

CITY COUNCIL PROCEEDINGS

August 10, 2005

The City Council of the City of David City, Nebraska met in an 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 August 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 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, Ted Lukassen, Nick Hein, and Bill Schatz, Youth Council member Nolan Moravec, City Administrator Jeff Fiegenschuh, City Attorney Jim Egr, Police Chief Stephen Sunday and Police Officers Vince Brehm, Chere' Fisher, and Jim Sylvester, Electric Supervisor Tim Kovar, Electric Plant Supervisor John Kabourek, Water/Sewer Supervisor Jim Kruse, Richard & Virginia Rerucha, Joanie Ebel, David Scribner, Attorney Mark Keenan, Banner Press Editor Larry Peirce, and City Clerk-Treasurer Joan E. Kovar. Council members Gary Kroesing and Mark Kirby, and Youth council member Audra Duren were absent.

The meeting opened with the Pledge of Allegiance.

The minutes of the July 13, 2005 meeting of the Mayor and City Council were approved upon a motion by Council member Smith and seconded by Council member Hein. Voting YEA: Council members Schatz, Lukassen, Hein, and Smith. Voting NAY: None. Council members Kroesing and Kirby were 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 to be shared.

Mayor Smith asked for consideration of claims. Council member Lukassen made a motion to authorize the payment of claims. Council member Smith seconded the motion. Voting YEA: Council members Hein, Schatz, Lukassen, and Smith. Voting NAY: None. Council members Kroesing and Kirby were absent. The motion carried.

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

City Attorney Egr reported that the Court ordered pictures be taken of the Randy Janak property as of August 2, 2005 and if Randy begins adding things to the property he will be cited for being in contempt.

Police Chief Sunday asked for clarification on trailers, small one axle utility trailers, pickup box trailers, boat trailers, and etc., concerning cleaning up unlicensed/non-operating vehicles. The council members present advised the police department to resolve the issue on cars - first, and then work on trailers, etc..

Mayor Smith scheduled a Committee of the Whole meeting for Monday, August 29, 2005 at 6:00 p.m. in the City Office meeting room.

Council member Hein 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, and Hein. Voting NAY: None. Council members Kroesing and Kirby were absent. The motion carried.

Council member Hein made a motion to advance to Agenda Item #9 - Consideration of a resolution establishing a commitment to preserve the community's historical assets. Council member Smith seconded the motion. Voting YEA: Council members Schatz, Lukassen, Smith, and Hein. Voting NAY: None. Council members Kroesing and Kirby were absent. The motion carried.

City Administrator Fiegenschuh reported that this resolution is part of the city's efforts to become part of the Federal Government's Preserve America Program. By joining this program more federal funds will become available to the city and local civic groups for community improvements. The Thorpe Opera House Foundation asked the City to pass this resolution.

Council member Hein made a motion to pass and approve Resolution No. 11-2005 establishing a commitment to preserve the community's historical assets. Council member Smith seconded the motion. Voting YEA: Council members Schatz, Lukassen, Smith, and Hein. Voting NAY: None. Council members Kroesing and Kirby were absent. The motion carried.

RESOLUTION NO. 11 - 2005

WHEREAS, the City of David City, Nebraska, provides that the Mayor and City Council have established by this resolution a commitment to preserve the community's historical assets.

WHEREAS, the City of David City, Nebraska will establish an inventory of historic properties in the community that will be ongoing and available for public inspection.

WHEREAS, the City of David City, Nebraska will adopt a community-wide historic preservation plan that will begin being implemented in Fiscal Year 2006.

NOW, THEREFORE BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the City of David City commits to the preservation of the community's historical assets.

Dated this 10th day of August, 2005.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Hein made a motion to advance to Agenda Item #10 - Consideration of change order for street project (CDBG 04-PW-019). Council member Lukassen seconded the motion. Voting YEA: Council members Schatz, Smith, Lukassen, and Hein. Voting NAY:

None. Council members Kroesing and Kirby were absent. The motion carried.

City Administrator Fiegenschuh reported that Olsson Associates recommended that the City do some additional work on "B" Street between 5th and 6th Streets. There is enough grant money left to re-pave this street that already has existing curb and gutter. This change order includes those costs and they are covered by our grant funds.

Council member Smith made a motion to approve the change order to do some additional work on "B" Street between 5th and 6th Streets for street project (CDBG 04-PW-019). Council member Hein seconded the motion. Voting YEA: Council members Schatz, Lukassen, Hein, and Smith. Voting NAY: None. Council members Kroesing and Kirby were absent. The motion carried.

