

CITY COUNCIL PROCEEDINGS

November 12, 2003

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 November 6, and an affidavit of the publisher is on file in the office of the City Clerk. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agenda which is a part of these minutes. The advance notices to the Public, Mayor and Council members conveyed the availability of the Agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection during regular office hours. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Stephen Smith, Council members Gary L. Kroesing, Mark Kirby, Gary Smith, Ted Lukassen, Nick Hein, and Bill Schatz, City Administrator Jeff Fiegenschuh, City Attorney Jim Egr, Police Chief Stephen Sunday, Electric Supervisor Tim Kovar, Waste Water Operator Jim Kruse, Banner-Press Editor Larry Peirce, Bob Kobza, Terry Samek, Cory Kuhlman, Mary Jo Drozda and sons Jacob and Alex, and City Clerk-Treasurer Joan E. Kovar.

The meeting opened with the Pledge of Allegiance.

The minutes of the October 8th and October 27th, 2003 meetings of the Mayor and City Council were approved upon a motion by Council member Kroesing and seconded by Council member Smith. Voting YEA: Council members Hein, Schatz, Kirby, Lukassen, Smith, and Kroesing. Voting NAY: None. The motion carried.

Mayor Smith asked for Petitions, Communications and Citizens' Concerns in addition to those contained in the Agenda packets. There were no petitions or citizens concerns. The following communication was acknowledged:

November 8, 2003

David City Police Department, 475 N. 3rd Street, David City, NE 68632

To Whom It May Concern,

I wanted to write this letter and let you know how much I appreciated the work that Ofc. Vincent Brehm did for me on a case I was working in Lincoln, NE. I called Ofc. Brehm on October 8, 2003 and requested his assistance in regards to a hit and run injury accident I was working on. I had requested him to attempt to contact the suspect and interview him in regards to the accident plus obtain the suspect's information for the accident report.

Within a couple of hours, Ofc. Brehm faxed us several well documented reports, miranda form and a hand written statement from the suspect. Ofc. Brehm also took some photographs of the suspect and sent those to us as well. Ofc. Brehm was very helpful on this case. I was able to cite the suspect due to Ofc. Brehm's thoroughness on his assistance on this case. I just wanted to make sure he is aware of how much I appreciate his willingness to go the extra mile on my case.

Thank You.

Ofc. Lana Sabata #1416, Lincoln Police Department, 575 S. 10th Street, Lincoln, NE 68508, (402) 441-7204

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

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

City Administrator Jeff Fiegenschuh reported the following:

- Received Economic Development Administration 1st rate approval on the grant request. They would like to fund us by December 31, hopefully in the amount of \$500,000.00. Jeff will be meeting with Senators Nelson, Bereuter, Hagel, and Bromm to help secure funding.
- Possible contaminated dirt from the power plant was taken to the old landfill. Street Superintendent Jim McDonald estimates it will cost \$200 to test the dirt or \$2,500 to move the dirt to the Butler County Landfill. McDonald will check to see how long it will take to get the dirt tested.
- Met with the David City Golf committee who provided a balance sheet as of November 10, 2003, and a profit and loss statement for January 1 through November 10, 2003 showing a net income of -\$5,340.27. The golf committee initially asked to put in their own water well. Terry Samek representing the golf board stated that they are having financial problems. Membership remains the same even though a sprinkler system was put in to attract more golfers. Digging a well is not feasible. Council member Kroesing suggested sharing a well so that untreated water is used for the golf course, football fields, and to fill the lakes during a drought. They do not have the assets necessary to keep going and would appreciate any help the City could give them. The city appropriates Keno funds to the ball association yearly, and so it was noted that perhaps the City should treat the golf course similarly by giving them a set amount for the next few years. It was noted that perhaps the City should allocate \$6,000 from this years Contingency Fund for the golf course, and then budget \$6,000 a year for the next few years. This will be discussed further at the next Committee of the Whole meeting and the December 10th council meeting.
- Will be attending a grants workshop December 1st - 5th
- Will be working ½ days with the various city/utility departments from December 17th -19th
- Advertised for a WA/SE Supervisor in the Banner Press, Nebraska Municipal Review, and on the internet "GovJobs.com" with a deadline of November 24, 2003
- The initial design for development of camping and RV trailer use pads was \$300,00 but the committee lowered it to \$177,000. Jeff applied for a 50% reimbursable grant through the NE Game & Parks Commission for Park Recreational improvements. The money would be taken from the electric department for a cost of approximately \$85,000. The City is not obligated to take the grant.

City Attorney Egr reported that the City vs. Smith for contempt of court regarding the property at 595 C Street, is scheduled for December 2, 2003 at 9:30 a.m.. City vs. Randy Janak is scheduled for December 2, 2003 at 2:30 p.m..

