

CITY COUNCIL PROCEEDINGS

November 13, 2002

The Mayor and City Council of the City of David City, Nebraska met in open public session in the meeting room of the City Office, 557 4th Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner-Press on November 7, and an affidavit of the publisher is on file in the office of the City Clerk. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agenda which is a part of these minutes. The advance notices to the Public, Mayor and Council members conveyed the availability of the Agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection during regular office hours. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Stephen Smith, Council members Mark Kirby, Gary Kroesing, Gary Smith, Bill Schatz, and Nick Hein, City Attorney Jim Egr, Electric Supervisor Tim Kovar, Street Superintendent Jim McDonald, Police Chief Steve Sunday, City Clerk Treasurer Joan E. Kovar, and Banner Press Editor Larry Peirce. Council member Ted Lukassen arrived at 7:25 p.m..

The minutes of the October 9, 2002 meeting 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 Schatz, Hein, Kirby, Smith, and Kroesing. Voting NAY: None. Council member Lukassen was absent. The motion carried.

Stephen Smith asked for Petitions, Communications and Citizens' Concerns in addition to those contained in the Agenda packets. There were no petitions.

City Clerk Kovar reported that Dr. Jack Kaufmann collected donations for two metal trees and a star to add to last year's lighted Christmas display (a metal tree and metal packages) for the downtown lot on the west side of 4th Street between "D" and "E" Streets. Rich Sweney of Butler County Welding made the trees. Dr. Kaufmann remitted \$35.00 of donations to the Electric Department in partial payment for the electricity to light the display. Dr. Kaufmann asked the Council if additional donations were collected if Ruth Nichols could design something "extra" to add to the display. The Council stated that that would be alright but they want to know what the "extra" is before it is actually placed on the lot.

The Banner Press has a new general manager Larry Peirce. Mayor Smith introduced Larry to the Council, City Clerk, City Attorney, and those present at the council meeting. Peirce will supervise the Banner Press staff and lead the news coverage.

Tom Jahde, activities director for David City High School, stated that the school uses the Auditorium frequently for various events. The curtains in the upper level of the auditorium are in disrepair which does not make a good impression of David City. Jahde questioned if the curtains could be replaced, and/or suggested that the Council talk to the David City High School Home Ec Teacher Judy Davis and perhaps her class could make the curtains if the City provided the material. Jahde also expressed concern regarding the volleyball standards, stating that safety is an issue. Jahde stated that the David City High School is replacing their volleyball standards and stated that perhaps their old ones could be utilized at the Auditorium. The Council will discuss this further at their Committee of the Whole meeting on Monday, November 25, 2002 at 5:30 p.m..

Mayor Smith asked for consideration of claims. Council member Kroesing made a motion to authorize the payment of claims. Council member Kirby seconded the motion. Council member Hein asked for clarification on three claims:

County Rd. 36 joins "O" Street west of 4th Street. Concerns were expressed concerning the speed of the vehicles traveling this road. The County Board felt that a stop sign should be placed on the Burlington Northern/Santa Fe Railroad. Council member Kirby, who lives at 1478 N 2nd Street, stated that if someone traveling east loses control traveling over the rough tracks, they could end up in his house. Street Superintendent McDonald stated that if speed is a concern, it should be regulated by speed signs, not a stop sign. This will be discussed further at the committee of the whole meeting.

Council member Lukassen thanked the street department, because since the tree spade was purchased, he now has three new trees on his property.

Police Chief Sunday reported the police department has been receiving information regarding stop sign violations at the 5th Street and Nebraska Central Railroad (Union Pacific) crossing. The stop signs were initially put up due to the teenage traffic going to the youth center. However, now the youth center is closed. Railroad crossing safety is always a concern for public safety, however, if one crossing has a stop sign, why not the others? The Council will discuss this at the committee of the whole meeting.

