

CITY COUNCIL PROCEEDINGS

July 12, 2006

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 May 4th, 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 notice 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 Smith, Gary Kroesing, Nick Hein, Mark Kirby, and Ted Lukassen, City Administrator Joe Johnson, City Attorney Jim Egr, Police Chief Stephen Sunday, Electric Supervisor Tim Kovar, Water/Sewer Supervisor Jim Kruse, Park/Auditorium Supervisor Bill Buntgen, Water/Sewer Employees Scott Steager and Scott Boyd, Pat Hilderbrand, Ryan Hilderbrand, Bryan and Nicole Hilderbrand, Willow Holoubek, Richard Cemper, Dr. Jack Kaufmann, Russ Heller, Banner Press Editor Larry Peirce, and City Clerk-Treasurer Joan E. Kovar. Council member Bill Schatz was absent.

The meeting opened with the Pledge of Allegiance.

Mayor Smith informed the public of the "Open Meetings Act" posted on the east wall of the meeting room.

The minutes of the June 14th, 2006 meeting of the Mayor and City Council were approved upon a motion by Council member Lukassen and seconded by Council member Smith. Voting YEA: Council members Hein, Kroesing, Kirby, Smith, and Lukassen. Voting NAY: None. Council member Schatz was absent. 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 Smith made a motion to authorize the payment of claims. Council member Kirby seconded the motion. Voting YEA: Council members Kroesing, Lukassen, Hein, Kirby, and Smith. Voting NAY: None. Council member Schatz was absent. The motion carried.

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

Mrs. Mark (Willow) Holoubek requested that she be a customer of Butler County Rural Public Power District rather than a customer of David City Utilities. She stated that since she resides outside of the City limits she cannot run for City Council, and since she is not a customer of Butler County Rural Public Power she cannot run for the Rural Public Power Board. She would like to be a customer of Butler County Rural Public Power so that she could apply for a position on the Public Power Board. Discussion followed in which City Attorney Egr stated that even though the City allows her to be a customer of the Butler County Rural Public Power District the City could still annex her property in the future. Council member Smith made a motion to allow Mrs. Mark (Willow) Holoubek, 3531 M Road, to be a customer of the Butler County Rural Public Power District. Council member Hein seconded the motion. Voting AYE: Councilmembers Lukassen, Hein, and Smith. Voting NAY: None. Council members Kirby and

Kroesing abstained. Council member Schatz was absent. City Attorney Egr stated that the motion passed.

Police Chief Sunday stated that he mailed a certified letter to a property owner who resides out of town instructing the property owner to mow the property. The letter came back unclaimed. Sunday questioned what he should do. The Council instructed Sunday to get the property mowed and file it as a lien against the property.

The City mailed out postcards asking residents to read both their inside and outside water meters. As the cards are being returned the water department employees have been checking those showing large discrepancies to make sure they were read correctly. Some are off 200,000 gallons. After much discussion it was decided that, for this time, the city will sustain the discrepancies over 25,000 gallons. The water department has been instructed to purchase new meters and get them installed so we don't have this problem again.

Mayor Smith scheduled a Committee of the Whole meeting for Monday, July 24, 2006 at 6:00 p.m.

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

Council member Kirby made a motion to advance to agenda item #22 – Consideration of authorizing City Administrator Joe Johnson to seek out engineering consulting firms for all present and future subdivisions and allocating funds for such. Council member Hein seconded the motion. Voting YEA: Council members Kroesing, Smith, Lukassen, Hein, and Kirby. Voting NAY: None. Council member Schatz was absent. The motion carried.

Ryan and Bryan Hilderbrand d.b.a. Hildy Construction were present to question why the city was now going to hire an engineer when they have already spent the money and hired the engineering firm of Snyder Engineering Co. Inc. in regards to their subdivision. They feel that Richard Snyder has done a phenomenal job. The plans and specifications were submitted to the Nebraska Department of Health and the Nebraska Department of Environmental Control to begin the review and approval process. Hilderbrands said it was a shame the City didn't say something earlier so that perhaps the city and Hildy's could have split the cost for an engineer rather than each having to pay for a study.

The Council stated that no-one is against the sub-division. Drainage is a concern; there is nothing against the project. The Council stated that no-one sitting around the council table is an engineer, they aren't experts and don't want to be responsible. They understand the investment that Hildy Construction has in this project but due to the size it is imperative to bring in an engineer. They stated that Sabata's sub-division is a perfect example. No-one saw a problem with it, it was approved, and construction began. Once the construction began everyone questioned why construction was so close to 11th Street. Perhaps if the city would have had an engineer they would have caught that. The Council stated it is up to them to protect the water and lakes.