WA/SE Operator Jim Kruse stated that Utility Superintendent Tom McCracken of Rising City asked if the City would be willing to enter into an agreement with Rising City, so that if McCracken is gone and a problem arises, David City would fill in for him. This will be discussed further at the next Committee of the Whole meeting.

Police Chief Sunday reported that the executive committee of the RAP board is going to ask that David City continue being the sub-grantee/coordinator. This may be a mute point as President Bush has axed all of these grant dollars in his budget request to Congress. Unless Congress overrides the President's budget proposal, there will be no grant dollars for drug task forces after September 2004. RAP 14 may be the end of RAP and any drug task force funded by these grant dollars.

Mayor Smith noted that a Public Hearing was scheduled for 7:45 p.m., therefore Council member Kroesing made a motion to advance to agenda item #9 - 7:45 p.m. Public Hearing to consider the application of Staab Inc. d/b/a/ Pizza Hut of David City, for a Class "A" Liquor License. Council member Kirby seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Mayor Smith declared the Public Hearing open at 7:51 p.m. to consider the application of Staab Inc. d/b/a/ Pizza Hut of David City, for a Class "A" Liquor License. Council member Kirby asked if a background check was done. Police Chief Sunday stated that the Liquor Commission would have done that. There being no further comments, Mayor Smith closed the Public Hearing at 7:52 p.m..

Council member Kroesing made a motion to approve the application of Staab Inc. d/b/a/ Pizza Hut of David City, for a Class "A" Liquor License. Council member Kirby seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

The Council continued with the Committee and Officer Reports.

City Clerk Kovar asked for clarification on the following matter: At the August council meeting a motion was made to pay Waster Water Operator Jim Kruse an additional \$300.00 per month while he assumes additional duties during the absence of Water/Sewer Supervisor Gene Divis who had heart surgery. Kovar questioned if Kruse was to get the additional pay only when Divis is using sick leave, or also when Divis is using vacation time. Council member Schatz stated that Divis is retiring and is using up his sick leave and vacation time; so Kruse should be reimbursed as the interim Water/Sewer Supervisor. Council member Kroesing made a motion to continue to pay Waste Water Operator Jim Kruse an additional \$300.00 per month until a new water/sewer supervisor is appointed. Council member Lukassen seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Mayor Smith scheduled a Committee of the Whole meeting for Monday, November 24, 2003, at 5:30 p.m. in the City Office meeting room.

Council member Lukassen made a motion to accept the Committee and Officers' Reports as presented. Council member Smith seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Schatz made a motion to enter into a contract with Government Acquisitions Inc., Vehicle Procurement Division to provide the city with a new police car. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

GOVERNMENT ACQUISITIONS, INC. Vehicle Procurement Division

- Following the events of September 11th we were contacted by local government officials and asked to develop a program to supply the vehicles and equipment necessary for them to provide Homeland Security and protect and serve in our communities. At that time, President Bush made his call to support Homeland Security. We decided to accept the challenge and over the course of the following year we worked with government officials and attorneys to develop the program.
- At the end of 2002, we began accepting applications nationally. We are working with thousands of law enforcement, fire, rescue, EMS and other government entities

- throughout America seeking to adopt the program.
- For an updated list of government entities that have adopted the program, you can visit our website: <http://GovernmentAcquisitions.com>

Answering The Call
For Homeland Security

- Due to budgetary constraints, many government entities are seeking alternative funding sources. The program provides an avenue for us to raise funds from local, regional and national sponsors. The raised funds can then be utilized to purchase and donate vehicles to your government entity. The Program is designed to get the vehicles you need to provide homeland security and protect and serve in your community.
- Sponsor endorsement is required on vehicles. However, with the Interim Sponsor Program, we can use raised funds to deliver vehicles without sponsor endorsement.
- The vehicle themes can be your choice of creative or conservative. You can be conservative on some vehicles and creative on others.

Mayor Smith declared a ten minute recess at 8:10 p.m. The meeting resumed at 8:20 p.m..

The Brahmsteadt property located at 988 E Street was discussed. The fire department won't burn down the house unless the asbestos is first removed from the outside of the house. The average bid to clean up the asbestos from the outside of the Curtis Brahmsteadt house at 988 E Street is estimated at \$5,000. Sometimes a company such as Fundco pays the back taxes and then the property owner must pay 14% interest. The Council questioned if back taxes were due. City Attorney Jim Egr stated that he would need time to research this. Therefore, Council member Schatz made a motion to table consideration of the Brahmsteadt property located at 988 E Street, to the December 10, 2003 council meeting. Council member Smith seconded the motion. Voting YEA: Council members Kroesing, Schatz, Hein, Kirby, Smith, and Lukassen. Voting NAY: None. The motion carried.

