to cut under the curb and gutter causing it to tip or to drop, thus, ruining the designed drainage pattern. Our recommendation for the repair of these streets is to mill the existing surface; scarify, overexcavate, and recompact the subgrade; core out and fill any areas that are soft or yielding; and then place asphalt surfacing.

The estimated costs for the above-referenced work are:

Estimated Construction Cost.....	\$ 825,000
Contingencies .....	75,000
Engineering 80,000	
Project Observation.....	20,000
TOTAL ESTIMATED PROJECT COSTS.....	\$1,000,000

If you need any further assistance or have any questions, please contact our office.

Sincerely,  
John A. Zwingman, P.E.  
Gilmore and Associates, Inc.

Council member Kirby made a motion to pass and adopt Resolution No. 10 - 2004. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. Resolution No. 10 - 2004 was passed and adopted as follows:

**RESOLUTION NO. 10 - 2004**

WHEREAS, the City of David City, Nebraska, is an eligible unit of general local government authorized to file an application under the Housing and Community Development Act of 1974 as amended for Small Cities Community Development Block Grant Program, and,

WHEREAS, the City of David City, Nebraska, has obtained its citizens' comments on community development and housing needs; and has conducted public hearing(s) upon the proposed application and received favorable public comment respecting the application which for an amount of \$325,000 for a street improvement project; and,

NOW, THEREFORE, BE IT RESOLVED BY the City Council of David City, Nebraska, that the Mayor be authorized and directed to proceed with the formulation of any and all contracts, documents or memoranda between David City, Nebraska and the Nebraska Department of Economic Development so as to effect acceptance of the grant application.

Passed and approved this 10<sup>th</sup> day of March, 2004.

Mayor Stephen Smith

City Clerk Joan E. Kovar

The City received a request from Father Brian Connor of Aquinas High School, asking that the penalty charges of \$242.95 on the Aquinas High School/St. Mary's School utility bills be waived. Father Connor explained that he offered to take the utility payment and deliver it on February 10<sup>th</sup>, however, he placed it in the payment drop-box for Butler County Public Power instead of the payment drop box for David City Utilities. Therefore, David City Utilities did not receive the payment until February 11, 2004, and the bill was delinquent. This had been discussed during the Committee of the Whole meeting, however Council Hein was absent and asked that it be reconsidered. Hein felt that Father Connor made an honest mistake and the penalty should be waived. Discussion followed in which the majority of the Council felt that Father Connor took the responsibility to deliver the payment, and he should have made sure he knew where the payment belonged. This was not a case of the postal service making an error. Council member Hein made a motion to waive the penalty charges for missing the February 10<sup>th</sup> deadline for the Aquinas/St. Mary's utility bills. The motion died for lack of a second.

Council member Kroesing introduced Ordinance No. 970. Council member Smith made a

motion to pass Ordinance No. 970 on the first reading only. Council member Kirby seconded the motion. Discussion followed.

Council member Schatz referenced §4-202: DISEASE; MEDICAL ATTENTION REQUIRED - that states "It shall be unlawful for the parent, guardian, or other person responsible for any child to fail or neglect to secure proper medical treatment for the said child when he/she is afflicted with a contagious or infectious disease." Schatz stated that some religions object to medical intervention and made a motion to strike this paragraph due to religious exceptions. The motion died for lack of a second.

Council member Smith referenced Article 4 - Nuisances, §4-401: NUISANCE; SPECIFICALLY DEFINED and made a motion to delete #11 "All articles, including tires, that may retain water and aide in mosquito breeding, which could prove to be a hazard for the west nile virus." Smith stated that there are several businesses that have stored tires waiting for pick-up. During discussion it was noted that this is complaint driven from a residential district. The motion died for lack of a second.

Council member Schatz suggested that in the fourth paragraph under **§4-601 GARBAGE COLLECTORS; LICENSE**, the wording "shall" be changed to "may". The council agreed and the change was made.