Council member Kirby made a motion to authorize City Administrator Joe Johnson to seek out engineering consulting firms for all present and future subdivisions and to allocate money out of the Contingency Fund for such. Council member Kroesing seconded the motion.

Voting YEA: Council members Smith, Hein, Lukassen, Kroesing, and Kirby. Voting NAY: None. Council member Schatz was absent. The motion carried.

Mayor Smith declared a ten minute recess at 8:00 p.m. The meeting resumed at 8:10 p.m.

Jim Brown and Pete Brummels, developers, are interested in constructing an ethanol production facility within 5 miles of David City. Jim Brown was present and stated that David City and the Butler County area has train rails, natural gas, paved roads, and corn which are essential for the production of ethanol. An ethanol production facility has a construction time frame of about two years from start to finish, will employ 35-40 people, and is a twenty-four hour, seven days per week operation. It requires 50-100 tractor-trailers of corn per day, 15 tractor-trailers of by-products per day, two wells, located near a rail system, and paved roads to the facility.

Dr. Jack Kaufmann was present and stated that he knows a woman, about 46 years old, who lived in Blair about 20 years, had the usual amount of colds, no real problems. Then an ethanol plant was built nearby. She then had frequent colds and coughs, had trouble breathing, and had to get a shot to save her life. She went to an Omaha, Nebraska lung specialist who told her she had asthma. Dr. Kaufmann stated that "asthma" is a chronic respiratory disease marked by labored breathing, chest constriction, and coughing - you are allergic to things you inhale or eat. She now has to spray her throat everyday to assist with her breathing. There have been 34 patients in the Blair area with similar problems. The doctor's opinion was that the asthma could be caused by the ethanol plant. Therefore, Dr. Kaufmann suggested locating the ethanol plant in Timbuktu or as far from David City as possible.

Jim Brown stated that the plant in Blair is not a pure ethanol plant. The Blair plant also uses coal where they are pursuing gas. Environmental studies are done which state that ethanol plants are non-polluting.

Council member Lukassen made a motion to pass Resolution No. 16 - 2006 supporting an ethanol production business that would locate within five (5) miles of the City's corporate limit. Council member Hein seconded the motion saying that the resolution is non-binding - ties the city to nothing - let's pursue it. Voting YEA: Council members Kirby, Smith, Kroesing, Hein, and Lukassen. Voting NAY: None. Council member Schatz was absent. The motion carried and Resolution No. 16 - 2006 was passed and adopted as follows:

RESOLUTION NO. 16 - 2006

A RESOLUTION OF THE CITY OF DAVID CITY, SUPPORTING AN ETHANOL PRODUCTION BUSINESS THAT WOULD LOCATE WITHIN FIVE (5) MILES OF THE CITY'S CORPORATE LIMIT.

WHEREAS, the City of David City, Nebraska (hereinafter referred to as "David City") is an independent body of government, and

WHEREAS, an ethanol production business is considering the David City area as a future site for an ethanol production facility,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that:

1. The City of David City, Nebraska, does hereby support an ethanol production business within five (5) miles of the City's Corporate Limit.

PASSED AND APPROVED this 12th day of July, 2006.

Mayor Stephen Smith

City Clerk Joan E. Kovar

City Administrator Joe Johnson met with Max Birkel and Bill Kozisek, Butler County Board Members, to discuss developing an Ethanol Advisory Board. It was established that the board be created using two City Council members from the City of David City and two Board of Supervisors from Butler County. These four individuals will be selected by their respective governing bodies. Once this four person group (or Ethanol Advisory Board) has been formed it will be the responsibility of the board to select three or five additional members to serve on this board. After all members have been selected and appointed, the Ethanol Advisory Board will guide the city and county of future ethanol issues.

Council member Lukassen made a motion to pass Resolution No. 17 - 2006 appointing two City Council members to serve on an ethanol advisory board. Council member Kroesing seconded the motion. Voting YEA: Council members Kirby, Smith, Hein, Kroesing, and Lukassen. Voting NAY: None. Council member Schatz was absent. The motion carried and Resolution No. 17 - 2006 was passed and adopted as follows:

RESOLUTION NO. 17 - 2006

A RESOLUTION OF THE CITY OF DAVID CITY, RECOGNIZING AND ESTABLISHING TWO MEMBERS OF THE BUTLER COUNTY / DAVID CITY ETHANOL ADVISORY COMMITTEE.

