

CITY COUNCIL PROCEEDINGS

August 11, 2004

The City Council of the City of David City, Nebraska met in open public session in the meeting room of the City Office, 557 4th Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner-Press on August 5, and an affidavit of the publisher is on file in the office of the City Clerk. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agenda which is a part of these minutes. The advance notices to the Public, Mayor and Council members conveyed the availability of the Agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection during regular office hours. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Stephen Smith, Council members Gary L. Kroesing, Ted Lukassen, Mark Kirby, Gary Smith, Nick Hein, and Bill Schatz, City Administrator Jeff Fiegenschuh, Attorney Jim Birkel, Police Chief Stephen Sunday, Water/Sewer Supervisor Jim Kruse, Jerry Kosch, Duane and Jeanne Zegers, Dr. Jerry Phillips, Laura Long and her son, Economic Development Coordinator Jeff Christensen of Northeast Nebraska Economic Development District, Banner Press Editor Larry Peirce, Nieves Blamey a Rotary Exchange Student from Catamarca, Argentina, who is currently residing with the Larry Peirce family, and City Clerk-Treasurer Joan E. Kovar.

The meeting opened with the Pledge of Allegiance.

The minutes of the July 14th, 2004 meeting of the Mayor and City Council were approved upon a motion by Council member Hein and seconded by Council member Lukassen. Voting YEA: Council members Schatz, Kroesing, Smith, Kirby, Lukassen, and Hein. Voting NAY: None. The motion carried.

Mayor Smith asked for Petitions, Communications and Citizens' Concerns in addition to those contained in the Agenda packets. The following petition was reviewed:

PETITION TO BRING BACK FAMILY SWIM HOUR

The pool committee consisting of Steve Smith, Gary Kroesing, Gary Smith, and Ted Lukassen will consider this for next year, as this swimming season is almost over.

There were no communications.

Council member Smith stated that he has received citizen concerns regarding the need for "No Parking" signs on both sides of 11th Street from approximately "D" Street to "O" Street. 11th Street is always busy with traffic, bicyclers, and walkers, and becomes hazardous when cars are driving around parked vehicles. Police Chief Sunday reported he has not had any problems on 11th Street except during new construction when some vehicles were left on the street overnight. A resolution will be considered at the next regular council meeting.

Council member Kroesing stated that he hopes the new water tower will not be as close to County Road "N" as it currently appears. City Administrator Fiegenschuh stated that it meets set-back requirements.

Mayor Smith asked for consideration of claims. Council member Kroesing made a motion to

authorize the payment of claims. Council member Hein seconded the motion. It was noted that the claim to the National Association of Cities in the amount of \$185.00 was voided, and the claim to D.C. Tree & Yard Care was changed to be paid to Nick Hein in the amount of \$50.00 as Nick had already paid them. Voting YEA: Council members Lukassen, Schatz, Smith, Kirby, Hein, and Kroesing. Voting NAY: None. The motion carried.

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

City Administrator Jeff Fiegenschuh reported the following:

1. Council member Kroesing and Jeff will be attending a meeting on Wednesday, August 25, 7:00 p.m., in Norfolk, Nebraska concerning the Alltel cellular coverage, and invited those interested to join them
2. Provided three different electric rate proposals for consideration:
 - Option 1. Increase the minimum monthly meter charge by \$2 per month and enacting a 1% blanket fee increase across the board.
 - Option 2: Enacting a 2% blanket fee across the board and leaving the minimum monthly rate as is.
 - Option 3: Over the course of two years increasing the minimum monthly fee by \$4 and enacting a 2% blanket fee increase (1% each year).This will be discussed in more detail at the budget meetings and the next Committee of the Whole meeting
3. The Planning Commission voted 3 to 1 in favor of amending the minimum lot area in Highway Commercial zoned areas from 20,000 sq. ft. to 15,000 sq. ft..
4. The Planning Commission granted the request of Mike Novotny, d.b.a. Marquis Body Shop for a special exception (conditional use permit) to operate a motor vehicle body shop contingent upon the City Council approving the lot size change to 15,000 sq. ft. and contingent upon Novotny meeting the 6 requirements stipulated by the Planning Commission for the special exception.