Olsson Associates
201 East 2nd Street
Grand Island, Nebraska 68801

Change Order No. 2

Date of Issuance: August 10, 2005

Project: Municipal Street Improvements, CDBG 04-PW-019, David City, Nebraska

Project No. 2004-1078

Contractor: Castle Construction, Inc., P.O. Box 932, Columbus, NE 68602-0932

CONTRACT DATE: March 9, 2005

AMOUNT OF ORIGINAL CONTRACT: \$507,418.27

You are directed to make the changes noted below in the subject contract:

The changes result in the following adjustment of Contract Price and Contract Time:

Contract Price Prior to this change order \$528,511.77

Net Increase resulting from this change order \$31,512.10

Current Contract Price including this Change Order \$560,023.87

Contract Time prior to this change order/calendar days - substantial completion October 15, 2005

Current Contract Time including this change order/calendar days - substantial completion November 1, 2005

The Above Change Order Approved:

City of David City
Owner
By: Stephen Smith

Olsson Associates
Consulting Engineers
By: Matthew Rief

Date 8/10/05

Date: 8/05/05

The Above Change Order Accepted:

Castle Construction, Inc.
Contractor
By: Stuart Gerhold
Date 8/03/05

Council member Hein made a motion to advance to Agenda Item #11 - Consideration of a resolution to approve hiring an engineer and authorizing plans and specs for a sewer improvement district. Council member Smith seconded the motion. Voting YEA: Council

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

Council member Smith made a motion to pass and adopt Resolution No. 12 - 2005. Council member Lukassen seconded the motion. It was noted that the City received a letter from Bank of the Valley stating that they have a "Line of Credit" for Larry Sabata and adequate funds are available to fund the improvements for his development project. Voting YEA: Council members Schatz, Hein, Lukassen, and Smith. Voting NAY: None. Council members Kroesing and Kirby were absent. The motion carried.

RESOLUTION NO. 12 - 2005

A RESOLUTION APPROVING THE HIRING OF SPECIAL ENGINEERS AND APPROVING PLANS, SPECIFICATIONS, AND ESTIMATE OF COST FOR THE CONSTRUCTION OF CERTAIN SANITARY SEWER IMPROVEMENTS TO BE CONSTRUCTED IN THE CITY OF DAVID CITY, NEBRASKA.

BE IT RESOLVED by the Mayor and City Council of the City of David City, Nebraska, that the hiring of Gilmore & Associates, as engineers for the construction of certain sanitary sewer improvements to be constructed in the City of David City in Sanitary Sewer Extension District No. 2005 -1 is hereby approved, ratified and confirmed, and that the plans, specifications, and estimate of cost of \$14,500 filed in the office of the City Clerk for the construction of the said improvements, are hereby approved.

PASSED AND APPROVED this 10th day of August, 2005.

ATTEST:

Mayor Stephen Smith

City Clerk Joan E. Kovar

[SEAL]

Council member Hein made a motion to advance to Agenda Item #12 - Consideration of an ordinance creating a sewer improvement district. Council member Smith seconded the motion. Voting YEA: Council members Schatz, Lukassen, Smith, and Hein. Voting NAY: None. Council members Kroesing and Kirby were absent. The motion carried.

Council member Lukassen introduced Ordinance No. 1008. Council member Lukassen made a motion to pass and adopt Ordinance No. 1008 on the first reading only. Council member Smith seconded the motion. Voting YEA: Council members Hein, Schatz, Smith, and Lukassen. Voting NAY: None. Council members Kroesing and Kirby were absent. The motion carried and Ordinance No. 1008 was passed on first reading only as follows:

ORDINANCE NO. 1008

AN ORDINANCE CREATING SANITARY SEWER EXTENSION DISTRICT NO. 2005-1 OF THE CITY OF DAVID CITY, NEBRASKA; DESCRIBING THE PROPERTY CONTAINED

WITHIN THE DISTRICT; DESIGNATING THE SIZE, LOCATION AND TERMINAL POINTS OF SANITARY SEWER MAINS AND SANITARY SEWER LINES AND RELATED IMPROVEMENTS WITHIN SAID DISTRICT; REFERRING TO PLANS AND SPECIFICATIONS AND COST ESTIMATES AS PREPARED BY THE ENGINEER IN CONNECTION THEREWITH AND ON FILE WITH THE CITY CLERK, 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. The Mayor and Council of the City of David City, Nebraska, hereby find and determine that it is necessary and advisable to extend the municipal sanitary sewer system beyond the existing system by the construction of sanitary sewer mains and sanitary sewer lines and appurtenant improvements and that for the purpose of constructing said sanitary sewer mains and related improvements, there is hereby created Sanitary Sewer Extension District No. 2005-1 of the City of David City, pursuant to authority granted in Section 19-2402, R.R.S. Neb. 1997.

Section 2. The property contained within Sanitary Sewer Extension District No. 2005-1 shall consist of a tract of land located in Butler County, Nebraska, being described as follows:

A tract of land consisting of Lots 11 through 20, both inclusive, in Sabata's 2nd Addition to the City of David City, all located in the North ½ of the Northeast ¼ of Section 20, Township 15 North, Range 3 East of the 3rd P.M., in Butler County, Nebraska.

The size, location and terminal points of the sanitary sewer mains, sanitary sewer lines and other appurtenances in said District shall consist of the following:

Installation and construction of sanitary sewer line consisting of an 8 inch PVC sanitary sewer line commencing at the intersection of 11th & N Streets on the west side of 11th Street and with a terminal point at approximately 150 feet East of the intersection of 11th & O Streets on the South side of the street together with the installation of three man holes, and other necessary related sanitary sewer improvements and appurtenances all as set out in the plans and specifications of the City's Engineers.