WHEREAS, the City of David City, Nebraska (hereinafter referred to as "David City") is an independent body of government,

WHEREAS, County of Butler County, Nebraska (hereinafter referred to as "Butler County") is an independent body of government,

WHEREAS, an ethanol plant developer is considering the Butler County / David City area as a future site for an ethanol production facility,

WHEREAS, it would be in the best interest of the citizens of Butler County and David City to have a Butler County / David City Ethanol Advisory Committee formed to serve in the best interest of the citizens of the respective governments,

WHEREAS, the Butler County / David City Ethanol Advisory Committee will represent the respective governments with an equal number of representatives,

WHEREAS, the Butler County Board of Supervisors will appoint two representatives from their respective board to represent their interest in the Butler County / David City Ethanol Advisory Committee,

WHEREAS, the City Council and Mayor of David City will appoint two representatives from their respective board to represent their interest in the Butler County / David City Ethanol Advisory Committee,

WHEREAS, the newly formed four (4) members of the Butler County / David City Ethanol Advisory Committee, as a whole, will appoint three (3) or five (5) additional members to serve on the Butler County / David City Advisory Committee,

WHEREAS, the newly formed seven (7) or nine (9) members of the Butler County / David City Ethanol Advisory Committee, as a whole, will adopt bylaws, term of office and meeting schedule, and

WHEREAS, the City appoints a two representatives to represent David City at meetings and serve as a member of the Butler County / David City Ethanol Advisory Committee.

WHEREAS, the City shall not obligate any funds to said Committee or project absent approval of the full City Council; and

WHEREAS, each member of said Committee shall be allowed to terminate participation in said Committee with thirty days notice to each other party.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that:

1. The City of David City, Nebraska, does hereby recognize the existence of the Butler County / David City Ethanol Advisory Committee,
2. The City of David City, Nebraska, does hereby appoint Mayor Stephen Smith as the Representative of the City of David City, Nebraska, to the Butler County / David City Ethanol Advisory Committee, and
3. The City of David City, Nebraska, does hereby appoint Nick Hein as the Representative of the City of David City, Nebraska, to the Butler County / David City Ethanol Advisory Committee.

PASSED AND APPROVED this 12th day of July, 2006.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Mayor Smith declared the Public Hearing open at 8:40 p.m. to consider the condition and status of the property located at 912 N. 10th Street, owned by Richard Cemper. Police Chief Sunday reported that the property is in violation of City Code #4-401. Richard Cemper was present and stated that the house has a wooden spiral staircase and a bathtub that he would like to sell or salvage. He requested some time, approximately 60 days, and then the City can burn the house down or whatever. There being no further comments, Mayor Smith declared the Public Hearing closed at 8:45 p.m.

Council member Kroesing made a motion to accept the findings of the Board and Health that the property located at 912 No. 10th Street owned by Richard Cemper is in violation of City Code #4-401 and is a public nuisance. Council member Kirby seconded the motion. Voting YEA: Council members Lukassen, Smith, Hein, Kirby, and Kroesing. Voting NAY: None. Council member Schatz was absent. The motion carried.

Mayor Smith declared the Public Hearing open at 8:47 p.m. to consider the condition and status of the Gene Hejhal property located at 261 So. 8th Street. Police Chief Sunday reported that this is no longer an issue as the trailer house has been removed. Therefore, Mayor Smith declared the Public Hearing closed at 8:48 p.m.

Park Supervisor Bill Buntgen reported that Zegers Home Center does not handle drapes anymore and Mama Moo Cow Quilting was not interested in bidding. Therefore he only had one bid to present for drapes at the City Auditorium as follows:

JCPenney

Custom Decorating Estimate:

8 windows – Pinch pleated drapery, including rods and installation

with sateen white lining \$8,095.00

with thermalsuede liner \$8,216.75

Park Supervisor Bill Buntgen stated that \$93,000.00 was budgeted for the auditorium renovations. He will be approximately \$4,400 over budget with the windows, doors, furnace, and drapes.

Council member Kirby made a motion to accept the bid of JCPenney in the amount of \$8,216.75 for pinch pleated drapery with thermalsuede liner, including rods and installation, for 8 windows at the City Auditorium, contingent upon JCPenney agreeing to let the City pay approximately \$4,400 out of next years budget. Council member Kroesing seconded the motion. Voting YEA: Council members Lukassen, Hein, Smith, Kroesing, and Kirby. Voting NAY: None. Council member Schatz was absent. The motion carried.