City Clerk Kovar presented the following information on purchasing a new copy machine:

Office Net/Fremont Office

Savin 2527 Digital Imaging System includes:

Reverse Automatic Document Feeder; 100 Sheet Adjustable Multi-Bypass; Electronic Sorting; 27 copies per minute speed; 25 - 400% enlargement and reduction; Large Operator Touch Panel, Duplexing, Digital Imager Console, SR790 Staple Finisher (1,000 sheet capacity/50 sheet staple capacity)

Regular Price \$9,699.00 Our Price: \$5,389.00

Service and Supply Agreement Pricing: for .012/copy, the agreement would include all labor, mileage, parts, photo-conductors, toner, and developer. The only exclusion being copy paper.

Print and scan options:

Print controller with network interface card \$945.00

Scan Options:

Basic scan option includes scan package with ScanRouter \$1,225.00

Eakes Office Plus

Sharp AR-275 Digital Copier with Feeder, Duplexing, Finisher with Stapler.

Regular Price \$10,363.00 Our Price: \$4,981.00

Service & supplies agreement: 0.0113 per copy, includes all maintenance and materials except paper and staples

Special: the above Sharp copier with scanning, printing, and fully connected with

additional memory for scanning and printing = \$5,981.00 OR

Since City Clerk Kovar told Eakes we had a limited budget, they would drop \$1,000 off the purchase price and charge: \$4,981.00 and .0163 per copy.

City Clerk Kovar stated that comparing prices and options, she would select the special from Eakes for the Sharp AR-275 including the scanning and printing capabilities for \$4,981.00 and .0163 per copy. The Council agreed and authorized this purchase.

City Attorney Egr stated that he sent a letter to Joe & Sharon Smith, 595 C Street, regarding the condition of their property located on the E ½ of Lots 1 and 4, S ½ of the W ½ of Lot 4, Block 40, Original Town of David City. Egr stated that the property has been cleaned up.

Mayor Smith gave reports on building permit applications, Tree Board and Board of Zoning Adjustment meetings, advised the Council of the upcoming Planning Commission meeting scheduled for Saturday, November 16, at 9:00 a.m., and scheduled a Committee of the Whole meeting for Monday, November 25, 2002, at 5:30 p.m., in the City Office.

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

Electric Supervisor Tim Kovar presented the bid specs for an electric truck

**BID DOCUMENTS AND SPECIFICATIONS
FOR
CHASSIS AND INSULATED, OVER-CENTER, MATERIAL
HANDLING AERIAL DEVICE
FOR
DAVID CITY ELECTRIC DEPARTMENT
DAVID CITY, NEBRASKA**

BIDS DUE

1:00 PM (Local Time)

Office of City Clerk
PO Box 191
557 4th Street
David City, Nebraska 68632

Specifications for insulated, over-center, material handling aerial device.

***List all exceptions on separate piece of paper and attach to bid.**

1. Unit to have a maximum working height of 59', 54' from ground to bottom of basket.
2. **Non** over-center side reach to be 35' minimum with 36' working height.
3. 24" x 48" x 42" fiberglass basket with 600 lb. capacity. Hydraulic basket rotator.
4. 24" hydraulic basket lift. (Increases basket height from 52' to 54').
5. Single stick control at basket for main boom functions.