Voting YEA to the original motion to pass Ordinance No. 970 on the first reading: Council members Schatz, Hein, Lukassen, Kroesing, Kirby, and Smith. The motion carried. Council member Schatz asked that the Council reconsider paragraph 4-202 due to religious exceptions prior to the next passage. Copies of this ordinance are to be mailed to garbage collectors for their review. Ordinance No. 970 was passed on the first reading as follows:

**ORDINANCE NO.**

**970**

AN ORDINANCE AMENDING CHAPTER 4: HEALTH AND SANITATION OF THE DAVID CITY MUNICIPAL CODE BOOK; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA:

Section 1. Chapter 4: Health and Sanitation of the David City Municipal Code Book be amended to read as follows:

**Chapter 4  
HEALTH AND SANITATION  
Article 1. General Provisions**

**§4-101 HEALTH; REGULATIONS.** For purpose of promoting the health and safety of the

residents of the Municipality, the Board of Health shall, from time to time, adopt such rules and regulations relative thereto and shall make such inspections, prescribe such penalties, and make such reports as may be necessary toward that purpose. (*Ref. 17-121 RS Neb.*)

**§4-102** **HEALTH; ENFORCEMENT OFFICIAL.** The Municipal Police Chief, as the Quarantine Officer, shall be the chief health officer of the Municipality. It shall be his duty to notify the Governing Body and the Board of Health of health nuisances and of every case of contagious, infectious, or malignant disease.

**§4-103** **HEALTH; STATE RULES.** The "Rules and Regulations Relating to Public Health," Department of Health of the State of Nebraska are hereby incorporated by reference when the same are applicable to the Municipality, in their present form and as they may hereafter be amended. Three (3) copies of the said pamphlet are filed at the office of the Municipal Clerk and shall be available for public inspection at any reasonable time. (*Ref. 18-132 RS Neb.*)

#### **Article 2. Contagious Disease**

**§4-201** **DISEASE; SPREADING CONTAGION.** It shall be unlawful for any person to spread disease willfully or negligently, or to cause the spread of the same.

**§4-202** **DISEASE; MEDICAL ATTENTION REQUIRED.** It shall be unlawful for the parent, guardian, or other person responsible for any child to fail or neglect to secure proper medical treatment for the said child when he/she is afflicted with a contagious or infectious disease.

#### **Article 3. Garbage Disposal**

**§4-301** **GARBAGE; DEFINED.** The term "garbage" as used herein shall be defined to mean kitchen refuse, decayed waste, dead animals, or anything that may decompose and become offensive to the public health.

**§4-302** **RUBBISH; DEFINED.** The terms "rubbish" or "trash" as used herein shall be defined as discarded machinery, chips, pieces of wood, sticks, dead trees, branches, bottles, broken glass, crockery, tin cans, boxes, papers, rags, or any other litter or debris that is not an immediate hazard to the health of the residents of the Municipality.

**§4-303** **WASTE; DEFINED.** The term "waste" as herein defined shall mean cinders, ashes, plaster, brick, stone, sawdust, or sand.

**§4-304** **GARBAGE, TRASH, AND WASTE.** It shall be unlawful for any person to keep in, on, or about any dwelling, building, or premise, or any other place in the Municipality, decayed vegetable or animal substance, garbage, or refuse matter of any kind that may be injurious to the public health or offensive to the resident of the Municipality unless the



same is kept in receptacles not exceeding a thirty (30) gallon capacity and as nearly air-tight as may be practical. It shall be unlawful to throw or sweep into the streets, alleys, parks, or other public grounds any dirt, paper, nails, pieces of glass, refuse, waste, or rubbish of any kind. No person may permit garbage, rubbish, waste, or refuse to collect and all persons shall remove the same from their property within twenty-four (24) hours after being notified to do so by the Municipal Police Chief who shall represent the Board of Health. Any person having garbage, rubbish, waste, or refuse that is subject to decay or fermentation within a short period of time shall be required to place the same in a standard garbage can with a tight cover, or a durable plastic container that is securely tied at its opening.