Council member Kirby introduced Ordinance No. 1025. Council member Kirby made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Kroesing seconded the motion. Voting YEA: Council members Lukassen, Hein, Smith, Kroesing, and Kirby. Voting NAY: None. Council member Schatz was absent. The motion carried.

Council member Lukassen made a motion to pass and adopt Ordinance No. 1025 on the third and final reading. Council member Smith seconded the motion. Voting YEA: Council members Hein, Kroesing, Kirby, Smith, and Lukassen. Voting NAY: None. Council member

Schatz was absent. The motion carried and Ordinance No. 1025 was passed and adopted as follows:

ORDINANCE NO. 1025

AN ORDINANCE TO AMEND ZONING ORDINANCE NO. 616, BY AMENDING SECTION 303 – DEFINITIONS, OF THE COMPREHENSIVE ZONING REGULATIONS OF THE CITY OF DAVID CITY, NEBRASKA, BY ADDING A DEFINITION FOR RESIDENTIAL METAL ROOFING; 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. That Article 3, Section 303 - Definitions - of the Comprehensive Zoning Regulations of David City, Nebraska shall be amended by the addition of the following:

303.88A ROOFING; RESIDENTIAL METAL

Definition of Metal Roofs:

Residential Metal Roofing shall mean: A factory finished pre-formed standing seam roof panel that meets the following:

1. Corrosion resistant
2. Installed per manufacturers specifications, including gutters, downspouts, and ice dams
3. This may include copper as a primary material, provided, the applicant and installer can demonstrate that the reflectivity will not create a safety concern to the motoring and/or pedestrian public. Copper may be used without the above required demonstration as a flashing and/or gutter installation.

However, in no case shall this definition include the following:

1. Flat sheets of metal
2. Unprotected metal panels
3. Galvanized Products

The home shall have a roof material which simulates asphalt or wood shingles, tile, rock or metal roofing as defined herein.

Section 2. That 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 hereby 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 12th day of July, 2006.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Kirby introduced Ordinance No. 1026. Council member Kroesing made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Kirby seconded the motion. Voting YEA: Council members Lukassen, Smith, Hein, Kroesing, and Kirby. Voting NAY: None. Council member Schatz was absent. The motion carried.

Council member Smith made a motion to pass and adopt Ordinance No. 1026 on the third and final reading. Council member Kirby seconded the motion. Voting YEA: Council members Lukassen, Hein, Kroesing, Kirby, and Smith. Voting NAY: None. Council member Schatz was absent. The motion carried and Ordinance No. 1026 was passed and adopted as follows:

ORDINANCE NO. 1026

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA, TO AMEND ZONING ORDINANCE NO. 616, BY AMENDING SECTION 603.3 – FENCES AND WALLS, OF THE COMPREHENSIVE ZONING REGULATIONS BY CLARIFYING THE MAXIMUM HEIGHT OF FENCES; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

Section 1. That Ordinance No. 616 be amended by adding the following to Section 303 – Definitions, of the Comprehensive Zoning Regulations of the City of David City, Nebraska:

SECTION 603 YARD EXCEPTIONS:

603.3 FENCES AND WALLS:

1. Ornamental fences, walls and structural screens may be permitted in any required yard, provided, however, that no such fence, wall or structural screen along the sides or front edge of any front yard shall be in excess of forty two (42) inches in height.
2. Fences, walls or structural screens along the front, sides or rear of any side or back yard shall not be in excess of seventy-two (72) inches in height.
3. Such height shall be determined by perpendicular measurement from the nearest average ground level. Said height shall be measured to the top of a panel on a paneled fence, or rail of a chain link fence.
4. The maximum height shall not include any caps or ornamental decoration on the posts, provided, that the bottom edge of the caps or ornamental decoration is in line with the top of the panel or rail. In no case shall this exception be construed to allow a greater extension of the posts above this stated maximum height plus the cap thickness.
5. The provision of this section shall not apply to retaining walls.

Section 2. That any ordinance or section of any ordinance passed and approved prior to the passage, approval and publication or posting of this ordinance and in conflict with the provisions is hereby repealed.

