

**ACKNOWLEDGEMENT OF RECEIPT OF NOTICE OF MEETING
OF THE MAYOR AND CITY COUNCIL OF
THE CITY OF DAVID CITY, NEBRASKA**

The undersigned members of the governing body of the City of David City, Nebraska, hereby acknowledge receipt of advance notice of a regular meeting of said body and the agenda for such meeting to be held at 7:00 o'clock p.m. on the **13th day of March, 2013**, in the meeting room of the City Office, 557 N 4th Street, David City, Nebraska.

This agenda is available for public inspection in the office of the City Clerk and may be modified up to twenty-four hours prior to the opening of the meeting.

Dated this 8th day of March, 2013.

AGENDA AS FOLLOWS:

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| 1. Roll Call; | <hr/> Mayor Alan Zavodny |
| 2. Pledge of Allegiance; | |
| 3. Inform the Public about the location of the Open Meetings Act and the Citizens Participation Rules; | <hr/> Council President Gary L. Kroesing |
| 4. Minutes of the February 13 th , 2013 meeting of the Mayor and City Council; | <hr/> Council member Michael E. Rogers |
| 5. Consideration of Claims; | |
| 6. Committee and Officer Reports; | <hr/> Council member Ruddy L. Svoboda |
| 7. Consideration of reimbursing John Rerucha for culverts; | |
| 8. Consideration of an electric cost adjustment for Brad & Deb Lensch's street light; | <hr/> Council member William Scribner |
| 9. Consideration of Ordinance No. 1185 changing the annual permits for ATV's to be valid from January 1 to December 31, rather than from the date of issuance, and placing the permit on the rear of the vehicle instead of the front. If the owner currently has a permit, the application fee would be pro-rated for the first transitional year; (passed on 1 st reading only 2/13/13) | <hr/> Council member Gary D. Smith |
| 10. Consideration of Ordinance No. 1186 changing the annual permits for UTV's to be valid from January 1 to December 31, rather than from the date of issuance. If the owner currently has a permit, the application fee would be pro-rated for the first transitional year; (Passed 1 st reading only 2/13/13) | <hr/> Council member John P. Vandenberg |
| | <hr/> City Clerk Joan E. Kovar |

11. Consideration of Resolution No. 5 – 2013 setting the admission prices, ticket charges, and other fees for the Swimming Pool;
12. Discussion concerning the Compliance Inspection results of the Wastewater Treatment Plant;
13. Consideration of purchasing a Hach kit that would provide in-plant testing at the Water Treatment Plant and also testing within the distribution system;
14. Consideration of Task Order No. 3 with Kirkham, Michael & Associates, Inc., in the amount of \$6,900 for the continued Water Treatment Plant Evaluation and Review;
15. Consideration of opening the City Auditorium, free of charge, for walkers and basketball players;
16. Consideration of a request to accept the documentation provided by Steve Maguire to contend that his property was used for continual agricultural purposes for the duration of the existence of the property;
17. Adjournment;

CITY COUNCIL PROCEEDINGS

March 13, 2013

The City Council of the City of David City, Nebraska, met in open public session in the meeting room of the City Office, 557 N 4th Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on March 7th, 2013 and an affidavit of the publisher is on file in the office of the City Clerk. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agenda which is a part of these minutes. The advance notice to the Public, Mayor, and Council members conveyed the availability of the agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection during regular office hours. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Alan Zavodny, Council members Bill Scribner, Gary Kroesing, John Vandenberg, Mike Rogers, Ruddy Svoboda, Gary Smith, City Attorney James Egr, Interim City Administrator Joan Kovar and Interim City Clerk Tami Comte.

Also present were: John Rerucha, Janis Cameron, Carolyn Yates, Keith Marvin, Steve Maguire and Banner Press Editor Larry Peirce.

The meeting opened with the Pledge of Allegiance.

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

The minutes of the February 13, 2013 meeting of the Mayor and City Council were approved upon a motion by Council member Scribner and seconded by Council member Vandenberg. Voting AYE: Council members Svoboda, Scribner, Rogers, Smith, Vandenberg, and Kroesing. Voting NAY: None. The motion carried.

Mayor Zavodny asked for consideration of claims. Council member Kroesing wanted to thank everyone that helped with the snow removal. Council member Smith made a motion to authorize the payment of claims and Council member Vandenberg seconded the motion. Voting AYE: Council members Svoboda, Rogers Vandenberg, Scribner, Smith and Kroesing. Voting NAY: None. The motion carried.

Mayor Zavodny called for Committee and Officers Reports.

Mayor Zavodny commended the City crew on a great job with the snow removal.

Mayor Zavodny stated that the geese removal was very annoying but it was very effective. He stated that we needed to weigh the benefit versus the inconvenience.

Mayor Zavodny stated that he wants to begin looking at the new budget and look at setting a dollar amount on a specific item that would need council approval before being spent.