#### **Article 4. Nuisances**

**§4-401** **NUISANCE; SPECIFICALLY DEFINED.** The maintaining, using, placing, depositing, leaving, or permitting of any of the following specific acts, omissions, places, conditions, and things are hereby declared to be nuisances:

1. Any odorous, putrid, unsound or unwholesome grain, meat, hides, skins, feathers, vegetable matter, or the whole or any part of any dead animal, fish, or fowl.
2. Privies, vaults, cesspools, dumps, pits or like places which are not securely protected from flies or rats, or which are foul or malodorous.
3. Filthy, littered or trash-covered cellars, house yards, barnyards, stable-yards, factory-yards, mill yards, vacant areas in rear of stores, granaries, vacant lots, houses, buildings, or premises.
4. Animal manure in any quantity which is not securely protected from flies and the elements, or which is kept or handled in violation of any ordinance of the municipality.
5. Liquid household waste, human excreta, garbage, butcher's trimmings and offal, parts of fish or any waste vegetable or animal matter in any quantity; Provided, nothing herein contained shall prevent the temporary retention of waste in receptacles in a manner provided by the health officer of the Municipality, nor the dumping of non-putrefying waste in a place and manner approved by the health officer.
6. Tin cans, bottles, glass, cans, ashes, small pieces of scrap iron, wire metal articles, bric-a-brac, broken stone or cement, broken crockery, broken glass, broken plaster, and all trash or abandoned material, unless the same be kept in covered bins or galvanized iron receptacles.
7. Trash, litter, rags, accumulations of barrels, boxes, crates, packing crates, mattresses, bedding, excelsior, packing hay, straw or other packing material, lumber not neatly piled, scrap iron, tin or other metal not neatly piled, old automobiles or parts thereof, or any other waste materials when any of said articles or materials create a condition in which flies or rats may breed or multiply, or which may be a fire danger or which are so unsightly as to depreciate property values in the vicinity thereof.
8. Any unsightly building, billboard, or other structure, or any old, abandoned or partially destroyed building or structure or any building or structure commenced and left unfinished, which said buildings, billboards or other structures are either a fire hazard, a menace to the public health or safety, or are so unsightly as to depreciate the value of property in the vicinity thereof.
9. All places used or maintained as junk yards, or dumping grounds, or for the

wrecking and dissembling of automobiles, trucks, tractors, or machinery of any kind, or for the storing or leaving of worn-out, wrecked or abandoned automobiles, trucks, tractors, or machinery of any kind, or of any of the parts thereof, or for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons, which said places are kept or maintained so as to essentially interfere with the comfortable enjoyment of life or property by others, or which are so unsightly as to tend to depreciate property values in the vicinity thereof.

10. Stagnant water permitted or maintained on any lot or piece of ground.
11. All articles, including tires, that may retain water and aide in mosquito breeding, which could prove to be a hazard for the west Nile virus.
12. Stock yards, granaries, mills, pig pens, cattle pens, chicken pens or any other place, building or enclosure, in which animals or fowls of any kind are confined or on which are stored tankage or any other animal or vegetable matter, or on which any animal or vegetable matter including grain is being processed, when said places in which said animals are confined, or said premises on which said vegetable or animal matter is located, are maintained and kept in such a manner that foul and noxious odors are permitted to emanate therefrom, to the annoyance of inhabitants of the Municipality, or are maintained and kept in such a manner as to be injurious to the public health.
13. All other things specifically designated as nuisances elsewhere in this Code.  
(*Ref. 17-207, 18-1720 RS Neb.*)

**§4-402** **NUISANCES; ABATEMENT PROCEDURE.** It shall be the duty of every owner, occupant, lessee, or mortgage of real estate in the Municipality to keep such real estate free of public nuisances. Upon determination by the Board of Health that said owner, occupant, lessee, or mortgagee has failed to keep such real estate free of public nuisances, the Governing Body shall thereupon cause notice to be served upon the owner occupant, lessee, mortgagee or agent thereof, by publication and by certified mail. Such notice shall describe the condition as found by the Board of Health and state that said condition has been declared a public nuisance, and that the condition must be remedied at once. If the person receiving the notice has not complied therewith or taken an appeal from the determination of the Board of Health within five (5) days after receipt of certified mail or within five (5) days after date of publication whichever is later, the Board of Health shall notify the Governing Body of such noncompliance and the Governing Body shall, upon receipt of such notice, cause a hearing date to be fixed and notice thereof to be served upon the owner, occupant, lessee, or mortgagee, or agent of the real estate. Such notice of hearing shall be by personal service or certified mail and require such party or parties to appear before the Governing Body to show cause why such condition should not be found to be a public nuisance and remedied. A return of service shall be required by the Governing Body. Such notice shall be given not less than five (5) days prior to the time of hearing, provided that whenever the owner, lessee, occupant, or mortgagee of such real estate is a non-resident or cannot be found in the State, then the Municipal Clerk shall publish, in a newspaper of general circulation in the Municipality, such notice of hearing for two (2) consecutive weeks, the last publication to be at least one (1) week prior to the date set for the hearing. Upon the date fixed for the hearing and pursuant to notice, the Governing Body shall hear all objections made by interested parties and shall hear evidence submitted by the Board of Health. If after consideration of all of the evidence, the Governing Body shall find that the said condition is a public nuisance, it shall, by resolution, order and direct the owner, occupant, lessee, or mortgagee to remedy the said public nuisance at once; Provided, the party or parties