City Clerk Kovar reported that next year, May 22-26, 2005, the International Institute of Municipal Clerks will be held in St. Paul, Minnesota. As this is a close vicinity when you consider "international", the Nebraska Clerks' Academy is encouraging all Clerks to attend. Joan will move to 2nd Vice President of the Nebraska Clerks' Association in October, and Harold Farrar, City Clerk of Kimball, will move to 1st Vice President. The NMCA budgets for the 1st Vice President to attend the IIMC Conference. However, Harold cannot attend next year as his son graduates from high school. The NMCA Board suggested that Joan attend IIMC in 2005 in St. Paul, Minnesota, and Harold go in place of Joan in 2006 to Anaheim, California. It is unknown at this time how much the NMCA budgets towards the conference expense. Since the 2004-05 budgets need to be prepared now, Joan questioned if the City Council would allow both Tami and herself to attend the IIMC conference and if so, how much they would budget or authorize for expenditures. The Council will consider this and it will be discussed further during the budget meetings.

Water/Sewer Supervisor Jim Kruse reported that Kobus Excavating is doing the digging to install the 12" water main from 11th & "O" Streets to the new water tower location which is north on County Rd. N on the east side of the street.

Council member Kirby questioned if they are making progress on the lime feed system. Kruse reported that they were having problems with the new roto-flow valve. The lime feed

system seems to be working normally at this time. Kirby stated that Monday the water was still brown. Kruse said they haven't had any real problems since August 1.

Attorney Birkel reported on a memo 8/03/04 ordered by District Judge Mary Gilbride that Randy Janak is to report to jail unless the cars, tires, scrap iron, etc., are removed from his property by September 1, 2004. Janak is to appear before the Court on September 7, 2004 at 9:30 a.m..

Council member Smith made a motion to schedule a special council meeting for Monday, August 30, at 6:00 p.m. in the City Office meeting room in order to consider the minimum lot area in Highway Commercial and the request of Michael Novotny to divide his property and sell approximately the North 130' to David Scribner. Council member Hein seconded the motion. Voting YEA: Council members Kirby, Kroesing, Lukassen, Schatz, Hein, and Smith. Voting NAY: None. The motion carried. The Committee of the Whole meeting will immediately follow the special council meeting.

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

The following letter was distributed:

August 11, 2004

To: David City Council Members

As individual members of the David City Chamber of Commerce, we would like to express our support for the City of David City to promote economic development in the area. We know first hand how difficult it can be to start a new business, and how vital it is to have the support of the community.

We feel it is important for the future of our town that the city, whenever possible, makes every effort to foster business growth in our community. We would respectfully ask that you consider the importance of economic development when decisions on matters that come before the city council.

The undersigned support the efforts currently underway to rezone the Zegers property for future business/retail development.

Janis Cameron
Chas Eberle
Jack D. Tarr
Albert Comte
Marsha Cieslik
Donald P. Hilger
Gary S. Westphal
Michael L. Moravec
Kim Cummings
Dale Yates
Mary Havlovic

Raymond Cameron
Ross Larson
Patty Vaca
Christine Ahrens
Pam Siroky
Joyce Stewart
Ed Meysenburg
Andra Vandenberg
Monica J. Heller
Russell G. Heller
Beth Klosterman

Larry McPhillips
Carolyn Yates
Eulalia Dahmke
Chris F. Dahmke

Virginia Rerucha
Mike Novotny
Rex Rehmer
Connie J. Perry

Matthew Raite
Joan Riha
Steve Maguire

Council member Schatz stated that he felt it would be reasonable to pass Ordinance No. 975 on the second reading.

Jerry Phillips stated that he didn't really know the location but he is for development and allowing a place for development. Many small towns deteriorate. It is important to establish a place, an opportunity, provide support, and take a serious look at development.

Council member Kirby stated if he lived where Mark Otte lives, he would have the same concerns, and so would the Council if they lived there. "Otte has legitimate concerns; things we need to think about" said Kirby. "When you add concrete where is the water going to go?" Otte lives downhill from the development site. What about drainage and outdoor lighting? Kirby made reference to Souba's Silver Heights - when it was a field there were no problems - but once it was developed with concrete streets, water drained heavily out of the new subdivision causing drainage problems along "O" Street. Kirby said he is for development and new business but there are concerns that need to be addressed.