6. Two speed throttle and engine star/stop at basket.
7. Hydraulic basket tilt for clean-out and rescue. Must be operable from basket and lower controls.
8. Full set of lower controls including winch control capable of overriding basket controls.
9. Aerial device to be tested and certified as category "C" for operation up to 46,000 volts per ANSI A 92.2-1990.
10. Unit to have full pressure, open center hydraulic system. 35 gallon hydraulic reservoir with clean out access hole and dipstick. Mobil 5606 aircraft spec hydraulic oil. Two shut-off valves. Air shift PTO.
11. Basket liner with molded inside step.
12. Vinyl basket cover.
13. Hydraulic tool outlets at basket and tailshelf with quick couplers.
14. 2000 lb. material handling jib and winch at basket. Jib is to be made of fiberglass and be 8 ft. long. 125 degrees of hydraulic articulation. Hydraulic jib extension with roller so jib can be extended under load. 75' of ½ in. load line.
15. Single conductor wire holder.
16. Three phase lift attachment *(List as option).
17. Two sets of A-frame outriggers.
18. Full length sub-frame with drop down door at rear for storage. Stop to be installed at 100".
19. Ground cable storage reel with wind up handle and 60' of #2 copper cable with ground clamp on each end. Stainless steel ground lug at tailshelf.
20. 18" treadplate tailshelf.
21. ICC rear bumper.
22. Two cable steps at tailshelf.
23. Two grab handles at tailshelf.
24. 6 prong trailer light socket.
25. 2500 watt Dimensions inverter with two Extenda-Lite quartz flood lights. *(List as option).
26. Rear mud flaps.
27. Four outrigger pads and holders.
28. Four wheel chocks with holders in body wheel wells.
29. Holland T-100 pintle hook with safety chain D-rings. Mounting height 25"-26" to center of throat.
30. Heavy-Duty A-frame boom rest.
31. Two Target Tech #651 strobe lights mounted off boom rest.
32. Hydraulic impact wrench with hoses. *(List as option).
33. Cargo area light mounted off boom rest with switch in cab.
34. Wired-Rite control panel for auxiliary switches and PTO.
35. Aluminum treadplate lined cargo walls with cargo rail and sliding hooks streetside.
36. Tie wire reel holder to hold three rolls of wire.
37. Nonskid paint applied to deck and compartment tops.
38. Complete lighting to meet FMVSS #108 recessed into rear.
39. Complete paint white with under body and rear area under tailshelf black.
40. Two sets of operator service and parts manuals.

Fiberglass body as follows

- Body to be for 108" cab to axle chassis so front outriggers mount between body and cab.
- Body to be approx. 150" L x 48" H x 18" D x 94" W. (57" tall steetside)
- Stainless steel two stage rotary door latches.
- Aluminum wheel well liners.
- Aluminum rock guards on body front.
- 1 chrome grab handle at access steps.
- 4 wheel chock holders in fender panels.
- Fibre-Glow tube lighting around three sides of all door openings.

Curbside compartmentation:

- 1st vert. 3 adjustable shelves with adjustable dividers.
- 2nd vert. Gripstrut access steps.
- 3rd vert. 4 adjustable shelves with adjustable dividers.
- 4th horiz. 18 drawer parts bin.
- 5th vert. Two sets of locking swivel material hooks mounted 2-3-2 at compartment top and 2-3-2 mounted midway.

Street side compartmentation (57" tall)

- 1st vert. Two sets of locking swivel material hoods mounted 2-3-2 at compartment top and 2-3-2 mounted midway.
- 2nd vert. 4 adjustable shelves with adjustable dividers.
- 3rd vert. 4 adjustable shelves with adjustable dividers.
- 4th horiz. Adjustable dividers in compartment bottom.
- 5th vert. One set of locking swivel hooks mounted 2-3-2 at compartment top.

Top area of 57" high street side compartment to have a 9" keep compartment with two aluminum treadplate lift up lids with gas struts. Front portion to have 7' door and rear portion to have 5' door. Full length center divider.

Cab/Chassis Requirements

108" cab to axle
12,000 lb. front axle
21,000 lb. rear axle
1.4 million RBM frame rails (minimum). Frame rails to be clear.
230 HP 6 cylinder diesel engine with 660 ft. lbs. of torque
6 speed manual transmission
Hydraulic brakes
Tinted glass
Cigarette Lighter
AM/FM
A/C
Full width cloth bench seat
Cold climate package
Two plate clutch
Front tow hooks
Mud and snow traction tread rear tires
Intermittent wipers
Driver controlled locking differential

Electric Supervisor Kovar stated that he will try to sell the old aerial truck in the spring, as NPPD has a spring truck sale in York.