Ordinance No. 961 setting the monthly water rates was discussed. Council member Smith stated that some citizens would rather see the increase over a 5 year period than a 3 year period. City Administrator Fiegenschuh stated that financially he didn't see how the City could wait 5 years to implement the water rate increase. Council member Hein agreed saying that we are using current figures to calculate the water charges; even in 3 years the rates will probably be below the average and it will be time to review them again. Council member Schatz agreed stating that some towns implement the change immediately; we are giving the citizens a break by spreading it over a 3 year period. The City will need to review the rates in 3 years and then should review them every year after. Council member Kirby stated that he doesn't like to raise rates to anybody but the City needs to implement a change. It is the customer charge that is increasing; the charge to have water service to your house; the price per gallon isn't going up that much.

Council member Schatz made a motion to pass Ordinance No. 961 on the 2nd reading. Council member Lukassen seconded the motion. Voting YEA: Council members Kirby, Kroesing, Hein, Schatz, and Lukassen. Voting NAY: Council member Smith. The motion carried and Ordinance No. 961 was passed on second reading as follows:

ORDINANCE NO. 961

AN ORDINANCE SETTING THE MONTHLY RATES TO BE CHARGED FOR WATER

USAGE; CUSTOMER CHARGES; EFFECTIVE DATES AND RATES; REPEALING ALL PARTS OF THE MUNICIPAL CODE AND ORDINANCES IN CONFLICT HERewith; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

WHEREAS, SECTION 3-101 OF THE MUNICIPAL CODE PROVIDES THAT THE GOVERNING BODY SHALL SET RATES TO BE CHARGED BY ORDINANCE.

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

Section 1. That the following monthly rates and customer charges shall become effective _____. (Not for the _____ billing but for the water used in _____, which will be billed in _____)

(Year 1)

For 5/8" by 3/4" meters:

Customer charge of \$7.50 per month (no water usage included)
and \$1.80 per 1,000 gallons.

For 3/4" meters:

Customer charge of \$11.25 per month (no water usage included)
and \$1.80 per 1,000 gallons.

For 1" meters:

Customer charge of \$11.25 per month (no water usage included)
and \$1.80 per 1,000 gallons.

For 1 1/2" meters:

Customer charge of \$18.75 per month (no water usage included)
and \$1.80 per 1,000 gallons.

For 2" meters:

Customer charge of \$56.25 per month (no water usage included)
and \$1.80 per 1,000 gallons.

For 3" meters:

Customer charge of \$75.00 per month (no water usage included)
and \$1.80 per 1,000 gallons.

For 4" meters:

Customer charge of \$75.00 per month (no water usage included)
and \$1.80 per 1,000 gallons.

Section 2. That the following monthly rates and customer charges shall become effective _____. (Not for the _____ billing but for the water used in _____, which will be billed in _____)

(Year 2)

For 5/8" by 3/4" meters:

Customer charge of \$11.25 per month (no water usage included)
and \$1.90 per 1,000 gallons for First 10,000
and \$1.95 per 1,000 gallons Over 10,000

For 3/4" meters:

Customer charge of \$16.90 per month (no water usage included)
and \$1.90 per 1,000 gallons for First 10,000
and \$1.95 per 1,000 gallons Over 10,000

For 1" meters:

Customer charge of \$16.90 per month (no water usage included)
and \$1.90 per 1,000 gallons for First 10,000
and \$1.95 per 1,000 gallons Over 10,000

For 1 1/2" meters:

Customer charge of \$28.10 per month (no water usage included)
and \$1.90 per 1,000 gallons for First 10,000
and \$1.95 per 1,000 gallons Over 10,000

For 2" meters:

Customer charge of \$84.40 per month (no water usage included)
and \$1.90 per 1,000 gallons for First 10,000
and \$1.95 per 1,000 gallons Over 10,000

For 3" meters:

Customer charge of \$112.50 per month (no water usage included)
and \$1.90 per 1,000 gallons for First 10,000
and \$1.95 per 1,000 gallons Over 10,000

For 4" meters:

Customer charge of \$112.50 per month (no water usage included)
and \$1.90 per 1,000 gallons for First 10,000
and \$1.95 per 1,000 gallons Over 10,000

Section 3. That the following monthly rates and customer charges shall become effective _____. (Not for the _____ billing but for the water used in _____, which will be billed in _____)

(Year 3)

For 5/8" by 3/4" meters:

Customer charge of \$16.90 per month (no water usage included)
and \$2.00 per 1,000 gallons for First 10,000
and \$2.10 per 1,000 gallons Over 10,000

For 3/4" meters:

Customer charge of \$21.10 per month (no water usage included)
and \$2.00 per 1,000 gallons for First 10,000
and \$2.10 per 1,000 gallons Over 10,000

For 1" meters:

Customer charge of \$21.10 per month (no water usage included)
and \$2.00 per 1,000 gallons for First 10,000
and \$2.10 per 1,000 gallons Over 10,000

For 1 ½" meters:

Customer charge of \$42.20 per month (no water usage included)
and \$2.00 per 1,000 gallons for First 10,000
and \$2.10 per 1,000 gallons Over 10,000

For 2" meters:

Customer charge of \$126.55 per month (no water usage included)
and \$2.00 per 1,000 gallons for First 10,000
and \$2.10 per 1,000 gallons Over 10,000

For 3" meters:

Customer charge of \$168.75 per month (no water usage included)
and \$2.00 per 1,000 gallons for First 10,000
and \$2.10 per 1,000 gallons Over 10,000

For 4" meters:

Customer charge of \$168.75 per month (no water usage included)
and \$2.00 per 1,000 gallons for First 10,000
and \$2.10 per 1,000 gallons Over 10,000

Section 4. The monthly rates to be charged for water usage and customer charges will be reviewed by the City Council on a three year basis;

Section 5. That any other ordinance or section of any ordinance passed and approved prior to passage, approval, and publication or posting of this ordinance and in conflict with its provisions, is hereby repealed.

Section 6. 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 _____th day of _____, 2003.

on 2nd reading 11/12/03)

_____ (Passed)

Mayor Stephen Smith

(Passed on 2nd reading 11/12/03)

City Clerk Joan E. Kovar

The council would like to pass the sewer rates in conjunction with the water rates, therefore, Council member Schatz made a motion to table consideration of a resolution setting the monthly rates to be charged for sewer usage and customer charges to the December 10, 2003, council meeting. Council member Lukassen seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

RESOLUTION NO. _____ - 2003

WHEREAS, Chapter 3, Article 2, Section 3-212 of the Municipal Code of the City of David City, Nebraska, provides that customers of the Municipal Sewer Department shall be charged rates set by resolution for the use of the sewer system.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that for the use of the sewer system, each customer shall pay a monthly Sewer Use Fee, which is an amount calculated as described hereafter:

For residential customers, the monthly sewer rate fee shall be based on the average quantity of water used in the months of December, January, and February preceding April of the current year. Customers who move within the City shall pay the same Sewer Use Fee at their new location as they paid for at their former location until which time the sewer rate fees are recalculated. For new residential customers in the City, an appropriate Sewer Use Fee will be determined by the Water/Sewer Supervisor.

For commercial customers, who use water in a commercial business, industrial, or other non-residential way, a monthly Sewer Use Fee will be calculated monthly based on the current months water usage. Commercial customers who do not want to pay a sewer use fee for water used for watering lawns or shrubs will be responsible, at their own cost, to hire a licensed plumber to install a separate water meter to separately meter such water usage.

The following monthly Sewer Rates and customer charges shall become effective _____, which will be billed in _____.

(Year 1)

Customer charge of \$4.60 per month
First 100,000 gallons of water @ \$2.03 per 1,000 gallons
Over 100,000 gallons of water @ \$1.53 per 1,000 gallons

That the following monthly sewer rates and customer charges shall become effective _____, which will be billed in _____)

(Year 2)

Customer charge of \$4.80 per month
First 100,000 gallons of water @ \$2.13 per 1,000 gallons
Over 100,000 gallons of water @ \$1.63 per 1,000 gallons

That the following monthly sewer rates and customer charges shall become effective _____, which will be billed in _____)

(Year 3)

Customer charge of \$5.00 per month
First 100,000 gallons of water @ \$2.23 per 1,000 gallons
Over 100,000 gallons of water @ \$1.73 per 1,000 gallons

BE IT FURTHER RESOLVED , that all resolutions and ordinances or parts thereof, in conflict with the provisions of this resolution, are hereby repealed.

Dated this _____th day of _____, 2003.

(Tabled)
Mayor Stephen Smith

(Tabled)
City Clerk Joan E. Kovar

Mayor Smith explained that the Planning Commission disagreed on the fees to be charged for various sign permits, so the sign permit fee remained at \$25.00. This may be increased in the near future.

Council member Lukassen made a motion to pass a resolution amending David City's current zoning permit fee structure. Council member Schatz seconded the motion. Council member Hein disagreed with the charge for townhouses. Hein felt that if a new residence over 2,000 sq. ft. gross living space is \$250.00, a duplex should be \$200.00 per unit; so a duplex would be \$400.00. Council member Schatz made a motion to make an amendment to the motion that townhouses be \$200.00 per unit. Discussion followed. It was noted that apartment houses aren't addressed. Council member Lukassen withdrew his original motion. Council member Schatz withdrew his second and also his amendment.

Council member Schatz made a motion to refer the resolution amending David City's Zoning Permit Fee Structure back to the Planning Commission for further discussion concerning the charges for new residences, townhouses, and apartment houses. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

RESOLUTION NO. - 2003

WHEREAS, the City of David City has adopted a Zoning Permit Application, and

WHEREAS, the City has determined a need to charge fees for the following applications.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA that the following application fees are hereby approved and adopted.