may appeal such decision to the appropriate court for adjudication, during which proceedings the decision of the Governing Body shall be stayed. Should the owner or occupant refuse or neglect to promptly comply with the order of the Governing Body, the Governing Body shall proceed to cause the abatement of the described public nuisance.

Upon completion of the work by the Municipality, a statement of the cost of such work shall be transmitted to the Governing Body, which is authorized to bill the property owner or occupant, or to levy the cost as a special assessment against the land. Such special assessment shall be a lien on the real estate and shall be collected in the manner provided for special assessments. (*Ref. 17-123.01, 17-207, 18-1720 RS Neb.*) (*Ord. No. 523, 4/28/76*)

- §4-403** **NUISANCES; JURISDICTION.** The Mayor and Chief of Police of the Municipality are directed to enforce this Municipal Code against all nuisances. The jurisdiction of the Mayor, Chief of Police, and court shall extend to, and the territorial application of this Chapter shall include, all territory adjacent to the limits of the Municipality within two (2) miles thereof and all territory within the corporate limits. (*Ref. 18-1720 RS Neb.*)

#### **Article 5. Garbage and Refuse Collection**

- §4-501** **GARBAGE AND REFUSE COLLECTION; AUTHORITY.** The governing body for the city may provide for the collection and removal of garbage or refuse found upon any lot or land within its corporate roads, or alleys abutting such lot or land which constitutes a public nuisance. The city may require the owner, duly authorized agent, or tenant of such lot or land to remove the garbage or refuse from such lot or land and streets, roads, or alleys. (*Ref. 16-230, 16-231, 16-246, 16-901, 18-1303 R.S. Neb.*)

- §4-502** **GARBAGE AND REFUSE COLLECTION; NOTICE; REMOVAL.** Notice that removal of garbage or refuse is necessary shall be given to each owner or owner's duly authorized agent and to the tenant if any. Such notice shall be provided by personal service or by certified mail. After providing such notice, the city through its proper offices shall, in addition to other proper remedies, remove the garbage or refuse, or cause it to be removed, from such lot or land and streets, roads, or alleys. (*Ref. 16-230, 16-231, 16-246, 16-901, 18-1303 R.S. Neb.*)

- §4-503** **GARBAGE AND REFUSE COLLECTION; NUISANCE.** If the Mayor declares that the accumulation of such garbage or refuse upon any lot or land constitutes an immediate nuisance and hazard to public health and safety, the city shall remove the garbage or refuse, or cause it to be removed, from such lot or land within forty-eight hours after notice by personal service or following receipt of a certified letter in accordance with section 4-502 if such garbage or refuse has not been removed. (*Ref 16-230, 16-231, 16-246, 16-901, 18-1303 R.S. Neb.*)

- §4-504** **GARBAGE AND REFUSE COLLECTION; LIEN.** Whenever a city removes any garbage or refuse, or causes it to be removed, from any lot or land pursuant to this article, it shall, after a hearing conducted by the governing board, assess the cost of the removal against such lot or land. (*Ref 16-230, 16-231, 16-246, 16-901, 18-1303 R.S. Neb.*)

#### **Article 6. Garbage Collectors**

**§4-601** **GARBAGE COLLECTORS; LICENSE.** *It shall be unlawful for any persons, corporations or other legal entities to collect, haul or convey wastes, refuse, garbage, rubbish, junk, hazardous waste, or solid waste (as those terms are defined under the laws of the State of Nebraska) for hire within the incorporated area of the City without first having procured a license to do so.*