Council member Kroesing made a motion to advertise for bids for a new Chassis and insulated, over center, material handling aerial device for the electric department. Council member Lukassen seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Schatz made a motion to pass Ordinance No. 925 on the 2nd reading. Council member Smith seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. Ordinance No. 925 was passed on 2nd reading as follows:

ORDINANCE NO. 925

AN ORDINANCE TO PROVIDE FOR PROTECTION OF THE CITY OF DAVID CITY WELLHEAD PROTECTION AREA PURSUANT TO SECTION 17-536 AND SECTION 46-1501 ET. SEQ. OF THE REVISED STATUTES OF NEBRASKA BY ESTABLISHING LIMITATIONS UPON THE LOCATION OF POTENTIAL SOURCES OF POLLUTION OR INJURY TO THE MUNICIPAL WATER SUPPLY AND GROUND WATER; TO ESTABLISH RULES AND REGULATIONS DEFINING AND ENFORCING SUCH LIMITATIONS; TO PROVIDE FOR REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; TO PROVIDE FOR AN EFFECTIVE DATE.

HEREAS, Section 17-536 of the Revised Statutes of Nebraska provides that the jurisdiction of the City to prevent pollution or injury to the source of its water supply shall extend 15 miles beyond its corporate limits;

HEREAS, Section 46-1503 of the Nebraska Wellhead Protection Area Act in the Revised Statutes of Nebraska provides that the City may designate a wellhead protection area and adopt controls pursuant to said Act for the protection of the public water supply system;

HEREAS, pursuant to the Nebraska Wellhead Protection Area Act, Sections 46-1501 et. seq. of the Revised Statutes of Nebraska, the Mayor and City Council have adopted a Wellhead Protection Plan and Area, which has been approved by the Nebraska Department of Environmental Quality;

HEREAS, it is necessary to place limitations upon the location of potential sources of pollution or injury to the municipal water supply and ground water within the Wellhead Protection Area and to prescribe rules and regulations with respect to such limitations and the enforcement thereof;

HEREAS, the County of Butler has not adopted zoning regulations at the time of the enactment of this ordinance, this ordinance shall be precedent;

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

ection 1. The City of David City hereby declares the David City Wellhead Protection area to include the entire area within the jurisdictional zoning map for the City of David City.

ection 2. The City of David City adopts the Wellhead Protection Plan and Area which has been approved by the Nebraska Department of Environmental Quality; the same is attached hereto and incorporated herein by reference as if fully set forth.

ection 3. Words or phrases used in this ordinance shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this ordinance its most reasonable application. Definitions set forth in the City of David City General Plan shall be applied in the event of any ambiguity or uncertainty in the interpretation of the rules and regulations established by this ordinance.

ection 4. For purposes of this ordinance, livestock confinement shall be restricted to a maximum density of animal production of one animal unit per 8 acres as defined by Title 130 of the regulations of the Nebraska Department of Environmental Quality and where allowed by zoning regulations in the General Plan and ordinance of the City of David City.

ection 5. It shall be unlawful for any person, other than the City of David City, to place, install, construct or replace any of the following structures or conduct any of the following activities or any activity which shall be designated by the Planning Commission as a potential threat to the water supply within the Wellhead Protection Area, except as may be provided herein, to wit:

Activity

Non-potable water well
Sewage lagoon - not allowed
Absorption or disposal field for waste - not allowed
Cesspool - not allowed
Dump - not allowed
Livestock confinement facilities - restricted by Section 4
Pit toilet
Sanitary landfill - not allowed
Chemical or petroleum product storage
Septic tank
Sewage treatment plant - not allowed
Sewage wet well - not allowed
Sanitary sewer connection
Sanitary sewer manhole
Sanitary sewer line

Section 6. The placing, installing, construction or replacing of any allowed structure or activity as set forth in Section 5 of this ordinance, hereafter termed "wellhead structure or activity", within the Wellhead Protection Area, shall not be permitted after the effective date of this ordinance unless a permit approved by the Planning Commission has been obtained. The owner of any wellhead structure or activity shall have the burden of establishing the existence and use of said wellhead structure or activity at the time of the effective date of this ordinance.