Schedule of application fees:

Certificate of Zoning Compliance: (needed for any new business going in)	No Charge
Zoning Permit:	
Fence, shed, deck.....	\$25.00
Carport, garage, additional living space.....	\$50.00
New residences.....	\$100.00
If over 2,000 sq. ft. gross living space	+\$150.00.....=.....\$250.00
Townhouses	\$200.00

Commercial building.....	\$250.00
Signs:.....	\$25.00
Join / Divide Lots.....	\$25.00
Subdivision:	
Preliminary Plat	\$250.00 + \$10.00 per lot
Final Plat.....	\$150.00
Rezoning:	\$150.00 + \$75.00 if land use map amended
Conditional / Special Use.....	\$75.00
Zoning Amendment	\$150.00
Zoning Variance.....	\$75.00

All fees are non refundable. If a special council meeting is required the applicant will be charged for the cost of the special council meeting.

Dated this ____th day of _____, 2003.

(Tabled)
Mayor Stephen Smith

(Tabled)
City Clerk Joan E. Kovar

Council member Hein made a motion to table consideration of hiring a Zoning Administrator. Council member Kroesing seconded the motion. All of the council members were present, all voted YEA, and the motion carried.

The Council discussed selling the old theater property located between H & R Block and Birkel & Egr Law Offices. This is located at Lot Nine (9), except for the south 4.7 feet (4.7') of Lot Nine (9), all of Lot Ten (10), and Lot Eleven (11) except for the north 5.8 feet (5.8') of Lot Eleven (11), all in Block Twenty-four, Original Town of David City. According to State Statute 17-503 the City needs to pass a resolution stating how the property is to be sold (public auction or sealed bids) and the manner and terms thereof. After the passage of the resolution directing the sale, the notice and terms of the sale must be published once each week for three consecutive weeks in a legal newspaper. If within thirty days after the third publication of the notice a remonstrance against such sale is signed by registered voters of the city equal in number to thirty percent of the registered voters of the city voting at the last regular municipal election is filed with the governing body, such property shall not then, nor within one year thereafter, be sold. Following passage of the resolution directing a sale, publishing of the notice of the proposed sale, and passing of the thirty-day right-of-remonstrance period, the property shall then be sold. Such sale shall be confirmed by passage of an ordinance stating the name of the purchaser and terms of the sale.

Council member Hein made a motion to go into executive session to discuss strategy in selling the old theater property located at Lot Nine (9), except for the south 4.7 feet (4.7') of Lot Nine (9), all of Lot Ten (10), and Lot Eleven (11) except for the north 5.8 feet (5.8') of Lot Eleven (11), all in Block Twenty-four, Original Town of David City. Council member Lukassen seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. Mayor Smith, City Council, City Attorney Jim Egr, and City Clerk Kovar went into executive session at 9:00 p.m..

Council member Hein made a motion to come out of executive session. Council member Schatz seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. The Mayor, City Council, City Attorney Egr, and City Clerk Kovar came out of executive session at 9:30 p.m..

Council member Schatz introduced Resolution No. 18-2003 and moved for its passage and adoption. Council member Hein seconded the motion. Voting YEA: Council members Lukassen, Kirby, Kroesing, Smith, Hein, and Schatz. Voting NAY: None. The motion carried and Resolution No. 18-2003 was passed and adopted as follows:

RESOLUTION NO. 18 - 2003

WHEREAS, Nebraska State Statute 17-503 allows any city of the second class to convey any real and personal property owned by it providing the passage of a resolution directing the sale at public auction or by sealed bid of such real and personal property and the manner and terms thereof; and,

WHEREAS, the City of David City, Nebraska, is the owner of the property located at Lot Nine (9), except for the south 4.7 feet (4.7') of Lot Nine (9), all of Lot Ten (10), and Lot Eleven (11) except for the north 5.8 feet (5.8') of Lot Eleven (11), all in Block Twenty-Four, Original Town of David City, and,

WHEREAS, the City of David City, Nebraska, desires to sell said property at public auction, which date is to be determined, with a minimum starting bid of \$10,000, 15% down on the date of sale, balance due upon confirmation. The City of David City reserves the right to reject any and all bids.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the City of David City will sell at public auction the property located at Lot Nine (9), except for the south 4.7 feet (4.7') of Lot Nine (9), all of Lot Ten (10), and Lot Eleven (11) except for the north 5.8 feet (5.8') of Lot Eleven (11), all in Block Twenty-Four (24), Original Town of David City.

BE IT FURTHER RESOLVED that the sale of real property and the terms thereof shall be published once each week for three consecutive weeks in a legal newspaper published in or of general circulation in David City, and after the passing of the thirty-day right-of-remonstrance period, the property shall then be sold. .

Dated this 12th day of November, 2003.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Schatz introduced Ordinance No. 965. Council member Schatz 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 Kirby, Schatz, and Smith. Voting NAY: Council members Kroesing, and Hein. Council member Lukassen abstained. The motion to suspend the statutory rule failed.