Council member Kroesing made a motion to accept the committee and officers reports as presented. Council member Scribner seconded the motion. Voting AYE: Council members Svoboda, Scribner, Rogers, Smith, Vandenberg, and Kroesing. Voting NAY: None. The motion carried.

Mayor Zavodny stated that the Council member discussed John Rerucha's issues at the Committee of the Whole meeting and they could take action at that meeting.

Council member Smith made a motion to pay the amount that was agreed upon between John Rerucha and Street Foreman Rodney Rech of \$239.94. Council member Rogers seconded the motion. Voting AYE: Council members Smith, Rogers, Scribner, Kroesing, Vandenberg and Svoboda. Voting NAY: None. The motion carried.

Mayor Zavodny told Mr. Rerucha that he would be reimbursed \$239.94.

John Rerucha asked about the reimbursement for the dirt.

Mayor Zavodny stated that the \$239.94 was the amount that the Council was willing to do.

John Rerucha stated that then the City stole the dirt.

Mayor Zavodny asked Mr. Rerucha what he thinks the right amount would have been.

John Rerucha stated that he wants \$420.00 plus half of the culverts.

Council member Scribner made a motion to reconsider the previous motion. Council member Svoboda seconded the motion. Voting AYE: Council members Scribner, Smith and Svoboda. Voting NAY: Council members Kroesing, Vandenberg and Rogers. Mayor Zavodny broke the tie by voting AYE. The motion carried.

Mayor Zavodny asked Mr. Rerucha what was the agreement that was made.

Mr. Rerucha stated that Jim McDonald gave you the culvert price and I gave you the dirt.

Mayor Zavodny asked Mr. Rerucha if he wanted the City to pay for the dirt now.

Mr. Rerucha said, "Yes, it's only fair."

Council member Kroesing stated that he did not like the "he said, she said" stuff. He stated that we have no agreement.

Council member Scribner stated that we have his receipts for the dirt.

Council member Kroesing stated that he wants to see the agreement.

Interim City Administrator Joan Kovar stated that she didn't know that we had an agreement. She stated that Mr. Rerucha stopped in the City Office and showed her where he had paid Kobus' the \$420.00 and where he paid Arps Sand & Gravel the \$33.60 and then Sod estimated \$479.88 for the culverts and he was agreeing to half. She stated that she didn't know anything about what Jim McDonald told him directly.

Council member Scribner said, "One thing that's for sure is that anything that is done on City property should be paid by the City."

City Attorney Jim Egr said, "The biggest problem the City's faced with, Mr. Rerucha, is that this was something between you and Jim McDonald and yes, Jim McDonald was an employee, at that time, of the City of David City, but he did not tell the City Administrator or the Mayor or the Council, what those arrangements were. That makes it tough on the City from the standpoint of what should be done. You spent the money, yes, and I don't know what the situation is with the dirt. All I have to say is that if you look back, any City employee or department head should not make a commitment to pay people back or to allow certain things unless it goes through at least someone from the City, the Mayor or the Interim City Administrator, because there's no record then. That's the problem with the City cases. It's a tough situation because we could have five different people come in here and say on that street work that was done, before that was done, that Jim McDonald said we'll pay you back if you go ahead and do these particular things, but there's no written record."

Council member Scribner stated that we do have a written record of his check for sand and gravel and the dirt for \$453.60 and we're going off an estimate for the culverts. He stated that he can see both points of this. He can see being a home owner and being upset because you are talking to a respected city employee, thinking that you are doing the right thing, and you tried to do everything that you could to be within the boundaries of the law, for the City that you're in, and you feel like you did it, and they come in and they rip it all up cause you're trying to be the person to help out the community and all you're doing is asking to get what you have in it.

Council member Svoboda asked Mr. Rerucha what he paid for the culverts.

John Rerucha stated that he agreed with Jim to go half.

Council member Svoboda asked Mr. Rerucha if he had a copy of the check that he made out for the culverts.

John Rerucha stated that was beside the point.

Mayor Zavodny stated that they could not reimburse more than an actual cost so it probably isn't really beside the point. Mayor Zavodny stated that to start discussion, as a Council, you have the option to go back to what you originally did, or do you want to meet him half way and give him \$329.97, is an option. That would be half.

Council member Scribner stated that without paper work or prices on the culverts that he feels, in his opinion, that \$453.60, which he has proof of, should be the number.

Council member Scribner made a motion to reimburse John Rerucha the \$453.60 that he paid for dirt, the sand and the gravel. Council member Svoboda seconded the motion.

Mayor Zavodny asked Mr. Rerucha if \$453.60 would be alright with him.

John Rerucha said, "Well, that's just the dirt, sand and gravel. What about the culverts?"