Section 3. Reference is hereby made to the plans and specifications for said sanitary sewer extensions, which have been prepared by Gilmore & Associates, special engineers for the City, and which, together with said engineers' estimate of the total cost for the proposed sanitary sewer extensions, have heretofore been filed with the City Clerk.

Section 4. The engineers' estimate of total cost for the proposed sanitary sewer extension improvements in said District No. 2005-1 is \$ 14,500.00 .

Section 5. The Mayor and Council hereby find and determine that none of the properties located within said District are presently served by the City's existing system of sanitary sewer service and that said District constitutes an area of land located apart and outside the area served and benefitted by said system and all of the property in said District is located within the City of David City, Nebraska or within one mile of the corporate limits of the City of David City, Nebraska.

Passed and approved this _____ day of _____, 2005.

Passed on 1st reading only

Mayor Stephen Smith

Passed on 1st reading only
City Clerk Joan E. Kovar

[SEAL]

Mayor Smith declared the Public Hearing open at 7:30 p.m. to consider the request of SBBM, Inc. to amend Highway Commercial District - Section 414.4 - to permit Mini Storage and RV Storage as a conditional/special use.

Attorney Mark Keenan stated that he represents David Scribner who owns the North 130' of Block 8, Miles 6th Addition, located along 5th Street just north of Marquis Body Shop, 495 So. 5th Street. David Scribner would like to erect mini storage and RV storage units which are not currently allowed in Highway Commercial zoned areas. They are requesting that Highway Commercial Section 414.4 be amended to permit mini storage and RV storage as a conditional/special use. Keenan stated that they feel it would be appropriate in that area and consistent with what is currently allowed. David Scribner stated that there is hardly a town that you can drive through that doesn't have storage units by the highway.

Virginia Rerucha stated that storage facilities are allowed in Industrial Zoned areas not Highway Commercial. Virginia is opposed to the storage facility in this proposed area because 1) there are residential homes to the east of this proposed area; 2) the driveway would be on 5th Street, not Highway access, which may cause congestion to students who use 5th Street to drive to the park and 4) there is already a water situation which will be increased with additional concrete. Virginia stated that the new comp plan - Section 5 - refers to a corridor to David City with street trees and decorative lighting as a way to attract people to David City. A storage facility is not an attractive thing to those coming into town. This building would not be an asset and it would not be beneficial to the town especially when David Scribner already owns property that has grown up in weeds. There are Industrial zoned areas by the David City Airport and Virginia feels that would be a much better location for a storage facility. Virginia reported that at the July 9, 2005 Planning Commission meeting Keith Marvin made a motion to recommend to the City Council to leave Highway Commercial as is, based upon the fact that the Planning Commission has denied requests in the past and want to stay consistent with that process because this is not an appropriate type of use in Highway Commercial based upon what we want to see on Highway Commercial and some of the concepts that we are trying to pursue in future land use/ future plans for the City.

There being no further comments, Mayor Smith declared the Public Hearing closed at 7:55 p.m..

Council member Hein made a motion to draft an ordinance to amend Highway Commercial District - Section 414.4 - to permit mini storage and RV storage units as a conditional/special use. Council member Lukassen seconded the motion. Voting YEA: Council members Smith,

Lukassen, and Hein. Voting NAY: Council member Schatz. Council members Kirby and Kroesing were absent. City Clerk Kovar advised that the motion did not carry as you need a majority of the elected officials (4) not just a majority of those present.

Council member Lukassen requested that an ordinance be drafted to amend Highway Commercial District - Section 414.4 - to permit mini storage and RV storage as a conditional/special use and that this be an agenda item for the September council meeting.

The following action took place at the December council meeting: *Pat Prothman arrived at 9:05 p.m. and stated that he was unaware that there was a lien on the property that he purchased located at 320 N. 10th Street and that not having a clear title made him nervous. Pat stated that he planned to rent out the property and already had someone interested. Discussion followed. Council member Kirby made a motion to **leave the existing lien on the property located at 320 N. 10th Street in David City, Nebraska, but if the property passes a Board of Health inspection by August 15, 2005, then the council will waive the interest on the lien.** Council member Smith seconded the motion. Voting YEA: Council members Hein, Schatz, Kroesing, Smith, and Kirby. Voting NAY: None. Council member Lukassen abstained. The motion carried.*

Police Chief Sunday reported that the Board of Health met and determined that the Pat Prothman property located at 320 N. 10th Street did pass inspection.

City Attorney Egr presented the following resolution:

RESOLUTION NO.

WHEREAS, the City of David City has a lien in the "Hlavac" property caused by clean up of the property owned by William Hlavac; and,

WHEREAS, the "Hlavac" property was sold at auction but did not bring enough to pay the lien and other costs; and,

WHEREAS, Pat Prothman purchased the "Hlavac" property and is entitled to clear title.