*Application for a license to collect, haul or convey wastes, refuse, garbage, rubbish, junk, hazardous waste or solid waste for hire shall be made to the City Clerk upon blanks furnished by the City Clerk. Said application blanks shall set forth the name and residence of the applicant, the business address of the applicant, the ownership of the vehicle or vehicles to be used, the number and kinds of vehicles to be used, with a definite description of each such vehicle and such other information as may be required to satisfactorily identify the applicant and vehicles. The applicant shall pay to the City Clerk the required licensed fee as hereinafter provided. Before any license shall be issued, the applicant shall execute and file with the City Clerk a bond in the sum of one thousand dollars (\$1,000.00) with one (1) or more sufficient sureties thereon to be approved by the City Council, conditioned that said applicant shall indemnify and save harmless the City from any damage or injury due to or on account of the act, neglect, fault or default of such applicant and conditioned further that such applicant shall comply with all ordinances or regulations of the City and State of Nebraska respecting the collecting, hauling or conveying of wastes, refuse, garbage, rubbish, junk, hazardous waste or solid waste.*

*It shall be unlawful for any persons, corporations, or other legal entities licensed under this section, or any other persons, to haul or convey any solid waste generated within the corporate limits of the City to any facility or system (as those terms are defined under State law) with which the City, either alone or in combination with other cities, villages or counties, has not contracted for the safe and sanitary disposal of solid waste generated within the City's jurisdiction area.*

*All persons, corporations, or other legal entities licensed under this section shall may provide, in addition to services regarding the collection, hauling, and conveying of solid waste, assistance in providing services for curb side pick-up of recyclable materials, yard waste, and discarded appliances.*

*All persons, corporations, or legal entities licensed under this section shall cooperate with their customers within the City in finding outside sources for the collection, hauling, conveying and disposal of hazardous waste generated within the corporate limits of the City.*

**§4-602** **GARBAGE COLLECTORS; LICENSE FEE.** *An annual license fee of \$50.00 shall be charged for each licensed hauler within the City. All license fees shall be due and payable on \_\_\_\_\_ 1<sup>st</sup> of each year and shall expire on \_\_\_\_\_.*

**§4-603** **GARBAGE COLLECTORS; COLLECTION.** *It shall be unlawful for any licensed person to collect, haul or convey refuse and garbage, except during the hours of six o'clock (6:00) a.m. and nine o'clock (9:00) p.m. during the day on Monday through Saturday of the week. The restriction as to hours herein provided shall not apply in and to the area of the Business District. The City Council by resolution may change or alter such time and days of collection. Provided, that in the event of an emergency requiring the removal of refuse or garbage, the Street Commissioner may issue a special permit for*

*such purpose, which permit shall state the period of time during which such hauling may be done and the date of expiration of such special permit.*

### Article 7. Penal Provisions

**§4-701** **VIOLATION; PENALTY.** Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this Chapter, set forth at full length herein or incorporated by reference shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not more than one hundred (\$100.00) dollars for each offense. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply.

**§4-702** **ABATEMENT OF NUISANCE.** Whenever a nuisance exists as defined in this Chapter, the Municipality may proceed by a suit in equity to enjoin and abate the same, in the manner provided by law.

Whenever, in any action, it is established that a nuisance exists, the court may together with the fine or penalty imposed, enter an order of abatement as a part of the judgement in the case. (*Ref. 18-1720, 18-1722 RS Neb.*)

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Section 2. Any other ordinance or section passed and approved prior to passage, approval, and publication or posting of this ordinance and in conflict with its provisions is repealed.

Section 3. This ordinance shall be published in pamphlet form and shall be in full force and effect from and after its passage as provided by law.

Passed and approved this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Seal)

(Passed on 1st reading only 3/10/04)  
Mayor Stephen Smith

(Passed on 1st reading only 3/10/04)  
City Clerk Joan E. Kovar

Council member Schatz made a motion to appoint Bill Magargal as an alternate member of the Board of Zoning Adjustment. Council member Lukassen seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

There being no further business to come before the Council, Council member Hein made a motion to adjourn. Council member Kroesing seconded the motion. Voting YEA: Council members Lukassen, Kirby, Schatz, Smith, Hein, and Kroesing. The motion carried and Mayor Smith declared the meeting adjourned at 9:47 p.m..

Mayor Stephen Smith

City Clerk Joan E. Kovar



CERTIFICATION OF MINUTES  
March 10, 2004

I, Joan E. Kovar, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of March 10, 2004; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

Joan E. Kovar