Council member Kroesing stated that we know that you have check stubs for the dirt, sand and gravel. So, we know that we have proof of that. We don't have proof about the culverts.

John Rerucha said, "I can show you how much I paid."

Council member Kroesing said, "That's just what Alan asked you and you said that it was beside the point."

John Rerucha said, "No, I meant for the dirt."

Council member Kroesing said, "No, the question was we don't have any proof about what you paid for the culverts, but we do have proof about the sand and the dirt. So, we're willing to pay you for that."

John Rerucha said, "Well, Jim promised me 50% of the culverts."

Council member Scribner stated that McDonald overstepped his bounds. That was not in his position to tell you that.

John Rerucha said, "There was a problem with L Street. It was supposed to be paved five years ago. It didn't go through. So, I filled in the ditch, put in a culvert, and when it came to do it this year I told Jim 'No' because the neighbors didn't agree with me last time so I didn't agree with them and he said, "We'll do it right" and that's what I'm here for."

Council member Scribner said, "And we can do what we have proof for. We don't have proof on the culverts."

John Rerucha said, "Well, the City took them."

Council member Scribner said, "Jim did not follow the proper procedure on notifying the City. This was one person saying one thing to another person when it should have been the City Council to do this. Basically, we had a department head that overstepped his bounds. What we can do is pay you what we have proof of, but we don't have any proof of the culverts. We'll give you everything but the estimated amount of half the culverts because we don't have any proof of that."

Council member Smith said, "I'd go for just adding half of those culverts on and just raise that up to \$659.94 and get it over with."

Council member Scribner withdrew his motion. Council member Svoboda withdrew his second.

Council member Smith made a motion to reimburse John Rerucha \$659.94 for culverts, sand, and gravel. Council member Svoboda seconded the motion. Voting AYE: Council members Smith, Scribner and Svoboda. Voting NAY: Council members Kroesing, Vandenberg and Rogers. Mayor Zavodny broke the tie by voting NAY. The motion failed.

Council member Scribner made a motion to reconsider the previous motion. Council member Smith seconded the motion. Voting AYE: Council member Scribner, Smith, Svoboda, Rogers, Vandenberg and Kroesing. Voting NAY: None. The motion carried.

Council member Scribner made a motion to reimburse John Rerucha \$453.60 for dirt, sand and gravel. Council member Smith seconded the motion. Voting AYE: Council member Scribner, Smith, Svoboda, Rogers, Vandenberg and Kroesing. Voting NAY: None. The motion carried.

Mayor Zavodny stated that the next item on the agenda was consideration of an electric cost adjustment for Brad & Deb Lensch's street light. This is another complicated issue.

Council member Kroesing said, "Since there was no malice aforethought in this whole thing, I can't justify the whole amount. It's not like it was premeditated. Somebody up there, sometime, wanted a street light and they were granted the privilege of having a light and like Joan has told me, on different occasions when I've asked her about it, there are many people that have lived in that home. So, you can't point a finger at one person and say it's their fault, or their fault. It's nobody's fault. As long as everybody enjoyed that light, otherwise, all those people up there would have said, "we don't want this light, it's too bright up here, pull it out. They've been enjoying the light; they've been getting use out of it."

Mayor Zavodny asked what Council member Kroesing would suggest is a fair thing to do here.

Council member Kroesing suggested going with half of the suggested refund amount.

Mayor Zavodny clarified that the total as presented was \$500.47 and you are proposing half.

Council member Kroesing said "Yes, and credit it to their power bill."

Council member Scribner said, "What Council member Kroesing said is true however, they didn't have the ability to turn it off or on. They had no control over how much electricity went to that. They have just been paying the bill for something that was used by everybody. The street lights that have gone in since then have been billed to the City. I just feel that it's fair to go the other way but, I can't vote on it either way. I'm just thinking as a person, if that was in my yard, how I would feel after I found out. They are not screaming and hollering and throwing a huge fit. All they are doing is saying we didn't have the right to turn it on or off and they've been paying the whole thing for the neighbors and all they are asking for is their just amount."

Council member Svoboda said, "I agree with Council member Scribner. The other thing is that it's only 10 years so there's three years that they paid for that's not accounted. So, their expense is more than the \$500. So, I think that it's fair to pay them the \$500 because they had no control whatsoever."

Council member Kroesing made a motion to approve an electric cost adjustment for Brad and Debra Lensch's street light in the amount of \$250.24 as a credit to their account. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Rogers, Vandenberg and Smith. Voting NAY: Council member Svoboda. The motion carried. Council member Scribner abstained from voting.

Council member Kroesing made a motion to suspend the statutory rule requiring an Ordinance be read on three separate days. Council member Rogers seconded the motion. Voting AYE: Council members Kroesing, Rogers, Smith, Scribner, Vandenberg and Svoboda. Voting NAY: None. The motion carried.