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

Passed and approved this 12th day of July, 2006.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Kroesing introduced Ordinance No. 1027. Council member Kroesing made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Smith seconded the motion. Voting YEA: Council members Lukassen, Kirby, Hein, Smith, and Kroesing. Voting NAY: None. Council member Schatz was absent. The motion carried.

Council member Kroesing made a motion to pass and adopt Ordinance No. 1027 on the third and final reading. Council member Kirby seconded the motion. Voting YEA: Council members Lukassen, Smith, Hein, Kirby, and Kroesing. Voting NAY: None. Council member Schatz was absent. The motion carried and Ordinance No. 1027 was passed and adopted as follows:

ORDINANCE NO. 1027

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA, AMENDING ORDINANCE NO. 909 – SUBDIVISION REGULATIONS OF DAVID CITY, NEBRASKA, BY AMENDING THE SUBMISSION REQUIREMENTS IN SECTION 502 PRELIMINARY PLAT APPLICATION AND SECTION 503 FINAL PLAT APPLICATION; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

Section 1. That Ordinance No. 909 be amended by amending the following Sections of the Subdivision Regulations of the City of David City, Nebraska:

SECTION 502 PRELIMINARY PLAT APPLICATION:

502.01 SUBMISSION

The subdivider shall take into consideration the advice offered by the City Administrator and the City Engineer or other subdivider's engineer in preparing and submitting an application for preliminary plat approval. The subdivider shall submit to the City

Administrator, **twenty-five (25) copies** of the preliminary plat **plus the number of copies required to present to abutting property owners, and an equal number of supplemental material** specified in Section 502.04 herein, together with one (1) written application on a form specified by the City. The land area to be included in any preliminary plat shall include all contiguous land holdings of the subdivider (owner). The subdivider shall submit a complete application at least fifteen (15) days prior to the date of the next regularly scheduled meeting of the Planning Commission at which the subdivision request is to be heard.

SECTION 503 FINAL PLAT APPLICATION:

503.01 SUBMISSION REQUIREMENTS

All final plat applications for review and approval shall conform to the approved preliminary plat and any conditions of approval of such preliminary plat, as well as all applicable standards set forth in this Ordinance and other applicable laws and regulations. If desired by the subdivider, a final plat may constitute only a portion of the land area contained in the approved preliminary plat to facilitate phasing of the subdivision development. Such phasing shall be in a manner as agreed by the City Council in the approval of the applicable preliminary plat.

The subdivider shall submit to the City Administrator, **twenty-five (25) copies** of the proposed final plat **and an equal number of supplemental material** and subdivision improvement plans and specifications specified in Sections 503.04 and 503.05 herein, together with one (1) written application on a form specified by the City. If the City Engineer is providing the subdivision improvement plans and specifications, the subdivider shall be required to submit only such supplemental material listed in Section 503.04 herein which is not provided by the City Engineer. The subdivider shall submit a complete application at least fifteen (15) days prior to the date of the next regularly scheduled meeting of the Planning Commission at which the subdivision request is to be heard.

Section 2. That any ordinance or section of any ordinance passed and approved prior to the passage, approval and publication or posting of this ordinance and in conflict with the provisions is hereby repealed.

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

Passed and approved this 12th day of July, 2006.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Mayor Smith declared the Public Hearing open at 9:22 p.m. to consider the application by Northside 66 Inc. for a minor subdivision in order to sell land to Venture LLC for a Family

Dollar Store. A turning lane off of the highway was discussed but determined that was not an issue as the State will address that. There being no further comments, Mayor Smith declared the Public Hearing closed at 9:25 p.m.

Council member Smith introduced Resolution No. 18 - 2006 and moved for its passage and adoption. Council member Kroesing seconded the motion. Voting YEA: Council members Kirby, Lukassen, Hein, Kroesing, and Smith. Voting NAY: None. Council member Schatz was absent. The motion carried and Resolution No. 18 - 2006 was passed and adopted as follows:

RESOLUTION NO. 18 - 2006

WHEREAS, Northside 66 Inc. has submitted a Zoning Application for a minor subdivision and,

WHEREAS, Northside 66 Inc. currently owns the following property:

A tract of land located in 18 15 3 PT of Lot 8, David City Land and Lot Company's Suburban Lots, in the S½ SE¼ containing 5.74 acres more or less, and :

WHEREAS, Northside 66 Inc. has requested to divide this lot and sell the following parcel of property to Venture, LLC for a Family Dollar Store:

A tract of land located in Lot 8, David City Land and Lot Company's Suburban Lots, in the SW¼ of the SE¼ of Section 18 T15N R3E of the 6th P.M., Butler County, Nebraska, described as follows:

Beginning at the northeast corner of said Lot 8, and assuming the north line of said Lot 8 to have a bearing of N 89° 49' 41" E; thence S 0° 27' 38" W, 178.32 feet, on the east line of said Lot 8; thence S 89° 49' 41" W, 293.45 feet, parallel with the north line of said Lot 8, to a point on the easterly right-of-way line of Nebraska Highway No. 15; thence N 1° 36' 48" E, 58.55 feet, on said easterly Highway right-of-way line; thence N 7° 15' 48" E, 120.75 feet, on said easterly Highway right-of-way line, to a point on the north line of said Lot 8; thence N 89° 49' 41" E, 277.90 feet, on the north line of said Lot 8, to the Point of Beginning, containing 1.18 acres, more or less, and

WHEREAS, the Planning Commission met on Monday, July 10, 2006 and are recommending approval to the City Council contingent upon the inclusion and completion of the signature blocks.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the request of Northside 66 Inc. to subdivide property and sell the above noted property to Venture, LLC, is hereby approved contingent upon the inclusion and completion of the signature blocks.

Dated this 12th day of July, 2006.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Kirby introduced Ordinance No. 1028. Council member Kroesing made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Kirby seconded the motion. Voting YEA: Council members Lukassen, Hein, Smith, Kirby, and Kroesing. Voting NAY: None. Council member Schatz was absent. The motion carried.

Council member Smith made a motion to pass and adopt Ordinance No. 1028 on the third and final reading. Council member Kirby seconded the motion. Voting YEA: Council members Lukassen, Hein, Kroesing, Kirby, and Smith. Voting NAY: None. Council member Schatz was absent. The motion carried and Ordinance No. 1028 was passed and adopted as follows:

ORDINANCE NO. 1028

AN ORDINANCE TO CONVEY BY WARRANTY DEED A TRACT OF LAND DESCRIBED AS FOLLOWS:

Part of Block 24, Original Town of David City, Butler County, Nebraska, legally described as: Lot 11, except the north 5.8 feet thereof; All of Lot 10; and Lot 9, except the south 4.7 feet thereof.

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

SECTION 1. That a tract of land described as follows:

Part of Block 24, Original Town of David City, Butler County, Nebraska, legally described as: Lot 11, except the north 5.8 feet thereof; All of Lot 10; and Lot 9, except the south 4.7 feet thereof.

is hereby conveyed by Warranty Deed and by this Ordinance to Victor C. and Carol Palik, husband and wife as joint tenants, who were the highest bidders at sealed bids and who have paid the full bid price according to the terms of the letting, which were as follows:

- (a). Sealed bid purchase price of Four Thousand Fifty-One Dollars (\$4,051.00)
- (b). No down payment received, sale pending the approval of City Council.
- (c). Title Insurance Split 50/50 between buyer and the City of David City, Nebraska.
- (d). Possession upon payment of balance.
- (e). Balance due and payable in cash or cashier=s check and passing of an Ordinance confirming the sale by the City of David City, Nebraska pursuant to Section 17-503 of the Revised Statutes of Nebraska and upon passing of the 30 day remonstrance period after the third (3rd) publication of Notice.

SECTION 2. That Notice of this sale has been given according to law by publication once each week for three (3) consecutive weeks; that thirty (30) days have passed since the last publication on June 1, 2006, for the right-of-remonstrance period; that the period of remonstrance has passed; and that no remonstrance has been filed.

SECTION 3. The City Clerk shall upon passage of this Ordinance certify the name of the purchasers to the Register of Deeds/County Clerk of Butler County, Nebraska.

SECTION 4. The Mayor and City Clerk are authorized to execute the necessary Warranty Deed to the Purchasers.

SECTION 5. That any other Ordinance or part of Ordinance passed and approved prior to the passing, approval, and publication or posting of the Ordinance and in conflict with its possession is hereby repealed.

SECTION 6. This Ordinance shall take effect and be in full force from and after its passage, approval, and publication or posting as required by law.

PASSED AND APPROVED this 12th day of July, 2006.

