

CITY COUNCIL PROCEEDINGS

October 12, 2011

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 October 6th, 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 Gary Kroesing, Bill Scribner, John Vandenberg, Ruddy Svoboda, Mike Rogers, Gary Smith, City Attorney James Egr, Interim City Administrator Joan Kovar and Interim Clerk-Treasurer Tami Comte.

Also present were: Water/Wastewater Supervisor Gary Janicek, Water/Wastewater employee Scott Steager, Joy Fountain, Greg Ashoff, Dr. Victor Thoendel 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 September 14th, 2011 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 Smith, Rogers, Svoboda, Vandenberg, Scribner, and Kroesing. Voting NAY: None. The motion carried.

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

Mayor Zavodny called for Committee and Officers Reports.

Council member Vandenberg stated that the new concrete looks good at the park.

Mayor Zavodny stated that it shows improvements in the park to the taxpayers.

Banner Press Editor Larry Peirce stated that the goals are set in concrete. He stated that some dirt work still needed to be done.

Mayor Zavodny stated that he talked to Scott Bales about doing the dirt work because you don't want someone to step off the edge and break an ankle.

Mayor Zavodny stated that he had a call from a concerned citizen regarding a 911 call at St. Mary's School. There was significant concern that the police did not respond. Mayor

Zavodny stated that he asked the Chief about it and he said that he was out of town at a meeting and we had somebody on standby and that's one of the things that we are going to run into with our scheduling. What made it worse was that it was a kid who was having a fairly significant thing and it was right at 3:30 p.m. when they were letting kids out of school. It would have been ideal if we could have had some traffic control and help getting kids out of the way so that the rescue unit could get up to the door. It was just an unfortunate timing thing but he wanted the council to be aware that he had been called about that.

Council member Scribner asked if the standby officer had not gotten the call.

Mayor Zavodny stated that the Chief told him that the response time is roughly 25 minutes.

Joy Fountain stated that Mark Hecker was off duty but he was at the call.

Council member Kroesing stated that 25 minutes for response time is asinine in a town of this size.

Mayor Zavodny stated that is probably an area where we need to see if there is a way to shore it up. He stated that he would like to know a little more about what our exact staffing level was on that day, especially when Chief was out of town. He stated that he thought somebody was on duty. Mayor Zavodny stated that it's just something that we need to be aware of and as we go forward. This is where coordination between agencies becomes helpful.

Council member Kroesing stated that we all knew that there would not be 24 hour coverage but there should be someone on duty when school is going into and getting out of session.

Mayor Zavodny stated that he would share the discussion with the Chief and try to make sure that we don't have something like that happen again.

Mayor Zavodny stated that he was a little embarrassed about the alley between the railroad tracks and E Street, and between 4th and 5th Streets. It's the fact that we have work done and in talking to some of the other departments, there were things that they wanted to do and would have made sense to do before we poured the alley. We did not communicate as well as we probably should have. Water Supervisor Janicek thinks that we will be alright with the sewer line. Mayor Zavodny said, "I hope that's true, but while we had it open, it might have been the time to put some new sewer lines in. However, I'm 100% sure on electric, that we could have done a lot better. In talking to Pat, he needed some time to talk to all of the landowners. We could have moved some transformers and eliminated some poles. We could have run a lot of conduit underground. A lot of the overhead we could have taken care of and, honestly, we should have. I'm embarrassed that that happened on my watch and I think that our citizens probably deserve better and I don't know how we did that."

Council member Scribner stated that he told Mayor Zavodny how he felt about that. He stated that any time there is any road work done that there should be a permit process where all of the departments need to sign off on before any work is done.