Jeannette & Duane Zegers stated that there are two contours that currently divert the water to the west toward the creek.

Council member Schatz stated that the Planning Commission will make sure that drainage studies are done by the developers. Otte's should work with the Planning Commission during the planning stage to discuss drainage and directional lighting. Schatz felt that they should be able to compromise it out.

Council member Kroesing stated that with easements, traffic concerns with people crossing the highway, the need to cross the highway to get to the water main, drainage, sidewalks, lighting, etc., he questioned if the Planning Commission can handle all of these concerns.

Council member Schatz stated that all of the concerns need to be calmly discussed by all of the interested parties. Schatz feels that Otte's concerns could be resolved.

Mayor Smith and City Administrator Fiegenschuh will arrange a meeting in which all of the concerns are discussed. They will involve as many people as possible and the Planning Commission members.

Council member Schatz made a motion to pass and adopt Ordinance No. 975 on the second reading. Council member Lukassen seconded the motion. Voting YEA: Council members Smith, Kroesing, Hein, Lukassen, and Schatz. Voting NAY: Council member Kirby. The motion carried and Ordinance No. 975 was passed on second reading only as follows:

ORDINANCE NO. 975

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP BY CHANGING THE ZONING CLASSIFICATION OF REAL ESTATE DESCRIBED FROM MOBILE HOME RESIDENTIAL (MHR) TO HIGHWAY COMMERCIAL (HC), REPEAL ANY ORDINANCES IN CONFLICT HEREWITH, DESCRIBE THE TIME WHEN THIS ORDINANCE SHALL BE IN FULL

FORCE AND EFFECT, 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 Official Zoning Map be amended as follows:

- a. To amend the following property from Mobile Home Residential to Highway Commercial:

part of the SW 1/4 of Section 30, Township 15,
Range 3 East, containing 23 acres more or less

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 its provisions, is hereby appealed.

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 adopted this 14th day of July, 2004.

Passed on 2nd reading 8-11-04
Mayor Stephen Smith

Passed on 2nd reading 8-11-04
City Clerk Joan E. Kovar

Council member Kirby made a motion to advance to agenda item #9 - Consideration of accepting the Department of Economic Development Contracts for the recently awarded Community Development Block Grant. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

The City was approved for a \$350,000 Community Development Block Grant (CDBG) for street improvements. Council member Hein made a motion to accept the Department of Economic Development Contracts for the recently awarded Community Development Block Grant. Council member Lukassen seconded the motion. Voting YEA: Council members Kroesing, Schatz, Kirby, Smith, Hein, and Lukassen. Voting NAY: None. The motion carried.

**STATE OF NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACT NO. 04-PW-019
[CFDA #14.228]**

This contract is entered into between the State of Nebraska Department of Economic Development ("Department"), and the City of David City, Nebraska ("Grantee"), upon the date of signature by both parties.

RECITALS:

A. The Department has been designated by the United States Department of Housing and Urban Development ("HUD") to administer; and HUD has awarded the Department funds for; the Community Development Block Grant Program ("CDBG").

B. The Grantee has submitted and the Department has approved, Grantee's application ("Application") which will undertake community development activities ("Project") authorized under the Housing and Community Development Act of 1974, as amended ("HCDA" or "Act"), and as authorized under the federal regulations governing CDBG at 24 C.F.R. Part 570.

C. The authorized use of CDBG funds is premised upon, and conditioned on, the Grantee fulfilling a CDBG national objective as a result of the CDBG-assisted activity. One of the three specified national objectives in the Act (and in the CDBG regulations) is benefiting low-to-moderate income ("LMI") persons.

1. Such LMI benefit national objective is usually satisfied in the context of community development projects involving public facilities or public improvements by demonstrating the projects serve a primarily residential area having at least 51% LMI residents. This subcategory of LMI benefit is referred to as LMI Area Benefit.

2. Sometimes the LMI benefit national objective may be satisfied when the public facilities or public improvements will be used for activities designed to benefit a particular group of persons (at least 51% of whom are LMI persons), rather than everyone in an area generally. This subcategory of LMI benefit is referred to as LMI Limited Clientele.