Council member Smith made a motion to pass Ordinance No. 1185 on third and final reading. Council member Scribner seconded the motion. Voting AYE: Council members Kroesing, Smith, Scribner, Rogers, Svoboda and Vandenberg. Voting NAY: None. The motion carried and Ordinance No. 1185 was passed and adopted on third and final reading as follows:

ORDINANCE NO. 1185

AN ORDINANCE AUTHORIZING THE OPERATION OF ALL-TERRAIN VEHICLES WITHIN THE CORPORATE LIMITS OF THE CITY OF DAVID CITY, NEBRASKA; TO ESTABLISH CONDITIONS OF OPERATION OF THE SAME; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; AND TO PROVIDE FOR AN EFFECTIVE DATE OF THIS ORDINANCE.

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

SECTION 1: Pursuant to Section 60-6,356(7) of the Revised Statutes of Nebraska, Reissue of 2010, a City may adopt an Ordinance authorizing the operation of all-terrain vehicles.

SECTION 2: It is hereby found and determined by the Mayor and City Council of the City of David City, Nebraska that all-terrain vehicles should be authorized to be operated within the corporate limits of the City in accordance with Section 60-6,356(3) of the Revised Statutes of Nebraska, Reissue of 2010.

SECTION 3: It is hereby found and determined by the Mayor and City Council of the City of David City, Nebraska that the following restrictions for the operation of all-terrain vehicles within the corporate limits of the City be as follows:

- (A) Any person desiring to operate an all-terrain vehicle upon the public streets of the City of David City, Nebraska, other than in parades which have been authorized by the mayor and City Council of David City, Nebraska, and which has not been specifically prohibited to be upon the public streets of the City of David City, Nebraska, shall first apply for a permit upon application forms furnished by the City Clerk and receive from the City Clerk a permit for said all-terrain vehicle.
- (B) A non-refundable application fee of \$50.00 shall accompany each application. Further, Applicant shall pay all other expenses and costs associated with Applicant's application.
- (C) **The permit is valid from January 1 to December 31 of the current year. (If the owner currently has a permit, the application fee would be pro-rated for the first transitional year;**
- (D) Operators of all-terrain vehicles must be at least 21 years of age and have a valid Class "O" operator's license or a farm permit as provided in Section 60-4,126 of the Revised Statutes of Nebraska, Reissue 2010.
- (E) All-terrain vehicles may be operated only between the hours of sunrise and sunset.
- (F) Operators shall have liability insurance coverage for the all-terrain vehicles effective while operating the same within the corporate limits of the City.

- (G) Operators shall not operate an all-terrain vehicle at a speed in excess of thirty (30) miles per hour on highways and not to exceed the speed limit posted or provided in Nebraska Statutes, whichever is less, within the corporate limits of the City.
- (H) A person operating an all-terrain vehicle shall provide proof of insurance coverage for the same to any peace officer requesting such proof within five (5) days of such request.
- (I) When a person is operating an all-terrain vehicle the headlight and taillight of said vehicle should be on.
- (J) When a person is operating an all-terrain vehicle, it shall have the same equipped with a bicycle safety flag which extends not less than five feet (5') above ground attached to the rear of the vehicle. Said safety flag shall be triangular in shape with an area of not less than thirty (30) square inches and shall be day-glow in color.
- (K) When operating an all-terrain vehicle, the operator must follow and obey all rules of the road.
- (L) An all-terrain vehicle may be operated without complying with the aforesaid paragraphs for the crossing of a highway only if:
 - (1) The crossing is made at an angle of approximately ninety degrees (90°) to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing.
 - (2) The vehicle is brought to a complete stop before crossing the shoulder or roadway of the highway.
 - (3) The driver yields the right-of-way to all oncoming traffic that constitutes an immediate potential hazard.
 - (4) In crossing a divided highway, the crossing is made only at an intersection of such highway with another highway.

SECTION 4: PENALTY

Any person violating the terms of this ordinance shall be guilty of an offense, fined in a sum of not more than \$500.00, and shall have the registration revoked as to the vehicle involved in said offense as follows:

- a. For the 1st offense, use of said vehicle shall be prohibited within the City of David City for a period of 6 months;
- b. For the 2nd offense, use of said vehicle shall be prohibited within the City of David City for a period of 1 year; and
- c. For the 3rd offense, use of said vehicle shall be permanently prohibited within the City of David City.

SECTION 5. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of this Ordinance, since it is the express intent of the Mayor and City Council to enact each section, subsection, clause or phrase separately.

SECTION 6: All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

SECTION 7: This ordinance shall be in full force and effect from and after its passage, approval and publication according to law.

PASSED AND APPROVED this 13th day of March, 2013.

Mayor Alan Zavodny

ATTEST:
(Seal)

Interim City Clerk Tami Comte

Council member Kroesing made a motion to suspend the statutory rule requiring an Ordinance be read on three separate days. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Rogers, Smith, Scribner, Vandenberg and Svoboda. Voting NAY: None. The motion carried.