Mayor Zavodny stated that we are going to talk about some reorganization things as we move forward over the next several days, weeks and months. We need to figure out a way to

make sure that the department heads have every chance of being successful. This is one that I don't know how it happened that we didn't get it handled. A window of opportunity has closed on that one. When are we going to get another opportunity to do something with the electrical. Then if something happens we are tearing up new concrete. We need to work on these alleys before we start on the Downtown Renovation because those will become the front door to those businesses while that is being done. If it would have taken a few months for Pat to get things worked out with those businesses and been able to do that, we would have been better off. I don't think that we did the citizens a service on this deal.

Mayor Zavodny stated that other than that – the park looks really good. That was the majority of the things that he had noted.

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

Interim Administrator Kovar stated that she had some questions about the Keno application for Duering Enterprises and so she called the Nebraska Charitable Gaming Division and they told her to go ahead and act on it so when we need it, it is ready to go. She stated that the liquor license has not gone through and she told Gerald Thomas that he should send in his automatic renewal just in case the Duerings don't get their license by November 1st.

City Attorney Jim Egr stated that the council should approve this subject to Duering's obtaining a liquor license and completing the sale.

Council member Scribner made a motion to approve the request of Duering Enterprises Inc. dba Duering 5th Street Pub & Grill, 536 5th Street, to operate Keno in their establishment subject to obtaining their liquor license and completing the sale of the business. Council member Vandenberg seconded the motion. Voting AYE: Council members Svoboda, Vandenberg, Smith, Rogers, Scribner and Kroesing. Voting NAY: None. The motion carried.

Mayor Zavodny stated that we have not gotten a single grant since he has become mayor.

Council member Kroesing stated that he heard someone say that Lori Aschoff does grant work.

Greg Aschoff stated that she has done grant work for the City of McCook on very similar projects and has been successful.

Council member Kroesing asked if the Downtown Redevelopment was contingent on this.

Mayor Zavodny stated that he didn't think so.

Council member Vandenberg asked if we stay with the same style of lighting that we have on D Street if that would qualify as historic.

Mayor Zavodny stated that he thinks that it will. He stated that we need to approach this differently than we did on the D Street project. We kind of left the City electrical department out of the loop and we put up posts that were too small to work on. We're also looking at some LED lighting and we're going to actually try a few different ones to see which ones give us the best light. Energy savings would probably be good with those. I believe that we will go with a similar one for continuity. The poles may be a little better because they can't work on the ones on D Street very well. If you have to go in and add the Christmas lights and some of the other stuff that they do, it's difficult to do. The bases are pretty small. It was my understanding that Pat was left out of the loop on this deal and decisions were made without him even having the opportunity to comment.

Council member Kroesing introduced Resolution No. 22-2011 and moved for its passage and adoption. Council member Rogers seconded the motion. Voting YEA: Council members Kroesing, Rogers, Svoboda, Scribner, Vandenberg and Smith. Voting NAY: None. The motion carried and Resolution No. 22-2011 was passed and adopted as follows:

RESOLUTION NO. 22-2011

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

WHEREAS, the City of David City, Nebraska proposed to apply for assistance from the TRANSPORTATION ENHANCEMENT PROGRAM for the purpose of constructing the David City Historic Pedestrian Lighting Project; and

WHEREAS, the project includes the construction of historic lighting; and

WHEREAS, the City of David City, Nebraska, has available a minimum of 20% of the project cost and has the financial capability to operate and maintain the completed facility in a safe and attractive manner for public use; and

WHEREAS, the proposed application and supporting documents were made available for public review at a properly announced meeting of the City Council of David City, Nebraska;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that applying for assistance from the Transportation Enhancement Program for the construction of the David City Historic Pedestrian Lighting Project, is unanimously approved.

Adopted this 12th day of October, 2011 at David City, Nebraska.

Mayor Alan Zavodny

Attest:

Interim City Clerk Tami Comte

Council member Scribner made a motion to approve the request of Nathan and Christy Palensky, 188 N. 6th Street, to construct an off street parking space, 24' x 26' on the City parkway. Council member Vandenberg seconded the motion. Voting AYE: Council members Scribner, Vandenberg, Smith, Kroesing, Rogers and Svoboda. Voting NAY: None. The motion carried.