Section 7. No permit shall be issued by the Planning Commission within the following setback distances from any City of David City municipal water well:

| <u>Activity</u> | <u>Minimum Distance from Water Supply</u> |
|--------------------------------------------------|-------------------------------------------|
| Non-potable water well | 1,000 ft. |
| Sewage lagoon | not allowed |
| Absorption or disposal or leach field for waster | not allowed |
| Cesspool | not allowed |
| Sanitary landfill | not allowed |
| Livestock confinement | 10,000 ft. |
| Pit toilet | 1,000 ft. |
| Chemical or petroleum storage | 5,000 ft. |
| Septic tank | 1,000 ft. |
| Lawn and garden compost | 500 ft. |
| Fertilizer and pesticide storage | 2,500 ft. |
| Septic tank exceeding 1,000 GPD | 5,000 ft. |
| Sewage treatment plant | not allowed |
| Sewage wet well | not allowed |
| Sanitary sewer connection | 100 ft. |
| Sanitary sewer manhole | 100 ft. |
| Sanitary sewer line | 50 ft. |

Any activity described in Section 7 located within the defined setback distance shall be considered prima facie a hazard to the quality of the municipal water supply.

Section 8. Any wellhead structure or activity not prohibited by Section 5 and Section 7 shall be allowed, subject to a determination of the Planning Commission that such activity does not constitute a hazard or threat to the quality of the municipal water supply or ground water and upon issuance of a permit.

Section 9. The Planning Commission of the City of David City shall be responsible for implementation and enforcement of the rules and regulations established by this ordinance and shall consider all applications filed pursuant hereto. All applications shall be approved or rejected by roll call vote. The Zoning Enforcement Officer shall be charged with administration of the rules and regulations.

Section 10. Prior to placing, installing, constructing, expanding or replacing any wellhead structure or activity, the owner of the real estate upon which the structure or activity is proposed shall file with the Planning Commission an application for a wellhead activity permit. Said application shall be on a form furnished by the City of David City and shall include supporting information indicating why approval would not adversely impact the municipal water supply and ground water. The application shall be

submitted to the Planning Commission for review. Prior to acting upon the application, the Planning Commission may seek an engineering report, recommendations of the Natural Resources District, the Nebraska Department of Environmental Quality or any other party or agency in evaluating the impact of the proposed structure or activity on the municipal water supply. A permit shall be issued only after the Planning Commission determines that the structure or activity is unlikely to contaminate or pollute the municipal water supply and ground water.

Section 11. Wellhead structures or activities in existence and use in the Wellhead Protection Area as of the effective date of this ordinance shall continue to be permitted unless such continued existence or use, in the opinion of the Planning Commission, presents a hazard to the municipal water supply or ground water. If the Planning Commission determines that an existing wellhead structure or activity presents a hazard, the Planning Commission shall authorize the Zoning Enforcement Officer to notify the owner of the structure or activity to cease and desist said structure or activity. If the owner of the structure or activity desires to continue operation of said structure or activity, the owner may make application for a permit pursuant to this ordinance. If the owner does not cease and desist pursuant to this ordinance, the Zoning Enforcement Officer may proceed pursuant to Section 12 of this ordinance against said owner of the structure or activity.

Section 12. Any person found violating any provision of this ordinance shall be subjected to a fine not to exceed \$500. The continuation of a violation of this ordinance shall be deemed an additional offense for every 24 hours of such continued violation. In addition, the City of David City may obtain injunctive relief and sue for damages and remediation and pursue other remedy available under laws of the State of Nebraska or other authority having jurisdiction over such matters.

Section 13. Should any section, paragraph, sentence or word of this ordinance hereby adopted be declared for any reason to be invalid, it is the intent of the Mayor and City Council of the City of David City that it would have passed all other portions of this ordinance independent of the elimination of any such portion as may be declared invalid.

Section 14. All ordinances or parts of ordinances in conflict with the provision of this ordinance are hereby repealed.

Section 15. This ordinance shall take effect and be in full force from and after its passage and publication according to law.

