

CITY COUNCIL PROCEEDINGS

June 12, 2002

The Mayor and 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 June 6, 2002, 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 Mark Kirby, Ted Lukassen, Bill Schatz, Gary Smith, and Nick Hein, City Attorney Jim Egr, Police Chief Stephen Sunday, Electric Supervisor Tim Kovar, Line Foreman Pat Hoeft, and City Clerk Joan E. Kovar. Council member Gary Kroesing and City Administrator Andrew Brannen were absent.

The minutes of the May 8th and May 20th, 2002, meetings of the Mayor and City Council were approved upon a motion by Council member Kirby and seconded by Council member Hein. Voting YEA: Council members Smith, Schatz, Lukassen, Kirby, and Hein. Voting NAY: None. Council member Kroesing was absent. The motion carried.

Stephen Smith asked for Petitions, Communications and Citizens' Concerns in addition to those contained in the Agenda packets. There were none.

Mayor Smith asked for consideration of claims. Council member Hein made a motion to authorize the payment of claims. Council member Lukassen seconded the motion. Council member Hein stated he wants the claims to be more detailed. When he looked at a specific claim he didn't know what it was for until he turned to the next pages to determine it was for meals, mileage, etc.. Voting YEA: Council members Schatz, Hein, Kirby, Lukassen, and Smith. Voting NAY: None. Council member Kroesing was absent. The motion carried.

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

Electric Supervisor Tim Kovar and Line Foreman Pat Hoeft reported that they have been testing trencher/vibrator combination plows from Ditch Witch of Omaha, and Vermeer Equipment of Nebraska, and will soon be ready to advertise for bids.

Council member Kirby, an employee of Butler Public Power thanked Electric Supervisor Tim Kovar and linemen Tim Kozisek and Mick Shipley for their help in Malmo, Nebraska, on Tuesday, June 11, following the storm.

In Police Chief Sunday's report he noted that an individual suffering from a mental health issue (Huisman), living at 457 7th Street, has goats living in her house. The goats supposedly provide therapeutic comfort. The Council instructed Sunday to advise her that City Code 6-206 states: It shall be unlawful for the owner, keeper, or harbinger of any livestock, namely cows, horses, sheep, goats, swine or mules, to keep such livestock within the corporate limits of the City of David City. The goats have to go.

The following letter was received from Hildy Construction:

Mr. Andrew Brannen, City Administrator
City of David City
P.O. Box 191
David City, NE 68632

May 24, 2002

Re: Construction of David City School District's Building Project

Dear Mr. Brannen

I am writing concerning the recent events that have disrupted the construction of David City School District's Building project. As you know, Hildy Construction worked hard to put together a design-build proposal that met the needs of the School District, including the appropriate budget, completion date and type of facility. Upon execution of our contract with the School District, Hildy Construction quickly began preparing for construction to meet the necessary completion schedule. As part of that process, we obtained the necessary building permit from the City and commenced construction. Hildy Construction then proceeded to set the footings and prepared to pour the foundation on February 27, 2002, when the City Administrator told us that we must stop construction because the City had inappropriately granted the building permit for the Project. Needless to say, we were somewhat surprised by the City's actions since we had already undertaken a significant amount of construction work based upon our contract and the building permit which had been issued to Hildy Construction.

Obviously, the disruption caused by the City's interference, including the pulling of the previously granted building permit, has significantly affected our schedule and placed in jeopardy our completion of the project by the currently-scheduled completion date. As I am sure you are aware, the City's actions required Hildy Construction to request an emergency meeting of the City Planning Commission, as well as to incur additional acceleration costs in order to complete the project by the scheduled completion date. In fact, many of the costs incurred by Hildy Construction are attributable to rental of equipment and labor that Hildy Construction has obtained to meet the currently-scheduled completion date. Not to mention the fees obtained from the City of David City for calling appropriate meetings caused by the City's failure to comply with its own guidelines. As of the date of writing this letter, Hildy Construction has incurred additional acceleration costs of \$14,210 that have been expended in an effort to remedy the City's interference with our construction of the project and to construct the building in the time frame required by Hildy Construction's contract. Of course, this amount does not include all amounts that will be expended in the future in order to timely complete the building. Hildy Construction will promptly submit its total claim upon final ascertainment of this amount with such certainty.