Mayor Zavodny stated that he asked City Attorney Egr to prepare a hold harmless agreement with Larry Plasek for the rental of the airport property located along highway 15.

City Attorney Egr stated that this is a month to month lease and that he needs to give 30 days written notice to terminate the lease.

Council member Scribner made a motion to approve the hold harmless agreement with Larry Plasek for the rental of airport property located along highway 15. Council member Smith seconded the motion. Voting AYE: Council members Smith, Scribner, Vandenberg, Rogers, Svoboda and Kroesing. Voting NAY: None. The motion carried.

A scanned copy of the Month-to-Month Ground Lease follows:

MONTH-TO-MONTH GROUND LEASE

This Month-To-Month Ground Lease, hereinafter referenced as "Lease" is made and entered into between the CITY OF DAVID CITY, NEBRASKA, a Nebraska Municipal Corporation, hereinafter referenced as "City", and LARRY PLASEK, a single person, hereinafter referenced as "Tenant".

WHEREAS, the City has "Airport" real estate in Butler County, Nebraska; and

WHEREAS, there is a tract as part of the "Airport" real estate as diagramed on Exhibit "A" attached hereto and incorporated herein by reference as if fully set forth and herein referenced as "Real Estate"; and,

WHEREAS, the City desires to rent the Real Estate to the Tenant and Tenant desires to rent from the City the Real Estate.

NOW, THEREFORE in consideration of the terms and conditions of this Lease, which the City and Tenant agree to be valuable consideration, the City and Tenant agree as follows:

- (1) City will rent to Tenant and Tenant will rent from the City the Real Estate.
- (2) The term of this Lease will be month-to-month commencing October 13, 2011.
- (3) Tenant will pay to City as rent each month the sum of ONE HUNDRED AND FIFTY DOLLARS AND NO CENTS (\$150.00) per month. Said rent will be due on the 13th day of each month commencing October 13, 2011.
- (4) Tenant agrees to use the Real Estate as a trailer display area for the display and sale of trailers Tenant merchandises.
- (5) Tenant agrees to maintain the Real Estate in such a manner that it is mowed, kept up, and is of pleasing appearance.
- (6) Should Tenant desire lighting and/or security lighting of the Real Estate, Tenant will pay for such lighting, the electricity for such lighting, and all related costs and will hold harmless the City for the same, including keeping the Real Estate free of any liens.
- (7) Tenant agrees to carry the necessary liability insurance and other such necessary insurance so as to hold the City free and harmless of all liability as relates to Tenant's use of the Real Estate, which includes any of the Tenant's heirs, assigns, employees and customers.

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- (8) The City and Tenant by WRITTEN NOTICE GIVEN TO THE OTHER AT LEAST THIRTY (30) DAYS PRIOR TO THE EXPIRATION OF EACH LEASE MONTH MAY TERMINATE THIS LEASE WITHOUT NOTICE OF SHOWING CAUSE.
- (9) Any termination hereinbefore provided will allow the Tenant to remove any lighting system installed or fixtures placed on the Real Estate by the Tenant and Tenant WILL put the Real Estate back into the condition it was prior to the installation of any lighting system and or fixtures.
- (10) The Tenant CANNOT assign this Lease or sublet the Real Estate without the consent of the City.
- (11) The Tenant WILL KEEP the Real Estate free of liens and encumbrances.
- (12) Default by the Tenant will allow the City to maintain whatever action is available under the State of Nebraska Forcible Entry and Detainer Statutes.
- (13) This Lease will be binding on the heirs, successors, assigns, and personal representatives of the City and Tenant.