Council member Smith made a motion to pass Ordinance No. 1186 on third and final reading. Council member Scribner seconded the motion. Voting AYE: Council members Kroesing, Smith, Scribner, Rogers, Svoboda and Vandenberg. Voting NAY: None. The motion carried and Ordinance No. 1186 was passed and adopted on third and final reading as follows:

ORDINANCE NO. 1186

AN ORDINANCE AUTHORIZING THE OPERATION OF UTILITY-TYPE VEHICLES WITHIN THE CORPORATE LIMITS OF THE CITY OF DAVID CITY, NEBRASKA; TO

ESTABLISH CONDITIONS OF OPERATION OF THE SAME; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; AND TO PROVIDE FOR AN EFFECTIVE DATE OF THIS ORDINANCE.

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

SECTION 1: Pursuant to Section 60-6,356(7) of the Revised Statutes of Nebraska, Reissue of 2010, a City may adopt an Ordinance authorizing the operation of utility-type vehicles.

SECTION 2: It is hereby found and determined by the Mayor and City Council of the City of David City, Nebraska that utility-type vehicles should be authorized to be operated within the corporate limits of the City in accordance with Section 60-6,356(3) of the Revised Statutes of Nebraska, Reissue of 2010.

SECTION 3: It is hereby found and determined by the Mayor and City Council of the City of David City, Nebraska that the following restrictions for the operation of all-terrain vehicles within the corporate limits of the City be as follows:

- (M) Any person desiring to operate a utility-type vehicle upon the public streets of the City of David City, Nebraska, other than in parades which have been authorized by the mayor and City Council of David City, Nebraska, and which has not been specifically prohibited to be upon the public streets of the City of David City, Nebraska, shall first apply for a permit upon application forms furnished by the City Clerk and receive from the City Clerk a permit for said utility-type vehicle.
- (N) A non-refundable application fee of \$50.00 shall accompany each application. Further, Applicant shall pay all other expenses and costs associated with Applicant's application.
- (O) The permit is valid from January 1 through December 31 of the current year (If the owner currently has a permit, the application fee would be pro-rated for the first transitional year);**
- (P) Operators of utility-type vehicles must be at least 21 years of age and have a valid Class "O" operator's license or a farm permit as provided in Section 60-4,126 of the Revised Statutes of Nebraska, Reissue 2010.
- (Q) Utility-type vehicles may be operated only between the hours of sunrise and sunset.
- (R) Operators shall follow and obey all rules of the road.
- (S) Operators shall have liability insurance coverage for the utility-type vehicles effective while operating the same within the corporate limits of the City.
- (T) Operators shall not operate a utility-type vehicle at a speed in excess of thirty (30) miles per hour on highways and not to exceed the speed limit posted or provided in Nebraska Statutes, whichever is less, within the corporate limits of the City.

- (U) A person operating a utility-type vehicle shall provide proof of insurance coverage for the same to any peace officer requesting such proof within five (5) days of such request.
- (V) When a person is operating a utility-type vehicle the headlight and taillight of said vehicle should be on.
- (W) When a person is operating a utility-type vehicle, it shall have the same equipped with a bicycle safety flag which extends not less than five feet (5') above ground attached to the rear of the vehicle. Said safety flag shall be triangular in shape with an area of not less than thirty (30) square inches and shall be day-glow in color.
- (X) A utility-type vehicle may be operated without complying with the aforesaid paragraphs for the crossing of a highway only if:
 - (1) The crossing is made at an angle of approximately ninety degrees (90°) to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing.
 - (2) The vehicle is brought to a complete stop before crossing the shoulder or roadway of the highway.
 - (3) The driver yields the right-of-way to all oncoming traffic that constitutes an immediate potential hazard.
 - (4) In crossing a divided highway, the crossing is made only at an intersection of such highway with another highway.

SECTION 4: PENALTY

Any person violating the terms of this ordinance shall be guilty of an offense, fined in a sum of not more than \$500.00, and shall have the registration revoked as to the vehicle involved in said offense as follows:

- a. For the 1st offense, use of said vehicle shall be prohibited within the City of David City for a period of 6 months;
- b. For the 2nd offense, use of said vehicle shall be prohibited within the City of David City for a period of 1 year; and
- c. For the 3rd offense, use of said vehicle shall be permanently prohibited within the City of David City.

SECTION 5: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of this Ordinance, since it is the express intent of the Mayor and City Council to enact each section, subsection, clause or phrase separately.

SECTION 6: All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

SECTION 7: This Ordinance shall be in full force and effect from and after its passage, approval and publication according to law.

PASS AND APPROVED this 13Th day of March, 2013.