Hildy Construction is still looking forward to completing its work and regrets the fact that the City did not determine there was a problem with the zoning until after we had already obtained a building permit from the City and started construction in reliance upon the City's actions. As we stated before, Hildy Construction will do everything it can to work with the City to expedite the resolution of this issue and to complete construction in a timely fashion. As more information is obtained, we will certainly let you know. In the meantime, please consider this Hildy Construction's formal request for the acceleration costs incurred to date of \$14,210, as well as its formal notice that additional acceleration costs will be expended from the date of this letter to completion of the project in order to comply with the anticipated schedule. As I am sure you are aware, this demand involves only those costs attributable to the City's interference with our contract.

If you need additional information concerning these claims and expenses, please do not hesitate to contact me at the address and telephone number listed below. Thank you for your prompt consideration of these matters.

Yours truly,
Hildy Construction
Ryan and Bryan Hilderbrand

City Attorney Jim Egr advised the Council that there is a formal process for filing a claim against the city and this letter does not meet those requirements. Egr said to file this.

Mayor Smith stated that at the end of the meeting the Council could go into executive session to discuss the pay survey. Council member Schatz questioned this stating that the Council was not in arbitration so why go into executive session to discuss the salary survey. Council Hein stated he would rather touch on the subject in executive session. Mayor Smith stated that pay is a touchy subject and better discussed in executive session.

Mayor Smith questioned if the Council would like a special council meeting on Wednesday, June 26, to make a decision on the salary survey.

Council member Hein made a motion to schedule a special council meeting for Wednesday, June 26, at 5:30 p.m., with the Committee of the Whole meeting immediately following. Council member Smith seconded the motion. Voting YEA: Council members Lukassen, Kirby, Smith, and Hein. Voting NAY: Council member Schatz. Council member Kroesing was absent. The motion carried.

Council member Schatz noted that Water/Sewer Supervisor Gene Divis's report stated that the contractor broke off a hydrant by the boring job and lost about 100,000 gallons of water. Schatz questioned if the City was reimbursed for this water. Divis was not present for the meeting but this will be researched.

Council member Schatz attended an Aquatic Restoration Project meeting which discussed drainage on the North edge of town. They toured the drainage area. Schatz stated that this project has a lot of potential and the city shouldn't shelve it just because the County isn't on board yet.

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

Council member Lukassen introduced Resolution No. 14 - 2002 and moved for its passage and adoption. Council member Hein seconded the motion. Voting YEA: Council members Smith, Schatz, Lukassen, Kirby, and Hein. Voting NAY: None. Council member Kroesing was absent. The motion carried and Resolution No. 14 - 2002 was passed and adopted as follows:

RESOLUTION NO. 14 - 2002

WHEREAS, Sack Lumber Company, a Nebraska Corporation, made a gift to the City of David City of the real estate described as:

Lots Three (3), Four (4), Five (5), Six (6), Seven (7),
Eight (8), Nine (9), Ten (10), Eleven (11), and
Twelve (12), in Block Twelve (12), Original
Town of David City, Butler County, Nebraska,

and,

WHEREAS, the agreement stated that it is desirous that said real estate be exclusively used for public purposes for the benefit of the community of David City, Nebraska; and

WHEREAS, the Cub Scouts, Boy Scouts, etc., could utilize the above mentioned real estate and building, 660 No. 5th Street, for their meetings, etc.; and

WHEREAS, the Cub Scouts, Boy Scouts, etc., will pay the utility bills, keep the building and grounds clean, and maintain the building in its present condition.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the Boy Scouts, Cub Scouts, etc., be allowed to use the building located at 660 No. 5th Street for their meetings until advised otherwise. The Boy Scouts, Cub Scouts, etc., agree that they will pay the utility bills, keep the building and grounds clean, and maintain the building in its present condition.

Dated this 12th day of June, 2002.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Hein introduced Resolution No. 15 - 2002 and moved for its passage and adoption. Council member Kirby seconded the motion. Voting YEA: Council members Smith, Schatz, Hein, Lukassen, and Kirby. Voting NAY: None. Council member Kroesing was absent. The motion carried and Resolution No. 15 - 2002 was passed and adopted as follows:

RESOLUTION NO. 15 - 2002

WHEREAS, the City of David City/David City Utilities receive checks that are sometimes returned to them as "insufficient fund check", etc.; and

WHEREAS, there is currently no written policy as to how an insufficient fund check will be handled.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that any individual or business who has issued two (2) insufficient fund checks to the City of David City/David City Utilities, shall be required to make all further payments in cash, postal money order, or cashiers check.

Passed and approved this 12th day of June, 2002.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Kirby made a motion to approve the application of Scott T. Samek to sell permissible fireworks. Samek will be located on the Amigo's parking lot, 209 So. 4th Street, David City, Nebraska. Council member Lukassen seconded the motion. Voting YEA: Council members Smith, Schatz, Hein, Lukassen and Kirby. Voting NAY: None. Council member

Kroesing was absent. The motion carried.