CITY:
CITY OF DAVID CITY, NEBRASKA,
A Nebraska Municipal Corporation

TENANT:

by: *Alan Zavodny*
Mayor, ALAN ZAVODNY

Larry Plasek 10/11/11
LARRY PLASEK

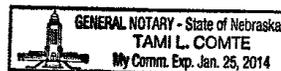
by: *Joan Kovar*
City Clerk, JOAN KOVAR

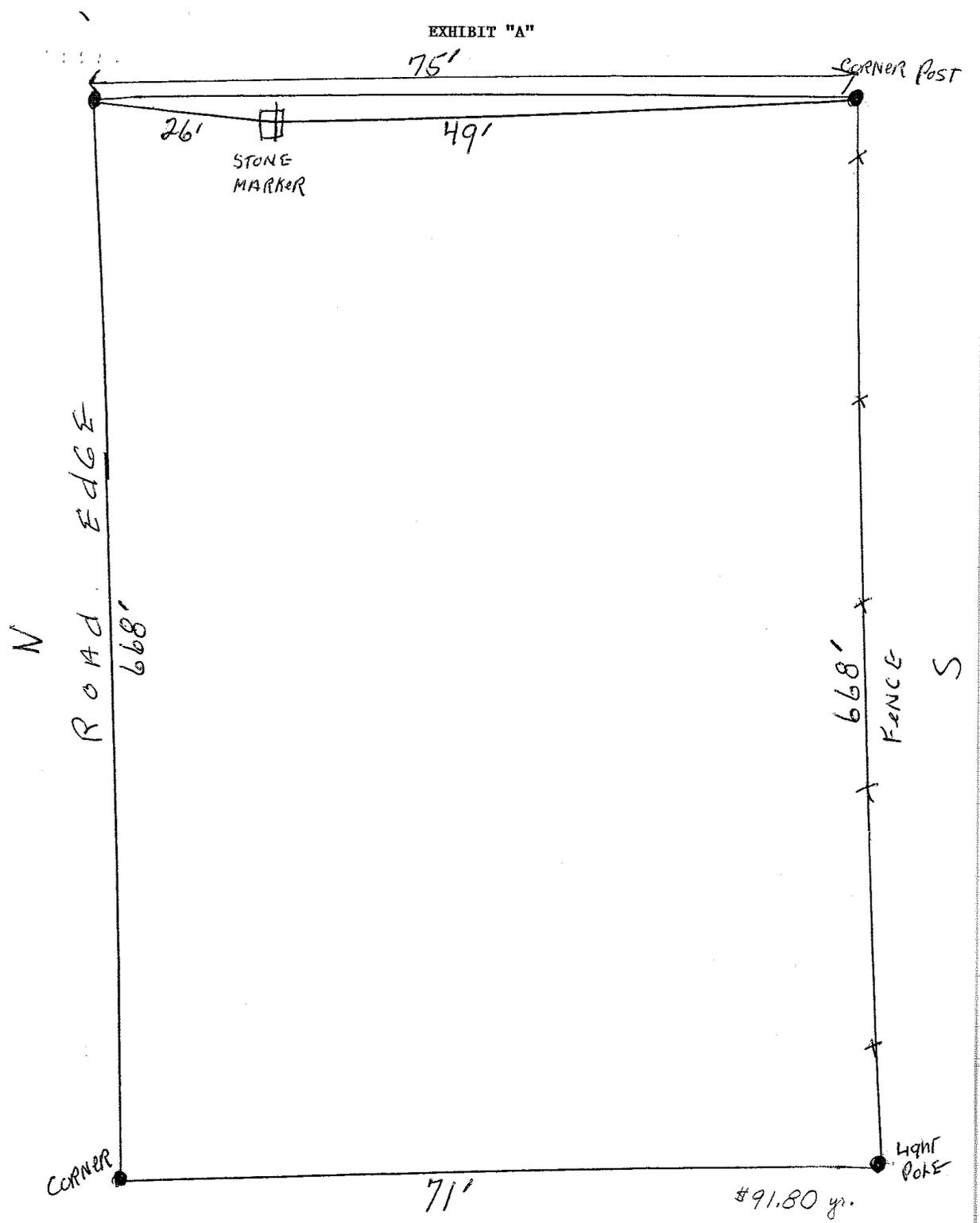


State of Nebraska)
) ss.
County of Butler)

The foregoing Month-to-Month Ground Lease was acknowledged before me on Oct. 12, 2011 by ALAN ZAVODNY, Mayor of the CITY OF DAVID CITY, NEBRASKA, a Nebraska Municipal Corporation, on behalf of the CITY.