ATTEST:

Mayor Alan Zavodny

Interim City Clerk Tami Comte

Council member Vandenberg introduced Resolution No. 5-2013 and moved for its passage and adoption. Council member Smith seconded the motion. Voting AYE: Council members Svoboda, Scribner, Kroesing, Rogers, Smith, and Vandenberg. Voting NAY: None. The motion carried and Resolution No. 5-2013 was passed and approved as follows:

RESOLUTION NO. 5 – 2013

WHEREAS, Chapter 3, Article 5, Section 3-502 of the Municipal Code of the City of David City, Nebraska, allows a reasonable admission charge for the use by any person of the Municipal Swimming Pool.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the following admission fees are hereby established as follows:

<u>Daily</u>		<u>Season</u>	
Adult (18 & up)	\$5.00	Family	\$140.00
Child (6-17)	\$3.00	Couple	\$100.00
Toddler (5 & under)	Free*	Individual	\$70.00

* Free with paying adult.

Punch Card: 12 punches for \$30.00 - students
 12 punches for \$50.00 – adults

Senior Citizen (over 65): \$60.00

Dated this 13th day of March, 2013

Mayor Alan Zavodny

Interim City Clerk Tami L. Comte

Mayor Zavodny stated that the next item on the agenda was discussion concerning the compliance inspection results of the Wastewater Treatment Plant. Mayor Zavodny stated that unfortunately Water/Sewer Supervisor is not able to attend the meeting tonight because he is in the middle of testing at the Power Plant.

Council member Smith made a motion to table discussion concerning the compliance inspection results of the Wastewater Treatment Plant. Council member Rogers seconded the motion. Voting AYE: Council members Kroesing, Rogers, Smith, Scribner, Vandenberg and Svoboda. Voting NAY: None. The motion carried.

Mayor Zavodny stated that the next item on the agenda was the purchasing of a Hach Kit that would provide in-plant testing at the water treatment plant and also testing within the distribution system. Mayor Zavodny stated that it is believed that we do not need to purchase this kit. It is his understanding that we have one of these. The water plant employees send it in to kind of protect themselves from any type of regulatory inspection. That was a recommendation from Kirkham, Michael report which we are trying to follow much more closely. The reason that we don't have it and the reason that they send them in is to have a record of them being sent to a lab and being tested.

Council member Kroesing asked that this be left open ended, like tabled indefinitely, just in case they have some things that they want to test for ours will not test for, that we have on hand.

Mayor Zavodny stated that he felt that would be appropriate.

Council member Kroesing made a motion to table indefinitely the purchase of a Hach Kit that would provide in-plant testing at the water treatment plant and also testing within the distribution system. Council member Rogers seconded the motion. Voting AYE: Council members Rogers, Kroesing, Vandenberg, Smith, Scribner and Svoboda. Voting NAY: None. The motion carried.

Mayor Zavodny stated that they had a meeting with Kirkham, Michael on the continued evaluation of the water treatment plant and they discussed the findings in the report and some of the other things that are going on and he felt that we should have someone who really understands water treatment plants to walk through and tell us what they think. That way, we have the ability to know what is the status of our plant.

Council member Scribner asked what town of our size has a water treatment plant. Mayor Zavodny answered that it is Falls City, Nebraska.

Council member Scribner asked if we could contact the City Administrator at Falls City and ask if we could pay their department heads wages to come up here and go through our plant with us.

Mayor Zavodny said, "I think that we have a multitude of options."

Council member Scribner stated that there is a town that has a plant that is running just like ours and maybe they could send someone to go through our plant and give our employees some hands on training.

Council member Kroesing stated that's what Rich Robinson said that he was shooting for. Rich said that they have two engineers that have do nothing but this, that's their specialty.

Council member Smith made a motion to approve Task Order No. 3 with Kirkham, Michael & Associates, Inc. in the amount of \$6,900 for the continued water treatment plant evaluation and review. Council member Rogers seconded the motion. Voting AYE: Council members Scribner, Rogers, Svoboda, Kroesing, Vandenberg and Smith. Voting NAY: None. The motion carried.

Council member Scribner made a motion to table the opening of the City auditorium, free of charge, for walkers and basketball players to the Committee of the Whole meeting with the stipulation that a committee of responsible adults will be formed and presented at that time. Council member Svoboda seconded the motion. Voting AYE: Council members Scribner, Rogers, Svoboda, Kroesing, Vandenberg and Smith. Voting NAY: None. The motion carried.

Steve Maguire was in attendance to request that the City Council accept the documentation provided that would contend that his property was used for continual agricultural purposes for the duration of the existence of the property.

Steve Maguire stated that it's never been his contention that it had been row cropped. When he took over it was a mix of alfalfa and brome grass and that is what he baled.