Resolution No. 9-2002 was passed and adopted on April 10, 2002 declaring the Brahmsteadt property a public nuisance and directing the city to begin cleaning up the property. Police Chief Sunday reported that he received two price quotes for the removal of asbestos from the outside of the Curtis Brahmsteadt house at 988 E Street. McGill Asbestos Abatement Co., Inc. quoted \$3,880.00 and Asbestos Removers, Inc. quoted a \$500.00 set up and tear down fee, plus \$1.25 per sq. ft.. Sunday measured the house at 2,300 sq. ft. for a cost of \$3,375.00. The fire department won't burn down the house unless the asbestos is first removed from the outside of the house. The Council questioned if Brahmsteadts would deed the property over to the city, so that once the lot is cleaned up, the property would belong to the city. Police Chief Sunday will discuss this with the Brahmsteadts. Council member Lukassen made a motion to table consideration of the demolition/burning of the Brahmsteadt property located at 988 E Street, to the June 26, 2002, council meeting. Council member Smith seconded the motion. Voting YEA: Council members Schatz, Hein, Kirby, Smith, and Lukassen. Voting NAY: None. Council Kroesing was absent. The motion carried.

Nicholas H. Vandenberg and Linda J. Vandenberg submitted a request to combine the south half (S ½) of Lot Three (3), all of Lot Six (6), and all of Lot Seven (7), Block 3, Will Thorpe and Perkins First Addition to David City, Butler County, Nebraska, to form one lot. Council member Lukassen stated that this will leave the No. ½ of Lot 3 which is a 25' lot and too small to build on. Lukassen stated that prior to approving Vandenberg's request, the property owners (Tom & Deb Svoboda) of the No. 25' of Lot 3 and all of Lot 2, Block 3, Will Thorpe and Perkins First Addition, should request that their lots be combined.

Council member Hein made a motion to table consideration of the Resolution to combine the south half (S ½) of Lot Three, all of Lot Six (6), and all of Lot Seven (7), Block Three (3), Will Thorpe and Perkins First Addition to form one 125' lot, as requested by Nicholas H. and Linda J. Vandenberg, to the June 26th special council meeting. Council member Kirby seconded the motion. Voting YEA: Council members Smith, Schatz, Lukassen, Kirby, and Hein. Voting NAY: None. Council member Kroesing was absent. The motion carried.

RESOLUTION NO. ____ - 2002

WHEREAS, Nicholas H. Vandenberg and Linda J. Vandenberg, as the owners of the south half (S ½) of Lot Three (3), all of Lot Six (6), and all of Lot Seven (7), Block 3, Will Thorpe and Perkins First Addition to David City, Butler County, Nebraska, have filed a request to combine the above lots to form one lot approximately 125' x 140', and,

WHEREAS, there were no objections expressed concerning combining the south half (S ½) of Lot Three (3), all of Lot Six (6), and all of Lot Seven (7), Block 3, Will Thorpe and Perkins First Addition to David City, Butler County, Nebraska.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the request of Nicholas H. Vandenberg and Linda J. Vandenberg, to combine the south half (S ½) of Lot Three (3), all of Lot Six (6), and all of Lot Seven (7), Block 3, Will Thorpe and Perkins First Addition to David City, Butler County, Nebraska, to form one lot, is hereby approved.

Dated this ____ day of _____, 20__.

(Tabled)

Mayor

(Tabled)

City Clerk

Council member Hein made a motion to go into executive session to discuss matters concerning the salary survey. Council member Smith seconded the motion. Voting YEA: Council members Lukassen, Kirby, Schatz, Smith, and Hein. Voting NAY: None. Council member Kroesing was absent. The motion carried. The Council and Mayor Smith went into executive session at 7:55 p.m..

Council member Schatz made a motion to come out of executive session. Council member Smith seconded the motion. All of the Council members present voted YEA. Council member Kroesing was absent. The motion carried and the Council came out of executive session at 8:55 p.m..

There being no further business to come before the Council, Council member Kirby made a motion to adjourn. Council member Smith seconded the motion. Voting YEA: Council members Smith, Hein, Schatz, Lukassen, and Kirby. Voting NAY: None. Council member Kroesing was absent. The motion carried and Mayor Smith declared the meeting adjourned at 9:02 p.m..

Mayor Stephen Smith

City Clerk Joan E. Kovar



CERTIFICATION OF MINUTES
June 12, 2002

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 June 12, 2002; 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