PASSED AND APPROVED this _____ day of _____, 2002

2nd reading only

Mayor Stephen Smith

Attest:

2nd reading only

City Clerk Joan E. Kovar

Mayor Smith declared a ten minute recess at 8:15 p.m. The meeting resumed at 8:25 p.m..

Council members Bill Schatz and Ted Lukassen served on a committee with Planning Commission members Keith Marvin and Jim Masek, Board of Zoning members Mary Havlovic and Steve Mowers, and local builders Don Hilger and Tony Novak. The Committee recommends doing away with building permit applications and instead having zoning applications. Applicants would still need to comply with the General Code and Zoning Regulations, but the City would not have the liability of inspecting buildings. The applicant would be solely responsible for all applicable state building, electrical and plumbing codes.

Discussion followed. Council member Schatz made a motion to table consideration of a zoning permit application form and other applicable forms. Council member Smith seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Schatz introduced Ordinance No. 926. City Clerk Kovar stated that when she typed the ordinance she had several questions - this is a rough draft. Council member Kroesing made a motion to pass Ordinance No. 926 on the first reading. Council member Smith seconded the motion. All Council members were present, all voted YEA, and the motion carried. Ordinance No. 926 was passed on first reading as follows:

ORDINANCE NO. 926

AN ORDINANCE TO AMEND PROVISIONS RELATING TO BUILDING/ZONING REGULATIONS, TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

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

Section 1. That Chapter 9, Article 1, Sections 101 - 104 and Article 2, Section 201 - 301 of the Municipal Code of David City, Nebraska be amended to read as follows:

Chapter 9

BUILDING REGULATIONS

Article 1. Process

§9-101 ZONING PERMIT APPLICATION: Property owners desiring to do any of the following are required to complete a zoning permit application:

- New home construction
- Foundation laying (for new construction or moving a house)

- New additions
- Rebuilding
- Porches, Decks, Storage Sheds, etc.
- Commercial construction
- Sidewalks, Driveways
- Fences
- Signs
- Satellite dish
- ?? Shingling (*currently require a permit because a fire code limits the amount of layers - no more than three layers - no permit fee was charged*)
- ?? Siding - (*a maintenance permit - no fee was charged*)
- and all else falling under zoning regulations

§9-102 **PERMIT APPROVAL:** The zoning permit application must be approved by both the Zoning Enforcement Officer and the Zoning Inspector prior to commencing any work.

Article 2. Permits

§9-201 **ZONING 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 Enforcement Officer; and written notice thereof shall be given to the person affected.

If the work described in any permit has not been substantially completed within two (2) years of the issuance thereof, said permit shall expire and be cancelled by the Zoning Enforcement Officer, and written notice thereof shall be given to the person affected, together with notice that further work as described in the cancelled permit shall not proceed unless, and until a new zoning permit application has been obtained.

§9-202 **PERMITS:** Any person desiring to commence or proceed to erect, construct, repair, enlarge, or relocate any building or dwelling, or cause the same to be done, shall file with the Municipal Clerk an application for a zoning 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 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. The application, plans, and specifications so filed with the Municipal Clerk shall be checked by the Zoning Enforcement Officer

and if they are found to be in conformity with the zoning requirements and all other ordinance applicable thereto; the Zoning Enforcement Office shall authorize the Municipal Clerk to issue the said applicant a permit upon the payment of the permit fee set by resolution of the Governing Body.

Section 2. That any other ordinance or section 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 take effect and be in full force from and after its passage, approval, and publication or posting as required by law.

Passed and approved this ___th day of _____, 2002.