Mayor Zavodny stated the he has lived here all but 10 years of his life and he stated that he remembers year that it just sat there. It grew up in weeds and possibly brome. So then the debate becomes, is that a cover crop? Ag gets to be kind of a funny thing. It's real clear if you bale hay and you show even weed control. The fact that maybe others had started using it differently than it had been years ago becomes a contention. The burden of proof on you to prove that it's been Ag is a tough one to bring forth.

Council member Kroesing said, "From the first part of the 70's until the first of the 80's, I lived within a block of that place, and the only thing that was growing on there was farm machinery, twice a year, for a consignment sale. The rest of the time it was weeds. They'd go in and knock it down for the consignment sale and right after the consignment sale it would go back to weeds again. It was also used for snow removal for the City of David City."

Planning Commission member Keith Marvin stated that he wanted the Council to be aware that at the March 23, 2013 Planning Commission meeting there will be a public hearing to amend the Zoning Ordinance to add the definition of cover crop and a public hearing to add cover crop as a conditional use in residential areas. We are defining a cover crop to be alfalfa and brome grass. With a conditional use they would be allowed to rotate every seven seasons with wheat or oats, in order to get the rotation through that you need with the alfalfa. It's also

stated in there that if it becomes any other crop, the permit is revoked and the crop is removed at the owner's expense. One thing that we also need to add to be clarified is that there will be no livestock grazing allowed. The Council would then have to act on those items at your April meeting.

Steve Maguire said, "The Planning Commission has been great to work with and if this body says that I have to go that route, then I will go that route. I'll be honest, I'm trying to make an April 1st deadline to keep an investor on tap to do this project and come about April 1 I'm afraid that he is going somewhere else and if he leaves, then I go. I've got a project that's slated close to \$200,000 to \$250,000 for that corner."

Planning Commission member Keith Marvin said, "The other issue that I have, and Mr. Egr please feel free to correct me, because I am not an attorney, but I do work with the Statutes on a regular basis, since Roger Kotil made this determination on this letter, it's a zoning issue, the proper procedure, at this point in time, in my opinion, is that it has to go to the Board of Zoning Adjustment because it's an administrative appeal on a determination by a city employee. I'm looking at Section 19-909 and 910 of the Statute because we are saying that he's in violation and he's an administrative officer of the City.

City Attorney Jim Egr said, "First of all, the only thing that the City Council has before it on its agenda today is for Mr. Maguire to present documentation that the property was used for agricultural purposes. This body cannot act on anything else. He's presented that information. I would think if Mr. Maguire's been working with the Planning Commission for such a long time, and I know that the Council doesn't want to do a special meeting, but if you have this happen on the 23rd where the Planning Commission says that they are going to recommend to do these things and then you give a conditional use upon the City Council, I would think that could be taken up at the April meeting. I would hope that you wouldn't lose your investor. If the Planning Commission comes back and says that they recommend this particular change and then also grant the conditional use, I think that going through this appeal process would be a waste of time."

Mayor Zavodny read the following letter from Rick Grubaugh:

Dear Planning Commission of David City,

I am writing to you today at the request of Mr. Maguire. Mr. Maguire has requested verification of continuous crops grown on the "Grubaugh" property which he purchased recently. I handled the sale of the property to Mr. Maguire and also represented the property for the family/sellers. I have family ties to the property.

I verify the following: To the best of my knowledge and for many years back as my memory allows, an agricultural crop was removed from the property on a continuous basis.

Sincerely,

Signed by Rick Grubaugh

City Attorney Egr said, "I would suggest to this Council that you not say that it was continuous Ag, but you say, it was continuous limited Ag purposes with cover crop and no livestock and there's only been one instance of a row crop on there. That makes a difference."

Mayor Zavodny said, "Ok but what I don't want to do here is to undermine the Planning Commission."

City Attorney Egr said, "Yes, the City needs to follow a process."

Mayor Zavodny said, "That's one concern that I have and the other one would be, if we vote that that's the case, outside of the zoning issue, what prevents corn from going there anyway."

City Attorney Egr said, "When you start looking into case law, I know Mr. Maguire has done stuff on that too, this grandfather clause stuff is all over the board. In my opinion, what the Nebraska Supreme Court does is, they take a look at what's fair and they make it fit. Basically, what you are saying, if you vote today on limited Ag, you acknowledge that and that puts the pressure on the Planning Commission from that standpoint."

Mayor Zavodny said, "Part of what makes the whole thing appealing to me is the compromise of how it gets used. I think that's important, as far as, you being willing to say, alfalfa is ok with us, we stipulate that, but if we say that is limited continuous Ag, I don't think that we could stop you from planting corn."

Janis Cameron asked if the Council does agree that it has been continuous Ag then what does that mean as far as the R-2 zoning and any action that the Planning Commission could take. I don't understand how it all comes together.