Jami L. Comte
Notary Public





Council member Kroesing stated that he wants to have the citizens be able to come into the meeting room 15 minutes prior to the Committee of the Whole meetings.

Council member Scribner introduced Resolution No. 23-2011 and moved for its passage and adoption. Council member Smith seconded the motion. Voting YEA: Council members Kroesing, Rogers, Svoboda, Scribner, Vandenberg and Smith. Voting NAY: None. The motion carried and Resolution No. 23-2011 was passed and adopted as follows:

RESOLUTION NO. 23 – 2011

A RESOLUTION OF THE CITY OF DAVID CITY, NEBRASKA, TO SET THE MEETING TIME FOR THE TREE BOARD OF THE CITY.

WHEREAS, it is desirable and in the public interest that the City of David City, Nebraska, a municipal corporation and City of the Second Class, re-establish a Tree Board to discuss tree issues and to make sure the tree ordinance is properly followed; and

WHEREAS, the Tree Board shall make recommendations to the Mayor and Council concerning items of interest concerning the planting, care, and maintenance of trees located on city property.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA:

Section 1. The Tree Board meetings will be scheduled on the **4th Wednesday of every month at 5:30 p.m.** in the City Council Chambers, 557 N 4th Street, David City, NE

PASSED AND APPROVED this 12th day of October, 2011.

Mayor Alan Zavodny

ATTEST:

Interim City Clerk Tami Comte

Council member Smith introduced Resolution No. 24-2011 and moved for its passage and adoption. Council member Scribner seconded the motion. Voting YEA: Council members Kroesing, Rogers, Svoboda, Scribner, Vandenberg and Smith. Voting NAY: None. The motion carried and Resolution No. 24-2011 was passed and adopted as follows:

RESOLUTION NO. 24 – 2011

A RESOLUTION OF THE CITY OF DAVID CITY, NEBRASKA TO CHANGE/SET THE TIME FOR COMMITTEE OF THE WHOLE MEETINGS OF THE CITY.

WHEREAS, it is desirable and in the public interest that the City of David City, Nebraska, a municipal corporation and City of the Second Class, create a Committee of the Whole resolution to reflect the City Council's ongoing local responsibilities, including but not limited to policies, finance, public safety, culture, recreation, public works and utilities; and

WHEREAS, it is in the public interest for the Mayor, City Council, Departments and Administrator to work cooperatively for the benefit of all David City residents to resolve public issues through efficient and effective communication; and

WHEREAS, the Committee of the Whole meetings provide a platform for elected officials and appointed officials to collaborate and discuss policies and legislation.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA:

Section 1. That there is hereby established a Committee of the Whole meeting for the purpose of meeting to discuss issues and items. The meeting will be for discussion only and no formal action will be taken at the Committee of the Whole meeting. Present for the meetings will be the Mayor, Council members, City Administrator, City Clerk, and Department Heads (*on an as needed basis*).

Section 2. The Committee of the Whole meeting will be scheduled on the **4th Wednesday of every month at 6:30 p.m.** in the City Council Chambers, 557 N 4th Street, David City, NE

PASSED AND APPROVED this 12th day of October, 2011.