NOW, THEREFORE, the City of David City, Nebraska hereby releases any and all balances due by reason of its lien on the "Hlavac" property and hereby confirms to the Butler County Treasurer that the said lien should be discharged and cleared for the Treasurer's records and be considered satisfied.

Discussion followed in which Council member Schatz stated that if the property met the Board of Health inspection it must just meet bear minimum requirements. Council member Hein stated that the agenda item stated "consideration of waiving the interest on the lien" and therefore felt that the Council couldn't consider waiving the lien.

Therefore, Council member Hein made a motion to waive the interest only, on the lien on the Pat Prothman property located at 320 No. 10th Street. Council member Schatz seconded the motion. Voting YEA: Council member Smith. Council member Lukassen abstained. Voting ceased as the Council determined it was pointless as only two council members remained to vote and the motion could not pass.

Council member Schatz made a motion to table consideration of waiving the interest on the lien on the Pat Prothman property located at 320 No. 10th Street to the September 14th council meeting. Council member Hein seconded the motion. Voting YEA: Council members Smith, Lukassen, Hein, and Schatz. Voting NAY: None. Council members Kirby and Kroesing were absent. The motion carried.

An interlocal agreement with David City Public Schools concerning updates at the City Auditorium was discussed. In City Administrator Fiegenschuh's report he stated *"The public school board has agreed to help front \$12,000 worth of improvements to the auditorium. They would like 4 years worth of rentals free to offset the costs since they don't own the auditorium. Their annual bills have been running around \$2,900 per year. I recommend we enter into this agreement for several reasons. (1) We have to come up with the \$12,000 somewhere. This allows us to front the money and use less bonding authority; (2) Good will gesture to the public schools; (3) Under LB 217 we have to go down this route if we don't have a vote of the people. With interest rates increasing I would like to secure the bonds sooner. Under LB 217 we still have to go through several open meetings before the bonds can be issued, (4) we will more than make up for this lost revenue through energy savings and increased usage of the newly updated facility."*

Council member Schatz stated that currently there isn't an actual interlocal agreement to review and he expressed concern with simply stating that David City Public Schools would receive 4 years worth of rentals free. Schatz felt that it needed to be clarified that this is based on the David City Public Schools "normal" usage for free rentals over the 4 year period. Schatz feels that the agreement needs to state that the "free" rentals shall not exceed \$12,000.00 over a 4 year period. Therefore, Council member Schatz made a motion that City Attorney Egr draft an interlocal agreement between the City and David City Public Schools that states David City Public Schools will front \$12,000 worth of improvement to the auditorium in-lieu of "free" Auditorium/Park rentals not to exceed \$12,000.00 over a 4 year period. Council member Smith seconded the motion. Voting YEA: Council members Hein, Lukassen, Smith, and Schatz. Voting NAY: None. Council members Kirby and Kroesing were absent. The motion carried.

Mayor Smith declared a recess at 8:30 p.m.. The meeting resumed at 8:38 p.m..

Council member Schatz made a motion to table consideration of an ordinance issuing bonds in the amount of \$40,000 for updates at the city auditorium. Council member Hein seconded the motion. Voting YEA: Council members Lukassen, Smith, Hein, and Schatz. Voting NAY: None. Council members Kirby and Kroesing were absent. The motion carried.

Phil Lorenzen, First Vice President of Kirkpatrick, Pettis was not present for the council meeting but had earlier advised that he contemplated the refunding of the balance of the 2001 Series Bonds plus taking out about \$125,000 of the bonds held by David City Utilities. Now, however, he recommends that the ordinance not be considered. The savings is simply not adequate to meet legal tests for refunding. He had earlier calculated the savings to be around \$20,000 with the market tone looking to move to still lower interest rates. Now, with some recent upward changes in the bond market resulting principally from the Chinese allowing their currency to float against the dollar, interest rates are up a little and savings shrinks to about \$10,000. The 2001 bonds were issued with an average coupon rate of 4.53%. The 2002 Bonds placed with the Utilities Investment Account have a coupon rate of 4.50%. A refunding today would require about an average rate of 3.80%, a difference of 7/10 of 1%. Phil wrote that he generally figures one needs to lower rates by 1% or more to achieve adequate savings for a refunding. However

since the 2001 bonds cannot be paid off until May, 2006, the cost of carry for the several months to May, 2006 and the estimated \$10,000 in costs to complete a refunding will not allow adequate savings to proceed at this time – Savings of only \$10,000 is not enough to proceed. Phil's view is to continue to carefully watch the market as we have been doing and with the occurrence of one of two items (1) a little decline in interest rates, or (2) moving closer to May 2006 to refund, then savings would seem adequate to achieve the refunding. Phil reported that savings should not be less than \$25,000 to \$30,000 to warrant the completion of the refunding.

Council member Hein made a motion to table indefinitely consideration of an ordinance authorizing the issuance of sales tax refunding bonds. Council member Lukassen seconded the motion. Voting YEA: Council members Smith, Schatz, Lukassen, and Hein. Voting NAY: None. Council members Kirby and Kroesing were absent. The motion carried.