Council member Schatz stated that he attended the Planning Commission meeting, heard their discussions and therefore made a motion to pass and adopt Ordinance No. 965 on the first reading. Council member Smith seconded the motion. The current ordinance states "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 inches (72") in height. Council member Hein stated this is an appearance issue and questioned if some fences now are 8' high, when only 6' high fences are allowed, does that mean people will now put up ten foot (10') high fences if the height is set at eight foot (8')? Hein stated that some people claim their fence is 6' but then it has 2' of decoration on top. Mayor Smith stated that would be up to the Zoning Administrator to enforce. Voting YEA: Council members Schatz and Smith. Voting NAY: Hein, Kroesing, and Kirby. Council member Lukassen abstained. The motion failed:

ORDINANCE NO. 965

AN ORDINANCE TO AMEND ORDINANCE NO. 616, SECTION 603.3 FENCES AND WALLS, TO REGULATE THE HEIGHT OF FENCES, WALLS, AND STRUCTURAL SCREENS, AND TO PROVIDE FOR PUBLICATION IN PAMPHLET FORM

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

Section 1. That Section No. 603.3 of Ordinance No. 616 be amended to read as follows:

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 (3½ ') in height. Fences, walls, or structural screens along the front, sides, or rear of any side or back yard shall not be in excess of ninety-six (96") inches (8') in height. Such height shall be determined by perpendicular measurement from the nearest ground level.

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 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 _____th day of _____, 2003.

(Failed 11/12/03)

Mayor Stephen Smith

(Failed 11/12/03)

City Clerk Joan E. Kovar

Council member Hein introduced Ordinance No. 966. 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. All of the Council members were present, all voted YEA, and the motion carried.

Mayor Smith declared a ten minute recess at 9:45 p.m. The meeting resumed at 9:55 p.m..

Council member Kirby made a motion to pass and adopt Ordinance No. 966 on the third and final reading. Council member Kroesing seconded the motion. Voting YEA: Council members Hein, Schatz, Lukassen, Kroesing, Smith, and Kirby. Voting NAY: None. The motion carried and Ordinance No. 966 was passed and adopted as follows:

ORDINANCE NO.
966

AN ORDINANCE AMENDING CHAPTER 2: COMMISSIONS AND BOARDS 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 2: Commissions and Boards of the David City Municipal Code Book be amended to read as follows:

Chapter 2

COMMISSIONS AND BOARDS

Article 1. Commissions and Boards

§2-101 **LIBRARY BOARD.** The Library Board shall consist of five (5) appointed members who shall be residents of the Municipality and who shall serve terms of four (4) years. The board members shall be appointed by a majority vote of the members of the City Council. Neither the Mayor nor any member of the City Council shall be a member of the Library Board. The terms of members serving on the effective date of a change in the number of members shall not be shortened, and any successors to those members shall be appointed as the terms of those members expire. In cases of

vacancies by resignation, removal, or otherwise, the City Council shall fill the vacancy for the unexpired term. No member shall receive any pay or compensation for any services rendered as a member of the Library Board. (Neb RS 51-202)

The City Council may require the members of the Library Board to give a bond in a sum set by resolution and conditioned upon the faithful performance of their duties.

The members of the Library Board shall immediately after their appointment meet and organize by electing from their number a President, a Secretary, and such other officers as may be necessary. A majority of the members of the Library Board shall constitute a quorum for the transaction of business. (Neb RS 51-204)

No member of the Board shall serve in the capacity of both the President and Secretary of the Board. It shall be the duty of the Secretary to keep the full and correct minutes and records of all meetings and to file the same with the Municipal Clerk where they shall be available for public inspection at any reasonable time.

The Board shall meet at such times as the Board may designate. Special meetings may be held upon the call of the President or a majority of the members of the Board.

The Library Board shall have the authority to appoint a librarian and all other employees. It shall be the duty of the Board to have general charge of the Municipal Library and to establish appropriate rules and regulations for the management, operation, and use of the same. The Board shall have supervisory authority over all employees of the library including the librarian. All actions of the Board shall be subject to review and supervision of the Governing Body. The Board shall be responsible for making such reports and performing such additional duties as the Governing Body may designate from time to time.

§2-201 PLANNING COMMISSION. The Governing Body shall appoint the Planning Commission, which shall consist of five (5) regular members plus one (1) additional member designated as an alternate who shall attend and serve only when one of the regular members is unable to attend for any reason. At least four (4) regular members shall be residents of the Municipality and one (1) regular member and the alternate shall live within the jurisdictional limits of the Municipality. The members of the Commission, including the alternate shall serve a three (3) year term of office unless reappointed. The Commission shall serve without compensation and shall hold no other municipal office except when appointed to serve on the board of adjustment as provided in State Statute 19-908. The Commission may be required, in the discretion of the Governing Body, to give a bond in a sum set by resolution of the Governing Body, and conditioned upon the faithful performance of their duties. At the time of the Commission's first (1st) meeting in January of each year, the Commission shall organize by selecting from its membership a Chairman and Vice-Chairman. An accurate record of all proceedings of meetings and hearings of the commission shall be kept, and shall be available for public inspection at any reasonable time. The Planning Commission shall be funded by the Governing Body from time to time out of the General Fund. A majority of the membership of the Commission shall constitute a quorum for the purpose of doing business. Special meetings may be called by the Chairman. It shall also be the duty of the Chairman to call such meeting when requested to do so in writing by a majority of the commission members. It shall be the duty of the Commission to make and adopt plans for the physical development of the municipality as well as those areas within the jurisdictional