Mayor Alan Zavodny

ATTEST:

Interim City Clerk Tami Comte

Dr. Victor Thoendel was present and stated that he, and the entire medical community, are opposed to the all-terrain vehicle ordinance. Dr. Thoendel stated that they feel this is a safety issue. He and Dr. Luckey have had experience dealing with ATV accident injuries. Dr. Thoendel asked where the pressure was coming from to allow ATV's in David City and how many people would benefit by the passage of this ordinance. He stated that he did not have a problem with allowing golf carts on the streets because they do not have the speed that the ATV's have. Dr. Thoendel stated that his biggest issue with these vehicles is the visibility. He

stated that a lot of people get in a routine and they just drive and don't pay as much attention as they probably should.

Mayor Zavodny asked Dr. Thoendel if he thought that ATV's were worse than motorcycles.

Dr. Thoendel stated that they probably are not worse than motorcycles. He stated that the motorcycle accidents that he has seen have been on the highways.

Council member Kroesing stated that Interim Administrator Kovar, Mark Hecker and himself surveyed 39 communities and asked for their input. They asked why they passed the ordinance, how much trouble they have had with them, have they had any accidents and how did they regulate it. They took the most severe cases and they created an age limit of 21 years and they made the penalty so severe that they actually could lose their privilege to operate them forever if they infringe upon the regulations. He stated that they couldn't make anything more severe. Council member Kroesing stated that they surveyed communities all the way from Scottsbluff to David City. Bellwood has passed this and Columbus is considering passing this. He stated that it wasn't a knee jerk reaction.

Dr. Thoendel stated that he appreciated the fact that they, at least, moved the age limitation up to 21. He stated that he still goes back to his primary concern that they are dangerous.

Council member Kroesing stated that nobody pushed them into doing this.

Mayor Zavodny stated that he was not a fan of this ordinance, however, he respected the fact that they went about it the right way and they worked hard on it. He stated that much should be noted. Mayor Zavodny stated that he didn't think it was a case of "if" there is an accident, it will be "when" there is an accident because we know it will happen. Mayor Zavodny told Dr. Thoendel that he really appreciated him coming and sharing his comments.

Council member Scribner made a motion to pass Ordinance No. 1156 on 2nd reading only. Council member Smith seconded the motion. Voting AYE: Council members Smith, Kroesing, Svoboda and Rogers. Voting NAY: Council members Vandenberg and Scribner. The motion carried and Ordinance No. 1156 was passed on second reading only as follows:

ORDINANCE NO. 1156

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 only one (1) year from the date of its issuance.
- (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 _____ day of _____, 2011.

Passed on 2nd reading only
Mayor Alan Zavodny

ATTEST:
(Seal)

Passed on 2nd reading only
Interim City Clerk Tami Comte

Council member Scribner made a motion to pass Ordinance No. 1157 on 2nd reading only. Council member Smith seconded the motion. Voting AYE: Council members Smith, Kroesing, Svoboda and Rogers. Voting NAY: Council members Vandenberg and Scribner. The motion carried and Ordinance No. 1157 was passed on second reading only as follows:

ORDINANCE NO. 1157

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 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.
- (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) 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.
- (P) Utility-type vehicles may be operated only between the hours of sunrise and sunset.
- (Q) Operators shall follow and obey all rules of the road.
- (R) Operators shall have liability insurance coverage for the utility-type vehicles effective while operating the same within the corporate limits of the City.
- (S) 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.
- (T) 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.
- (U) When a person is operating a utility-type vehicle the headlight and taillight of said vehicle should be on.
- (V) 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.
- (W) 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 _____ day of _____, 2011.

ATTEST:

Passed on 2nd reading only
Mayor Alan Zavodny

Passed on 2nd reading only
Interim City Clerk Tami Comte

Mayor Zavodny stated that the bids that were received for the addition to the astro building came in less than what was budgeted.