Police Chief Sunday, Police Sergeant Jim Sylvester, and Police Officers Vincent Brehm and Chere' Fisher were present to request that they be paid time and a half on all holidays they work. Council member Hein made a motion to update the employees manual to pay the police officers time and a half for hours worked on a holiday. This does not include the floating holiday. Council member Smith seconded the motion. Voting YEA: Council members Lukassen, Schatz, Smith, and Hein. Voting NAY: None. Council members Kirby and Kroesing were absent. The motion carried.

Council member Hein made a motion to table consideration of Ordinance No. 1006 amending Chapter 9: Zoning/Building Regulations of the David City Municipal Code Book to the September 14th council meeting. Council member Lukassen seconded the motion. Voting YEA: Council members Smith, Schatz, Lukassen, and Hein. Voting NAY: None. Council members Kirby and Kroesing were absent. The motion carried.

ORDINANCE NO. 1006

AN ORDINANCE AMENDING CHAPTER 9: ZONING / BUILDING REGULATIONS 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 9: Zoning/Building Regulations of the David City Municipal Code Book be amended to read as follows:

Chapter 9

ZONING / BUILDING REGULATIONS

Article 1. Zoning / Building Permits

§9-201 ZONING / BUILDING PERMIT; LIMITATION. If the work described in any Zoning Permit has not begun within six (6) months from the date of issuance thereof, said permit shall expire; it shall be cancelled by the Zoning Administrator; and written notice thereof shall be given to the persons affected.

If the work described in any Zoning / Building Permit has not been substantially completed within two (2) years of the issuance thereof, said Permit shall expire and be

cancelled by the Zoning Administrator, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the cancelled Permit shall not proceed unless, and until, a new Zoning Permit has been obtained.

§9-202 ZONING / BUILDING PERMITS. Any person desiring to commence or proceed to erect, construct, repair, enlarge, demolish, or relocate any building or dwelling, or cause the same to be done, shall file with the Municipal Clerk an application for a zoning / building permit. The application shall be in writing on a form to be furnished by the Municipal Clerk for that purpose. Every such application shall set forth the legal description of the land upon which the construction or relocation is to take place, the current zoning, the nature of the use or occupancy, the principal dimensions, the estimated cost, the names of the owner, architect, and contractor, and such other information as may be requested thereon. Payment of the permit fee set by resolution of the Governing Body is due at the time the application is filed. The application, plans, and specifications so filed with the Municipal Clerk shall be checked and examined by the Zoning Administrator. If the application, plans, and specifications are found to be in conformity with the requirements of this Chapter and all other ordinances applicable thereto, the Zoning Administrator shall authorize the Municipal Clerk to issue the said applicant a permit. Whenever there is a discrepancy between permit application procedures contained herein and those contained in any building code adopted by reference, the provisions contained herein shall govern. *(Ref. 17-130 thru 17-132, 17-550, 17-1001 RS Neb.)*

§9-203 BUILDING MOVING; REGULATIONS. It shall be unlawful for any person, firm, or corporation to move any building or structure within the Municipality without a written permit to do so. Application may be made to the Municipal Clerk, and shall include the present and future location of the building to be moved, the proposed route, the equipment to be used, and such other information as the Governing Body may require. The application shall be accompanied by a certificate issued by the County Treasurer to the effect that all the provisions regulating the moving of buildings have been complied with on the part of the owner of the real estate upon which the said building is presently located. The Municipal Clerk shall refer the said application to the Municipal Police for approval of the proposed route over which the building is to be moved. Upon approval of each municipal department head listed on the building moving permit, and upon approval of the Zoning Administrator, the Municipal Clerk shall then issue the said permit; provided, that a good and sufficient corporate surety bond, check, or cash in the amount set by motion of the Governing Body and conditioned upon moving said building without doing damage to any private or Municipal property is filed with the Municipal Clerk prior to the granting of any permit. All buildings wider than ten feet (10'), or longer than twenty feet (20'), or, when in a position to move, higher than fifteen feet (15'), or of any other size which shall require displacement of any City property, shall require a building moving permit and a building moving fee in the amount set by motion of the Governing Body. All other buildings or structures shall require only a building moving permit. In the event it will be necessary for any licensed building mover to interfere with the telephone or telegraph poles and wires, or a gas line, the company or companies owning, using, or operating the said poles, wires or line shall upon proper notice of at least twenty-four (24) hours, be present and assist by disconnecting the said poles, wires, or line relative to the building moving operation. All expense of the said disconnection, removal, or related work shall be paid in advance by the licensee unless such

disconnection or work is furnished on different terms as provided in the said company's franchise. Whenever the moving of any building necessitates interference with a water main, sewer main, pipes, or wire belonging to the Municipality, notice in writing of the time and route of the said building moving operation shall be given to the various Municipal officials in charge of the Municipal utility departments who shall proceed in behalf of the Municipality and at the expense of the mover to make such disconnections and do such work as necessary. (Ref. 60-6,288 to 60-6,294, 60-6,296)

§9-204 BUILDING MOVING; DEPOSIT. At such time as the building moving has been completed, each municipal department head listed on the building moving permit shall inspect the premises and report to the Municipal Clerk as to the extent of damages, if any, resulting from the said relocation and whether any Municipal laws have been violated during the said operation. Upon a satisfactory report from each municipal department head listed on the building moving permit, the Municipal Clerk shall return the corporate surety bond, cash, or check deposited by the applicant. In the event the basement, foundation, or portion thereof is not properly filled, covered, or in a clean and sanitary condition, the Governing Body may apply the money deposited for the purpose of defraying the expense of correcting the said conditions. If the expense of correcting the hazardous condition is greater than the amount of the deposit set by motion of the Governing Body, as required herein, the Governing Body may recover such excess expense by civil suit or otherwise as prescribed by law.