limits of the Municipality. All actions by the Commission shall be subject to the review and supervision of the Governing Body. The Commission shall be responsible for making such reports and performing such other duties as the Governing Body may, from time to time, designate. No member of the Governing Body, or other municipal official, except where otherwise specifically provided, shall serve as a member of the Planning Commission while serving any other term of office. (*Ref. 19-925 through 19-933 RS Neb.*)

The legislative body shall receive the advice of the planning commission before taking definite action on any contemplated amendment, supplement, change, modification, or repeal. No such regulation, restriction, or boundary shall become effective until after separate public hearings are held by both the planning commission and the legislative body in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be given by publication thereof in a paper of general circulation in such municipality at least one time ten days prior to such hearing. (*Ref. 19-904 RS Neb.*)

§2-202 BOARD OF ADJUSTMENT. The Governing Body shall appoint the Board of Adjustment which shall consist of five (5) regular members plus one (1) additional member designated as an alternate who shall attend and serve only when one of the regular members is unable to attend for any reason. Each member of the Board shall serve a term of three (3) years, unless reappointed, and shall be removable only for good and sufficient cause by the Governing Body upon written charges and after a public hearing. The members of the Board shall serve without compensation and may be required, in the discretion of the Governing Body, to give a bond in a sum set by resolution of the Governing Body, and conditioned upon the faithful performance of their duties. One (1) member of the Board of Adjustment shall be at the same time a member of the Planning Commission at all times. Upon the loss of membership on the Planning Commission the said member shall also lose his membership on the Board of Adjustment. The Board shall organize at its first (1st) meeting in June of each year and elect from its membership a Chairman and Secretary. It shall be the duty of the Secretary to keep complete and accurate minutes of all Board meetings and to file the same at the office of the Municipal Clerk for examination at any reasonable time by the public. The Board of Adjustment shall be funded from time to time out of the General Fund by the Governing Body. Meetings of the Board shall be held at such times as the Governing Body may designate, or at such other times as the Chairman may, in his discretion call a meeting. Special meetings may be also held upon the call of any three (3) members of the Board. A majority of the board shall constitute a quorum for the purpose of doing business. It shall be the duty of the Board to hear and decide appeals where it is alleged that there is error in any order, requirement, decision, or determination made by a Municipal official based on any zoning ordinance of the Municipality; to hear and decide in accordance with the provisions of any zoning ordinance, requests for interpretation of any map or decision relating to zoning regulations; and authorize a variance from the strict application of any zoning ordinance if it is found that a specific piece of property, due to exceptional specifications existing at the time of passage of the said ordinance, would result in exceptional difficulties and undue hardship; provided, that no variance shall be granted if the undue hardship appears to affect the property in the district generally, or if the situation of the property concerned appears to be so general or recurring in nature as to make reasonably practicable, the formulation of a general regulation to be adopted by the Governing Body as an ordinance. The concurring vote of four (4) members of the

Board shall be necessary to reverse any order, requirement, decision, or determination made by a Municipal official on any matter which was governed by any Municipal zoning ordinance. The Board shall be responsible for making such reports and performing such other duties as the Governing Body may designate. No member of the Governing Body shall serve as a member of the Board of Adjustment. No member of the Board of Adjustment shall serve in the capacity of both Chairman and Secretary of the Board.

The Board of Zoning Adjustment shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official or agency based on, or made in the enforcement of, any zoning regulation or any regulation relating to the location or soundness of structures, to interpret any map, to grant variances on sidewalk matters covered by sections 8-201 through 8-206 of the David City Municipal Code, or to grant variances on fences or related matters. (*Ref. 19-907 thru 19-912; 19-912.01 RS Neb.*)

§2-203 BOARD OF HEALTH. (1) The Governing Body shall appoint a Board of Health which shall consist of four (4) members. The members of the Board shall include the Mayor, who shall serve as Chairperson, the President of the City Council and two (2) other members. One member shall be a physician or health care provider, if one can be found who is willing to serve. Such physician or health care provider, if appointed, shall be the Board's medical advisor. If the Mayor has appointed a Chief of Police, the Chief of Police shall serve on the Board as Secretary and quarantine officer. The members of the Board shall serve, without compensation, a one (1) year term of office, unless reappointed, and shall reorganize at the first meeting in December of each year. No member of the Board of Health shall hold more than one (1) Board of Health position. (2) The Secretary shall keep full and correct minutes and records of all meetings and file the same with the Municipal Clerk where they shall be available for public inspection during office hours. The Board of Health shall be funded by the Governing Body from time to time out of the General Fund. A majority of the Board shall constitute a quorum for the purpose of doing business. The Board shall meet at such times as the Governing Body may designate. Special meetings may be held upon the call of the Chairperson, or any two (2) members of the Board.