Mayor Stephen Smith

City Clerk Joan Kovar

City Administrator Joe Johnson stated that an ordinance was prepared to consider adding the wording "potable water well" to the current Wellhead Protection Ordinance No. 925 as an activity or structure with a minimum distance of "1,000 ft." from any City of David City municipal well. Potable water is drinking water and non-potable water is non-drinking water. As currently governed, Ordinance No. 925 allows any person to place, install, construct, or replace a "potable water well" with a setback distance of zero (0) from any City of David City municipal water well and/or without a permit being issued by the City of David City's Planning Commission. Discussion followed. If a farmer uses potable water and their potable well needs to be replaced they shouldn't have to wait 30 days for a permit. Also, it was noted that this should go before the Planning Commission.

Council member Hein made a motion to table consideration of an ordinance adding "potable water well" to the current list of structures included in the Wellhead Protection Area, as there are issues to be resolved. Council member Kroesing seconded the motion. Voting YEA: Council members Smith, Lukassen, Kirby, Kroesing, and Hein. Voting NAY: None. Council member Schatz was absent. The motion carried.

City Administrator Joe Johnson explained that Ordinance No. 1019 allows for: Greenway, Park and Open Spaces; School; Churches; Health Care Facilities; Public; and Utilities. The above-mentioned uses are not defined and have no governing rules associated with these zoning districts. The above-mentioned are permitted uses and structures within the zoning districts of Agriculture; Low Density Residential; High Density Residential; Mobile Home Residential; Downtown Commercial; Highway Commercial; Light Industrial; Industrial; and Flex Space. On June 30, 2006, a land appraiser representing Aquinas High School contacted the City Office to request the governing rules over a "school" district. The City Office did not have rules governing a "school" district.

Council member Lukassen introduced Ordinance No. 1029. Council member Smith made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Lukassen seconded the motion. Voting YEA: Council members Hein, Kirby, Kroesing, Lukassen, and Smith. Voting NAY: None. Council member Schatz was absent. The motion carried.

Council member Smith made a motion to pass and adopt Ordinance No. 1029 on the third and final reading. Council member Lukassen seconded the motion. Voting YEA: Council members Hein, Kroesing, Kirby, Lukassen, and Smith. Voting NAY: None. Council member Schatz was absent. The motion carried and Ordinance No. 1029 was passed and adopted as follows:

ORDINANCE NO. 1029

AN ORDINANCE TO AMEND THE ZONING MAP TO REFLECT THE RESCINDING OF ORDINANCE NO. 1019, PROVIDE AN EFFECTIVE DATE, AND PROVIDE FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

Section 1. That the Zoning Map be amended to reflect the rescinding of Ordinance No. 1019.

Section 2. That any ordinance or section of any ordinance passed and approved prior to or subsequent to the passage, approval, and publication or posting of this ordinance and in conflict with its provisions, is hereby appealed.

Section 3. This ordinance shall be published in pamphlet form and shall take effect and be in full force from and after its passage, approval, and publication or posting as required by law.

PASSED AND APPROVED this 12th day of July, 2006.

Mayor Stephen Smith

City Clerk Joan E. Kovar

City Clerk Kovar received the following memo from Phil Lorenzen concerning the interlocal agreement between the City and David City High School regarding improvements at the David City Auditorium:

The waiting periods have passed as to both the City and the School District (The Districts final waiting/remonstrance period ended June 22nd).

Here are the remaining steps: (Not necessarily all inclusive—but a good summary)

1. *City and School District are now authorized to sign the "Interlocal Cooperation Act Agreement Creating the David City Community Building Agency." Prior actions of the City and the School District have approved the signing of the Agreement "...with such changes and amendments as may be determined by the City and the District" --with the officers of the City and the District empowered to make such administrative changes to update the documents. The changes will only be modest date changes and other minor updates to reflect the circumstances. I am updating the form of the agreement for everyone's review and signatures.*

2. *The David City Community Building Agency needs to hold its initial organizational meeting and proceed with its issuance of the Note to borrow the funds. Following published notice funds can then be delivered to the City.*

3. *The City needs to finalize the interest rate (you will recall, we advised and the City previously set a cap of 5%) and put its ordinance upon final passage for the issuance of the City's bonds. A cap of a 5% interest rate and a cap of not more than \$50,000 of borrowing by the Agency was also incorporated in the previously adopted proceedings and referenced in notices.*

You will recall that the School District's deposit of cash and the City's delivery of bonds to the Agency is the security for the Agency borrowing, and grants the City the power to make the needed levy for payment of its share of the borrowing.