Article 3. Building Code

§9-301 BUILDING CODE; ADOPTED BY REFERENCE. To provide certain minimum standards, provisions, and requirements for safe and stable design, methods of construction, and uses of materials in buildings hereafter erected, constructed, enlarged, altered, repaired, relocated, and converted, the Uniform Building Code the most recent edition, recommended by the International Conference of Building Officials, and printed in book or pamphlet form is hereby incorporated by reference in addition to all amended editions as though printed in full herein insofar as said code does not conflict with the Statutes of the State of Nebraska.

One (1) copy of the Building Code is on file at the office of the Municipal Clerk and is available for public inspection at the city office during their regular business hours. The provisions of the Building Code shall be controlling throughout the Municipality and throughout its zoning jurisdiction. (Ref. 17-1001, 18-132, 19-902, 19-922 RS Neb.)

Article 4. Plumbing Code

§9-401 PLUMBING CODE; ADOPTED BY REFERENCE. To provide certain minimum standards, provisions, and requirements for safe and stable installation, methods of connection, and uses of materials in the installation of plumbing and heating shall be as found in the Uniform Plumbing Code, the most recent edition, published by the International Association of Plumbing and Mechanical Officials in book or pamphlet form, is hereby incorporated by reference in addition to all amended editions as though printed in full herein insofar as said code does not conflict with the Statutes of the State of Nebraska.

One (1) copy of the Plumbing Code is on file at the office of the Municipal Clerk and is available for public inspection at the city office during their regular business hours. The provisions of the Plumbing Code shall be controlling throughout the Municipality and throughout its zoning jurisdiction. (Ref. 17-1001, 18-132, 19-902, 19-922 RS Neb.)

Article 5. Electrical Code

§9-501 **ELECTRICAL CODE; ADOPTED BY REFERENCE.** To provide certain minimum standards, provisions, and requirements for safe and fire proof installation, methods of connection, and uses of materials in the installation of electrical wiring and appliances shall be as found in the National Electrical Code, the most recent edition, as recommended and published by the National Fire Protection Association, printed in book or pamphlet form, in addition to all amended editions as though printed in full herein insofar as said code does not conflict with the statutes of the State of Nebraska. All prior ordinances in conflict herewith shall be and are hereby repealed.

One (1) copy of the Electrical Code is on file at the office of the Municipal Clerk and is available for public inspection at the city office during their regular business hours. The provisions of the Electrical Code shall be controlling throughout the Municipality and throughout its zoning jurisdiction. (Ref. 17-1001, 18-132, 19-902, 19-922 RS Neb.)

Article 6. Lighting and Thermal Efficiency Standards

§9-601 **LIGHTING AND THERMAL EFFICIENCY STANDARDS; NEED.**

1. This article shall be known as the Minimum Lighting and Thermal Efficiency Standards for Buildings.
2. The City of David City, Nebraska finds that there is a present and continuing need to provide for the development and implementation of minimum lighting and thermal efficiency standards for buildings to insure coordination with federal policy under the Energy Conservation Standards for New Buildings Act of 1976, to promote the conservation of our dwindling energy resources, and to provide for the public health, safety, and welfare.

§9-602 **TERMS; DEFINED.** As used in this Article, unless the context otherwise requires, the following definitions shall apply:

PRIME CONTRACTOR shall mean the person, persons, entity or entities who has a contract with the owner and is the one responsible for the overall construction of any building or the installation of any component which affects the energy efficiency of the building. Prime Contractor shall also mean a property owner who performs the work of a Prime Contractor.

ARCHITECT or ENGINEER shall mean any person registered pursuant to section 81-847, Reissue Revised Statutes of Nebraska, 1943.

BUILDING shall mean any structure which utilizes or will utilize a heating system, cooling system, or domestic hot water system, including new buildings, renovated buildings, and additions, but not including any structure which has a consumption of traditional energy sources for all purposes not exceeding the energy equivalent of one (1) watt per square foot.

RESIDENTIAL BUILDING shall mean a building three (3) stories or less that is used primarily as one (1) or more dwelling units.

RENOVATION shall mean alterations on an existing building which will cost more than fifty (50%) percent of the replacement cost of such building at the time work is commenced or which was not previously heated or cooled, for which a heating or cooling system is now proposed, except that the restoration of historical buildings shall not be included.