(3) The Board shall enact rules and regulations, which shall have the full force and effect of law, to safeguard the health of the people of the Municipality. The Board shall enforce the rules and regulations and provide fines and punishments for any violations thereof. It may regulate, suppress, and prevent the occurrence of nuisances and enforce all laws of the State of Nebraska and ordinances of the Municipality relating to nuisances and to matters of sanitation which affect the health and safety of the people. The Board shall regularly inspect such premises and businesses as the Governing Body may direct. All members of the Board shall be responsible for making such reports and performing such other duties as the Governing Body may, from time to time, designate. (*Ref. 17-121 RS Neb.*)

§2-204 HOUSING AUTHORITY; CONTINUED EXISTENCE. The local housing authority established under prior state law and in existence on January 1, 2000, shall have continued existence as a housing agency under the Nebraska Housing Agency Act. The local housing agency shall conduct its operations consistent with the Nebraska Housing Agency Act. All property, rights in land, buildings, records, and equipment and any funds, money, revenue, receipts, or assets of the authority belong to the agency as successor. All obligations, debts, commitments, and liabilities of the authority are

obligations, debts, commitments, and liabilities of the successor agency. Any resolution by the authority and any action taken by the authority prior to January 1, 2000, and which resolution or action is lawful under state law as it existed prior to January 1, 2000, is a lawful resolution or action of the successor agency and binding upon the successor agency and enforceable by or against the agency notwithstanding that such resolution or action is inconsistent with, not authorized by, or prohibited under the provisions of the Nebraska Housing Agency Act. All Commissioners of the local housing agency and all officers, legal counsel, technical experts, directors, and other appointees or employees of the agency holding office or employment by virtue of any such prior law on January 1, 2000, shall be deemed to have been appointed or employed under the Nebraska Housing Agency Act. (Ref. 71-1576 RS Neb.)

§2-205 TREE BOARD; CREATION AND ESTABLISHMENT. There is hereby created and established a City Tree Board for the City of David City, Nebraska, which shall consist of four members, who are residents of this City, and who shall be appointed by the Mayor with the approval of the City Council. Also to serve with voting rights will be the Community Forester.

The term of office of the four persons appointed by the Mayor shall be two years. In the event that a vacancy shall occur during the term of any member, a successor shall be appointed for the unexpired portion of the term.

Members of the City Tree Board shall serve without compensation.

It shall be the responsibility of the City Tree Board to develop and administer a written plan for the maintenance, planting and removal of all street and park trees and shrubs. Such plans will be presented annually to the City Council and upon their acceptance and approval shall constitute the official "Comprehensive City Tree Plan" for the City of David City, Nebraska.

The Tree Board, when requested by the City Council, shall research and make recommendations on any special matter within the scope of its duties. The City Tree Board shall choose its own officers, make its own rules and regulations, and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business. Quarterly meetings shall be conducted as a minimum.

The City Council shall have the right to review the conduct, acts and decisions of the City Tree Board. Any person may appeal any ruling or order of the City Tree Board to the City Council, who will hear the appeal and make the final decision.

Article 3. Penal Provision

§2-301 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 dollars (\$100.00) 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 12th day of November, 2003.

(Seal)

Mayor Stephen Smith

City Clerk Joan E. Kovar

Council member Hein made a motion to go into executive session to 1) discuss legal expenses incurred concerning the proposed water line to Bruno and the fact Bruno has decided not to buy water from David City; 2) Issues dealing with the police department; and 3) begin the evaluation of City Administrator Jeff Fiegenschuh. Council member Kirby seconded the motion.

All of the Council members were present, all voted YEA, and the motion carried. The Council, Mayor Smith, City Administrator Fiegenschuh, City Attorney Egr, Police Chief Sunday, and City Clerk Kovar went into executive session at 10:00 p.m.. City Clerk Kovar left the executive session at 10:30 p.m. and Police Chief Sunday left the executive session at 10:35 p.m..

Council member Hein made a motion to come out of executive session. Council member Kirby seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. The Mayor, Council, City Administrator, and City Attorney came out of executive session at 10:55 p.m..

There being no further business to come before the Council, Council member Hein made a motion to adjourn. Council member Lukassen seconded the motion. All of the Council members were present and all voted YEA. The motion carried and Mayor Smith declared the meeting adjourned at 11:06 p.m..

Mayor Stephen Smith

City Clerk Joan E. Kovar



CERTIFICATION OF MINUTES
November 12, 2003

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 November 12, 2003; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such

subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

Joan E. Kovar