Passed 1st reading only
Mayor Stephen Smith

Passed 1st reading only
City Clerk Joan E. Kovar

Council member Kirby made a motion to advance to agenda item #11 - Consideration of a resolution setting the fees for zoning permits, rezoning, subdivisions, join/divide lots, variances, etc.. Council member Kroesing seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

The resolution setting zoning permit fees should not be approved prior to adopting the ordinance establishing the zoning permit application. Therefore, Council member Kirby made a motion to table consideration of a resolution setting the fees for zoning permits, rezoning, subdivisions, join/divide lots, variances, etc.. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

RESOLUTION NO. _____

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

WHEREAS, the City has determined a need to charge of fee 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:

| | |
|--------------------------------|---------|
| Zoning Permit..... | \$20.00 |
| Join / Divide Lots..... | \$40.00 |
| Subdivision..... | \$40.00 |
| Rezoning..... | \$40.00 |
| Conditional / Special Use..... | \$40.00 |
| Zoning Amendment | \$40.00 |
| Zoning Variance..... | \$40.00 |

Dated this ____th day of _____, 2002.

(Tabled)
Mayor Stephen Smith

(Tabled)
City Clerk Joan E. Kovar

City Attorney Jim Egr received the following letter:

*Law Offices
Erickson & Sederstrom, P.C.
Regency Westpointe
10330 Regency Parkway Drive, Suite 100
Omaha, Nebraska 68114-3761*

November 7, 2002

*Mr. James M. Egr
Egr & Birkel, P.C.
P.O. Box 46
David City, NE 68632-0046*

RE: *Lueder Construction Company
David City Family Aquatic*

Center

Our File No. 8327.43725

Dear Jim:

I'm writing with regard to the subject we discussed during our telephone conversation last week. As I told you during that conversation, I represent Lueder Construction Company, the company building the David City Aquatic Center under contract with the City of David City. Our client's contract with the City provides that retainage would be reduced to 5 percent once the work was 50 percent complete unless the engineer certified that our client's progress on the job was not adequate. Despite that contract provision and our client's demand for payment, the City has

continued to withhold retainage at the 10 percent level. The contract is now almost entirely complete and the City continues to hold the additional 5 percent retention, which we do not believe it is entitled to withhold under the contract.

When we discussed this matter, you said that you were unaware of the dispute, but that you would look into the matter and, if appropriate, raise it at the City Council meeting on November 13, 2002. I would appreciate it if you would do that and let me know what the City decides. As I mentioned, it is my client's impression that the City is continuing to withhold the retainage solely as leverage for negotiating the value of certain changes requested by the City during the course of my client's performance on the contract. That, obviously, would not be appropriate under the circumstances, given the contract language.

I'd appreciate hearing from you after the City Council meeting. Awaiting your reply.

*Sincerely,
Thomas J. Culhane*

Section 12 - Progress Payments, Retainage and Deductions - of the contract reads:

a. Payments can be made to the Contractor on a monthly basis. The amount of the payment shall be based on the percent of work completed as determined by the Engineer. Equipment and materials shall be eligible for payment; AFTER its installation. A ten percent (10%) retainage shall be withheld from each payment until the work outlined herein has been 50% completed. At 50% completion, further partial payments shall be made in full to the contractor and no additional amounts may be retained unless the Engineer certifies that the job is not proceeding satisfactorily, but amounts previously retained shall not be paid to the contractor until the work is accepted by the Owner. Application and certificate of payment shall be on form AIA Document G702 and G703. Contractor shall provide lien waivers to the Owner prior to final payment, or as requested by the Owner.

At the present time, the pool vessel is leaking. They suspect a valve is leaking but this has not been determined. We have no idea what it will take to repair the leak or the cost involved. The original contract sum with Lueder Construction is \$1,730,550.00. At the present time, the City is retaining \$173,953.00. City Attorney Jim Egr will contact Dave Burbach of Burbach Aquatics, the pool engineer, to discuss this further.

Council member Kirby introduced Ordinance No. 927. Council member Kroesing made a motion to suspend the statutory rule that requires an Ordinance be read on three separate readings. Council member Kirby seconded the motion. All of the Council members were present and all voted YEA. The motion carried.