SO, HERE IS WHAT NEEDS TO HAPPEN NEXT AND MY REQUEST:

At the July 12th regular meeting of the Mayor and City Council, can action be taken to set a date for an organizational meeting of the Agency (the intent is that the Mayor and Council will serve as the agency board -- same persons -- different hats) We will provide notices of meetings in form similar to your normal Council Meeting Notice. Publication of meeting notices could then take place.

As we discussed, perhaps the best approach is that of simply holding the organizational meeting of the Agency at the same time as the Council meeting. Perhaps 30 minutes or an hour after the Council meeting begins might be more convenient for the Agency Meeting. I would see no reason to close the Council meeting. We would just open the Agency meeting on top of the Council meeting, then close the Agency meeting and lastly close the Council meeting.

Council member Hein made a motion to schedule an organizational meeting of the Mayor and City Council and the David City Community Building Agency (which is the same people just different title) on August 9, 2006, during the regularly scheduled council meeting. Council member Lukassen seconded the motion. Voting YEA: Council members Kroesing, Smith, Kirby, Lukassen, and Hein. Voting NAY: None. Council member Schatz was absent. The motion carried.

Street/Airport Supervisor Jim McDonald received the following letter from Barry Scheinost, Project Engineer of the Nebraska Department of Aeronautics:

The Department is requesting that the City of David City transfer approximately \$61,000 of their Non-Primary Entitlement (NPE) funding to another Nebraska airport so that the federal funds stay in Nebraska and are not returned to HQ FAA in Washington, D.C. These are NE federal funds that will expire by September 30, 2006.

David City was not in a position for a federal grant this fiscal year because purchase agreements will not be completed and submitted to the FAA in time for a federal grant to be issued in FY 2006. I did not prepare a grant application for federal funds (due to FAA by May 1, 2006) because the only contracts/costs that were in place at that time were for the survey & Exhibit A. Appraisals, reviews, interim approval from FAA and then the negotiations take much more time than was available for signed purchase agreements to be completed in order to request the grant amount this fiscal year. Land grants can not be issued until after the purchase agreements are signed.

David City will have enough NPE federal funds to reimburse all land costs in FY 2007. We expect that the new Airport Improvement Program (FY 2008 will be a new program) will continue to provide adequate funding for your planned runway extension in FY 2008.

Please call Anna Lannin, P.E., 402-471-7931, if you have questions or concerns about funding. She will take over the land project from me.

Council member Kroesing introduced Resolution No. 19 - 2006 and moved for its passage and adoption. Council member Hein seconded the motion. Voting YEA: Council members Kirby, Lukassen, Smith, Hein, and Kroesing. Voting NAY: None. Council member Schatz was absent. The motion carried and Resolution No. 19 - 2006 was passed and adopted as follows:

RESOLUTION NO. 19-2006

RESOLUTION ADOPTING AND APPROVING THE EXECUTION OF AN AGREEMENT TO WAIVE RECEIPT OF THE NON-PRIMARY ENTITLEMENT FUNDS APPORTIONED TO DAVID CITY MUNICIPAL AIRPORT IN FISCAL YEAR(S) 2003, AND TRANSFERRING THESE FUNDS TO ANOTHER NEBRASKA AIRPORT.

Be it resolved by the Mayor and Members of the City Council of David City, Nebraska, that:

1. The City of David City shall enter into an Agreement with the Federal Aviation Administration waiving the airport's right to the specified non-primary entitlement funds and transferring those funds to Tecumseh Municipal Airport.
2. The Mayor of the City is hereby authorized and directed to execute said Agreement on behalf of the City.
3. The Agreement referred to hereinabove is attached hereto as Exhibit "O", and made a part hereof by reference.

Dated this 12th day of July, 2006.

Mayor Stephen Smith

City Clerk Joan Kovar

Council member Smith made a motion to authorize City Administrator Joe Johnson to actively seek out engineering consulting firms for a future trail system and allocating funds for such with the understanding the engineering firm will be engineers. Council member Hein seconded the motion. Voting YEA: Council members Kirby, Lukassen, Kroesing, Hein, and Smith. Voting NAY: None. Council member Schatz was absent. The motion carried.

There being no further business to come before the Council, Council member Kroesing made a motion to adjourn. Council member Hein seconded the motion. Voting AYE: Council members Smith, Lukassen, Kirby, Hein, and Kroesing. Voting NAY: None. Council member Schatz was absent. The motion carried and Mayor Smith declared the meeting adjourned at 10:02 p.m.

Mayor Stephen Smith

City Clerk Joan E. Kovar