City Attorney Egr said, "In my opinion, from the Council's standpoint, if the Council says, "OK, it's been used, rightfully or wrongfully, for Ag purposes", that's the only thing that the Council would be doing today. I mean no disrespect to Mr. Maguire. Maybe I'm misinterpreting what you want to do by doing this. If you think that by the Council putting it in the public record that we find that there was agricultural use that that justifies anything in the future, it does not. The only thing that the City Council would be doing is saying that there was an agricultural use or a limited agricultural use, is that historically it has been done that way. But, it doesn't give any credence to it because those uses occurred sometime during the time when the zoning wasn't followed. If the Council were to say yes there was a limited Ag use does NOT justify a continued Ag use in violation of what the City Ordinances have. That's the way I look at it as City Attorney. Now, if there's any intent that will just give cannon fodder to be able use to say, "I should be able to use it because the Council acknowledged that it was grandfathered in", that's not what's being done. To me, the simplest thing would be, like the mayor said, follow the process. Get the thing done with the Planning Commission, get it through, and I would hope that your investor wouldn't run out because it wasn't available by April 1."

Steve Maguire said, "My investor has been waiting for a year."

City Attorney Egr said, "Then I guess if your investor has been waiting a year, then 10 more days shouldn't matter, if that investor really wants to be involved."

Gary Kroesing said, "You're asking us to do something to supersede what the Planning Commission is presently doing."

Steve Maguire said, "Actually, I'm not. The Planning Commission informed me that they have no ability to acknowledge what I'm asking. Roger said that he had no ability to

acknowledge what I'm asking. I have never contended that Roger was wrong on his zoning item."

Gary Kroesing said, "Truthfully, nobody around this table can acknowledge what you said as right either. There's no historian sitting around this table that can verify that that's been agricultural land historically. So, you want us to truly acknowledge something that we can't verify that's been agricultural for all these years."

Mayor Zavodny said, "One of the things that I think does become an issue here is – the burden of proof is on Steve to verify that it has been continually used as Ag. How in the heck do you prove it? It's a very difficult standard to prove. So, what he did is provided a letter saying that it is. I'm just saying that there are convoluted issues here. Given what counsel said maybe the question tonight becomes moot because even if we say that it is then that doesn't change what ends up happening from tonight on."

Mayor Zavodny asked Mr. Maguire, "After hearing the Council's discussion and legal counsel's discussion, where are you at?"

Steve Maguire said, "I'm believing that I am no further now than I where I was an hour ago."

Mayor Zavodny said, "Who ever answers that question? If someone brings FSA records and stuff, who ultimately can say, "Yes, we accept that verification." Because this may come up again someday and I'd be curious to know who gets to say."

City Attorney Egr said, "My initial reaction is that if you go into a court of law, a judge is going to say if it was used for agricultural purposes then it had to be signed up with the FSA in some way, shape or form. I doubt this property has been signed up with the FSA."

Steve Maguire said, "If you raise alfalfa then you do not have to sign up with the FSA and if you raise corn, you do not have to sign up with the FSA. There is no statute that requires that."

City Attorney Egr said, "Then the other thing is what are there for aerial maps. If the aerial maps don't show row crops, other than those two years, then I don't think that you meet the burden of proof for agricultural land."

Mayor Zavodny said, "But my question is, who determines that? What I'm saying is that anyone who brings this issue up should have a reasonable expectation who can tell me if I'm successful in my argument or not successful. Do you see what I'm getting at?"

Keith Marvin said, "Roger made a determination that it was a non-conforming use that wasn't legal from a zoning standpoint."

Mayor Zavodny said, "I agree with that, but no one is answering my very basic question of if I've got to prove that it's been continually Ag, then what do I need to provide to you and who gets to decide."

Interim City Clerk Comte said, "Correct me if I'm wrong Jim, if the Board of Zoning Adjustment denies the request then it goes to district court."

City Attorney Egr said, "That's correct."

Mayor Zavodny said, "Ok, but are you talking about that it's being used properly or that it was continual Ag."

City Attorney Egr said, "I think either way it goes to the Board of Zoning Adjustment."

Keith Marvin said, "If Roger makes a determination that it was non-conforming and then it goes to the Board of Zoning Adjustment to appeal that and if they disagree it goes on to district court. This can be resolved and be legal in four weeks."

It was determined that this item will come before the City Council at the April Council meeting after the Planning Commission reviews it.

There being no further business to come before the Council, Council member Scriber made a motion to adjourn. Council member Rogers seconded the motion. Voting AYE: Council members Kroesing, Vandenberg, Svoboda, Rogers, Scribner and Smith. Voting NAY: None. The motion carried and Mayor Zavodny declared the meeting adjourned at 8:35 p.m.



CERTIFICATION OF MINUTES
March 13, 2013

I, Tami L. Comte, duly qualified and acting Interim City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of March 13, 2013; 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.

Tami L. Comte, Interim City Clerk