Council member Kirby made a motion to pass and adopt Ordinance No. 927 on the third and final reading. Council member Kroesing seconded the motion. Discussion followed. Council member Hein stated that the salary survey results showed that the pay for the Mayor and Council was comparable to other towns, but indicated that a few employee's pay lines were low. Council member Hein stated that he had no problem with a raise for the Mayor but could not vote on an increase for himself when the Council did not initiate a pay increase for the employees. *[At the September 11, 2002, council meeting City Administrator Brannen stated that in light of our current budget situation, we should probably consider not taking any action on the salary survey and conducting a new survey next summer using updated data from the League of Municipalities. The Council agreed saying that if our current budget situation changes the Council could consider it at that time.]* Council member Kirby stated that he received comments from the public that they felt the Council deserved a raise. City Attorney Egr stated that this council does a

lot of work, attends several different meetings, and are more prepared for the meetings. Voting YEA: Council members Smith, Lukassen, Schatz, Kirby, and Kroesing. Voting NAY: Council member Hein. The motion carried and Ordinance No. 927 was passed and adopted as follows:

ORDINANCE NO. 927

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA TO AMEND SECTION 1-903 OF THE MUNICIPAL CODE OF THE CITY OF DAVID CITY, NEBRASKA, RELATING TO COMPENSATION FOR ELECTED OFFICIALS; REPEAL ALL ORDINANCES OR PORTIONS OF ORDINANCES IN CONFLICT THEREWITH; TO PROVIDE FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM; TO PROVIDE FOR A TIME WHEN THIS ORDINANCE SHALL TAKE EFFECT.

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

SECTION 1. That Section 1-903 of the Municipal Code be amended to read as follows:

1-903 COMPENSATION: SALARIES OF ELECTED OFFICIALS. The salaries of the elected officials of the Municipality of David City are hereby fixed as follows:

Mayor -

Three hundred dollars (\$300.00) for each regular meeting(s) attended.
One hundred fifty dollars (\$150.00) for each special meeting(s) attended.

Council members -

Two hundred twenty-five dollars (\$225.00) for each regular meeting(s) attended.
One hundred twelve dollars and fifty cents (\$112.50) for each special meeting(s) attended.

The Mayor and/or Council members shall be allowed to miss one (1) meeting per year and receive the established pay for the meeting so missed.

SECTION 2. Any and all ordinances, or sections thereof, 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, approval, and publication as provided by law and city ordinance.

PASSED AND APPROVED this 13th day of November, 2002.

Mayor

City Clerk

The ballot question for a proposed sales and use tax of one-half of one percent (1/2 of 1%) with the proceeds collected to be used for street construction and necessary and appurtenant improvements, failed. The Council discussed pursuing available street improvement grants and possibly entering into an agreement with Orville Stahr, Stahr and Associates. Orville Stahr attended the October 28, Committee of the Whole meeting at which time he explained that grant funds are available and sidewalk replacement can be incorporated with the street grant request. The last community needs housing survey was not coded and not trackable. Stahr stated that they need to be able to identify target areas, if they exist, for blighted and substandard areas. Stahr and Associates would do the survey and tabulating of the results for approximately \$3,000. The City would do the mailing. Council member Hein made a motion to spend up to \$3,000 to enter into an agreement with Stahr and Associates for a community needs housing survey in order to pursue available street improvement grants. Council member Kroesing seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Smith made a motion to allow \$750.00 per month to Mayor Smith and \$750.00 per month to City Clerk Kovar as additional compensation during the absence of a city administrator. Council member Kroesing seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Smith made a motion to go into executive session to discuss personnel matters and appointments. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. The Council, Mayor Smith, City Attorney Jim Egr, and City Clerk Kovar went into executive session at 10:17 p.m..

Council member Kroesing made a motion to come out of executive session. Council member Smith seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. The Council came out of executive session at 10:40 p.m..

There being no further business to come before the Council, Council member Kirby made a motion to adjourn. Council member Kroesing seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. Mayor Smith declared the meeting adjourned at 10:42 p.m..

Mayor Stephen Smith

City Clerk Joan E. Kovar



CERTIFICATION OF MINUTES
November 13, 2002

I, Joan E. Kovar, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of November 13, 2002; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

Joan E. Kovar