ADDITION shall mean any construction added to an existing building which will increase the floor area of that building by five (5%) percent or more.

FLOOR AREA shall mean the total area of a building, expressed in square feet, which is within the exterior face of the shell of the structure which is heated or cooled.

STANDARD shall mean The Model Energy Code, 1983 Edition, of the Council of American Building Officials.

TRADITIONAL ENERGY SOURCES shall mean electricity, petroleum based fuels, uranium, coal, and all nonrenewable forms of energy. (*Amended by Ord. No. 602, 9/14/83*)

§9-603 STANDARD; APPLICABILITY. The Standard shall apply to all new buildings, or renovations of or additions to any existing buildings, on which construction is initiated on or after the effective date of this Section. (*Amended by Ord. No. 602, 9/14/83*)

§9-604 EXEMPTIONS. The following shall be exempt from this act:

1. Any building which has a peak design rate of energy usage for all purposes of less than one (1) watt, or three and four-tenths (3.4) British Thermal Units per hour, per square foot of floor area.
2. Any building which is neither heated nor cooled.
3. Any building or portion thereof which is owned by the United States of America.
4. Any mobile home as defined by section 71-4603, Reissue Revised Statutes of Nebraska, 1943.
5. Any manufactured housing unit as defined by subsection (1) of section 71-1557, Reissue Revised Statutes of Nebraska, 1943.
6. Any building (i) listed on the National Register of Historic Places, (ii) determined to be eligible for the National Register of Historic Places by the State Historic Preservation Officer, or (iii) designated as an individual landmark or heritage preservation site by a Municipality or located within a designated landmark or heritage preservation district.

7. Any building to be renovated that is located within an area that has been designated blighted by a Municipality.
8. All residential buildings shall be exempt from lighting efficiency standards. *(Amended by Ord. No. 602, 9/14/83)*

§9-605 FEES. The fees, charges, and expenses for Zoning Permits and Certificates of Zoning Compliance shall be as established by the City Council; such fees, charges, and expenses to be set by Resolution.
The schedule of fees shall be posted in the office of the City Clerk and may be altered or amended only by the City Council. Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

§9-606 WHEN ARCHITECT OR ENGINEER IS RETAINED. If an architect or engineer is retained, the architect or engineer shall place his or her state registration seal on all construction drawings which shall indicate that the design meets the standard. The Prime Contractor shall build or cause to be built in accordance with the construction documents prepared by the architect or engineer.

§9-607 VIOLATION; PENALTY; ENFORCEMENT. Any person violating any provision of this Article shall be subject to a maximum fine of five hundred (\$500.00) dollars. In addition, the City of David City may by an action in the District Court enforce the provisions of this Article through equity and injunctive processes.

§9-608 VALIDITY. If any Section in this Article or any part of any Section shall be declared invalid or unconstitutional such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Article 7. Penal Provision

§9-701 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.

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 _____, _____.

Tabled - Passed 1st reading only 7/13/05
Mayor Stephen Smith

Tabled - Passed 1st reading only 7/13/05
City Clerk Joan E. Kovar

Council member Lukassen made a motion to schedule Special Council meetings beginning at 6:00 p.m. on Monday, August 15th and Tuesday, August 16th to discuss the proposed budgets for fiscal year 2005-2006. Council member Hein seconded the motion. The city budgets will be discussed on Monday, and the Utility budgets on Tuesday. Voting YEA: Council members Smith, Schatz, Hein, and Lukassen. Voting NAY: None. Council members Kirby and Kroesing were absent. The motion carried.

Council member Smith made a motion to authorize Street Superintendent Jim McDonald to purchase a pickup truck out of the current 2004 - 2005 budget. Smith reported that Jim found a used pickup for \$17,000 less the trade in for his current pickup. Council member Lukassen seconded the motion. Voting YEA: Council members Hein, Schatz, Lukassen, and Smith. Voting NAY: None. Council members Kirby and Kroesing were absent. The motion carried.

Consideration of authorizing Electric Supervisor Tim Kovar to purchase a pickup out of the current 2004-2005 budget was discussed. The pickup was totaled in an accident on 9th & A Street so this would be a replacement pickup. Council member Schatz stated that he is convinced with the status of the electric department that it is wiser to buy a new pickup as compared to a used pickup. The street department is being run off of Highway Allocation and the tax base. The electric department has proven itself, that it is capable of having a reserve account. The City borrowed money from the electric department reserve account to use towards the swimming pool. The recent increase in electric rates was justified due to corresponding increases in our rates based on NPPD and WAPA. The utility rates were also increased by a 3% occupation fee that was established to transfer revenues to the city side to build up the city reserves. This is not an add on - or a frivolous expenditure - this is a replacement vehicle for the one that was wrecked. The vehicles are driven until they die; it is a wise business decision to buy new with a warranty. City Attorney Egr agreed that the City would be money ahead to buy a new vehicle.

Council member Smith sarcastically made a motion to authorize Electric Supervisor Tim Kovar to buy a new vehicle from Kobza Motors, and if he has that much money to buy a new one for Street Superintendent Jim McDonald also. Council member Schatz seconded the motion. Voting YEA: Council members Lukassen, Schatz, and Smith. Voting NAY: Council member Hein. Council members Kirby and Kroesing were absent. The motion failed.