D. As is agreed in §1.03 below, but also being cited here in the Recitals for emphasis, a failure to fulfill the LMI benefit national objective as a result of the CDBG-assisted activities will result in the disallowance of CDBG funding for the Project, and the Grantee will be required, under HUD CDBG regulations, to repay all CDBG funds to the Department.

E. This Recital provision is to formally memorialize in this contract (as opposed to such data simply being among the various application materials, or among other administrative file materials, submitted by the Grantee) the proposed LMI beneficiaries data established at the time of the approval of the Project and which is being used by the Department in ascertaining that the LMI national objective is proposed to be met by the Project.

1. The subcategory of LMI benefit being utilized for the Project is:

LMI *Area Benefit* --or-- LMI *Limited Clientele*.

2. The data for proposed beneficiaries is → 179 persons, of whom 119 (66.48%) are LMI persons.

AGREEMENT:

Premised on the Recitals above, and in consideration of the mutual promises and

understandings of the parties set forth below, the parties agree as follows:

PART I: TERMS AND CONDITIONS.

§1.01 Amount, Use, and Payment of CDBG Funds.

The total amount of CDBG funds paid by the Department to the Grantee for allowable expenses incurred will not exceed \$350,000. Of that amount, approved administrative and audit expenses will not exceed \$17,500.

The grant will be used to fund the Project as detailed in the Application, which generally involves construction of street improvements in the southwest target area identified in the Application for David City, Nebraska.

The proportion of CDBG funds paid and applied to a specific activity will not exceed the proportion specified in the Sources and Uses of Funds outlined at Part III of this contract.

To request payment of allowable expenses, the Grantee must submit a request for payment to the Department, in the manner and form prescribed from time to time by the Department, mailed to the Community and Rural Development Division, Department of Economic Development, 301 Centennial Mall South, P.O. Box 94666, Lincoln, Nebraska 68509-4666.

§1.02 Time of Performance.

The period covered under this contract will be 24 months from July 23, 2004. The termination date of this contract will be July 23, 2006. All of the required activities and services, except for administration and audit, will be completed by or before this date.

§1.03 National Objective Compliance--Failure Requiring Repayment by Grantee.

A failure to fulfill the national objective as a result of the CDBG-assisted activities will result in the disallowance of CDBG funding for the Project, and the Grantee will be required, under HUD CDBG regulations, to repay all CDBG funds to the Department.

PART 11: SPECIAL CONDITIONS FOR RELEASE OF FUNDS.

Funding of the amount stipulated in §1.01 of this contract will not be released to the Grantee by the Department until the following special conditions for release of funds are met. These special conditions must be satisfactorily completed no later than October 23, 2004. The Department reserves the right to cancel the contract if these special conditions are not met within this specified time frame.

§2.01 Grantee Information Sheet.

Completion, and submission to the Department, of the Department's Grantee Information Sheet.

§2.02 Environmental Review.

Documentation evidencing the Grantee's completion of its responsibilities for environmental review and decision making pertaining to the project, and its compliance with the National Environmental Policy Act of 1969 (NEPA), and other provisions of Federal law as specified in 24 C.F.R. Part 58 which furthers the purposes of NEPA.

§2.03 Authorization to Request Funds Form.

Completion by the appropriate chief elected official of the Grantee, and submission to the Department, of the Department's Authorization to Request Funds form.

§2.04 Financial Management.

Documentation evidencing completion of all financial management system requirements and execution of the financial management certification form prescribed by the Department.

§2.05 Procurement Standards.

Documentation evidencing adoption of procurement standards equivalent to those established in 24 C.F.R. §85.36 and in 24 C.F.R. §570.489.

§2.06 Excessive Force Certification.

Documentation that the Grantee has adopted a policy to prohibit the use of excessive force by local law enforcement agencies against any individual engaged in nonviolent civil rights demonstrations.

§2.07 Fair Housing.

Documentation that the Grantee has specifically provided a description of the actions they will take during the course of the grant to fulfill the requirements to affirmatively further fair housing.

§2.08 Implementation Schedule.

Completion, and submission to the Department, of the Nebraska CDBG Grantee Implementation Schedule form.

§2.09 Other Special Conditions.

None.

PART III: SOURCES AND USES OF FUNDS.

Sources and Uses of Funds for the Project are shown in the table below.