Council member Schatz stated that he wanted consideration of authorizing Electric Supervisor Tim Kovar to purchase a pickup truck out of the current 2004-2005 budget on the September council agenda, but later retracted this. Schatz stated it was unfortunate that the Council did not look at things as though we are running a business. The purchase of a pickup may be discussed further during the Utility budget hearings next Tuesday, August 16, 2005.

Council member Smith made a motion to approve the application of the Knights of Columbus for a Bingo Permit at 517 4th Street in David City, Nebraska. Council member Hein seconded the motion. Voting YEA: Council members Schatz, Lukassen, Hein, and Smith. Voting NAY: None. Council members Kirby and Kroesing were absent. The motion carried.

Police Chief Sunday reported that he contacted U.S. Bank concerning Sherry Benson's loan on her property at 912 No. 11th Street. The bank stated that she is current on her payments and they have no reason for foreclosure. Sunday mailed the following letter:

*To: U.S. Bank
From: David City Board of Health*

*RE: Sherry Benson property located at 915 N. 11th Street, David City,
Butler County, Nebraska*

The David City Board of Health has determined that the above described property is in violation of city code 4-401(8), and the City of David City is currently processing the property towards abatement. There are several liens against the property, to-wit; City of David City, U.S. Bank and Wachovia-Coll Agt for back property tax. As secretary for the Board of Health, it is incumbent upon me to inform U.S. Bank that the Mayor and City Council are giving serious consideration of having the house located on this property burned down for the purpose of abatement. The City has the authority to abate a nuisance no matter what liens may be in place in regards to the property.

I've asked the Mayor and City Council to schedule a public hearing for the September 14, 2005 City Council meeting. I want to make sure everyone that has an interest in this property has an opportunity to speak directly to the Council. I've also sent a letter to the property owner, Sherry Benson, informing her of what is taking place in regards to this property. A copy of that letter is enclosed. It is my understanding that U.S. Bank has no intention at this time of releasing the lien they have on the property. Therefore, I would be in hopes that a representative from U.S. Bank would be at the September 14, 1005 City Council meeting to provide input regarding this matter. Please contact me, or the City Administrator if you have any questions, thanks.

*Stephen M. Sunday
Chief of Police/Inspector-Secretary, Board of Health*

Council member Hein made a motion to accept the report of the Board of Health concerning the Sherry Benson property located at 912 No. 11th Street that states the property is in non-compliance as it is in violation of city code 4-401(8). Council member Smith seconded the motion. Voting YEA: Council members Lukassen, Schatz, Smith, and Hein. Voting NAY: None. Council members Kirby and Kroesing were absent. The motion carried.

Council member Hein made a motion to schedule a Public Hearing regarding the Sherry Benson property located at 912 No. 11th Street for the September 14, 2005 council meeting. Council member Schatz seconded the motion. Voting YEA: Council members Lukassen, Smith, Schatz, and Hein. Voting NAY: None. Council members Kirby and Kroesing were absent. The motion carried.

Council member Hein made a motion to accept the report of the Board of Health concerning the Barb Vogl property located at 1070 No. 8th Street that states the property is still in non-compliance. Council member Smith seconded the motion. Voting YEA: Council members Lukassen, Schatz, Smith, and Hein. Voting NAY: None. Council members Kirby and Kroesing were absent. The motion carried.

Resolution #25 - 2004 passed on October 13, 2004 that declared the Barb Vogl property located at 1070 N. 8th Street a public nuisance and directed that the Municipality begin cleaning up said property on, or after, October 13, 2004, unless a notice of appeal was made with the

District Court of Butler County, Nebraska. Council member Smith made a motion to reiterate and re-affirm the passage of Resolution #25-2004 and to instruct/order the street department to assist the police department in the clean-up of the Barb Vogl property located at 1070 N. 8th Street. Council member Hein seconded the motion. Voting YEA: Council members Schatz, Lukassen, Hein, and Smith. Voting NAY: None. Council members Kirby and Kroesing were absent. The motion carried.

Council member Smith made a motion to accept the recommendation of the water tower committee not to illuminate the bulb of the new water tower. The committee felt that the street light and security lights were sufficient. Council member Schatz seconded the motion. Voting YEA: Council members Hein, Lukassen, Schatz, and Smith. Voting NAY: None. Council members Kirby and Kroesing were absent. The motion carried.

There being no further business to come before the Council, Council member Hein made a motion to adjourn. Council member Lukassen seconded the motion. Voting YEA: Council members Schatz, Smith, Lukassen, and Hein. Voting NAY: None. Council members Kirby and Kroesing were absent. The motion carried and Mayor Smith declared the meeting adjourned at 9:27 p.m..

Mayor Stephen Smith

City Clerk Joan E. Kovar



CERTIFICATION OF MINUTES
August 10, 2005

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 August 10, 2005; 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.

City Clerk Joan E. Kovar