Water/Wastewater Supervisor Gary Janicek stated that they only received one bid for the addition and that was from Hilger Construction. He stated that Don Hilger and Tony Novak are going to work together on this to try to get it done before winter so they have a place to put

their equipment. Janicek stated that the building was in one bid and the electrical is in a separate bid. There were two bids on the electrical. One from Woolsey Electric and one from Vandenberg Electric. Woolsey Electric's bid is \$3,986.18 and Vandenberg Electric's bid is \$4,775.00. Janicek stated that Vandenberg also put in a bid for the VFD's at the wastewater plant and if they wanted to split up the business they could award the bid for the VFD's to Vandenberg.

Mayor Zavodny asked how close the bids were on the VFD's.

Water/Wastewater Supervisor Janicek stated that there was about \$800 difference in the bids. He stated that Cory Vandenberg actually went to school for controls and so he is really up to date when it comes to those.

Mayor Zavodny stated that this item was put into the budget, but asked Janicek to refresh the council on how they would use this addition.

Water/Wastewater Supervisor Janicek stated that the sewer jet and the backhoe for sure will be put in the addition. He stated that in previous years both of those items took up space in the light department shop. He stated that \$60,000 was budgeted and they are looking at about \$55,000, so it will come in under budget.

Mayor Zavodny stated that Don Hilger and Tony Novak both have very good reputations and so if we are going to have something done that we would feel good about them doing it.

Council member Smith made a motion to accept the bid of Hilger Construction in the amount of \$49,914.31 and the bid from Woolsey Electric in the amount of \$3,986.18 for a 36' x 60' addition to the astro building shop located along 6th Street between the Union Pacific Railroad and "G" Street. Council member Kroesing seconded the motion. Voting AYE: Council members Svoboda, Vandenberg, Smith, Rogers, Scribner and Kroesing. Voting NAY: None. The motion carried.

Water/Wastewater Supervisor Janicek stated that they received two bids for an entire turn-key operation from Electric Pump and Pump Con. He suggested that they purchase two pumps from Electric Pump. Those two pumps will fit directly in where the old pumps will come out of and so it's just a matter of wiring them. He suggested buying the pumps from Electric Pump and then he would like to have Cory Vandenberg install the three VFD's.

Mayor Zavodny stated that then we would save the difference between the \$39,723 turn-key and the \$25,996 for just the two pumps.

Water/Wastewater Supervisor Janicek stated that they would need to add the \$7,399 from Vandenberg Electric but that they would be saving roughly \$6,000 or \$7,000. He also stated that the other reason that they would like to go with Vandenberg Electric is that he is right here in town and is only a phone call away if there are any problems.

Mayor Zavodny asked if the pumps that were being taken out were totally useless or if they would still work.

Water/Wastewater Supervisor Janicek stated that they would be used for spares. He stated that we are gaining capacity on the new pumps. He stated that they come with a one

year warranty. In two or three years they need to be pulled and gone over. They will keep one pump right in the lift station for a spare for emergencies. Janicek stated that this was part of his plan so in case they have another flood like they had in 2008 that they have a valve that they can open up in case of flooding and discharge right into Keyser Creek and then they just have to notify DEQ and sample at their request.

Council member Smith made a motion to accept the bid of Electric Pump for two flygt pumps at a cost of \$12,998 each and accept the bid of Vandenberg Electric to install the pumps at the lift station. Council member Kroesing seconded the motion. Voting AYE: Council members Smith, Kroesing, Scribner, Rogers, Vandenberg and Svoboda. Voting NAY: None. The motion carried.

Water/Wastewater Supervisor Janicek stated that he received four bids for the compact utility tractor that will be split between the water and sewer departments. The bids received were from Plains Power, Benes Service, Bobcat of Omaha and Platte Valley John Deere. They figured out a three year payment plan on the utility tractor. They have \$14,000 budgeted per year. Most of the bids came in under budget.

The bids are as follows:

Plains Power – John Deere	\$41,060.35
Benes Service – Massey Ferguson	\$38,296.50
Bobcat of Omaha – Bobcat	\$36,054.65
Platte Valley – John Deere	\$40,384.91

Mayor Zavodny stated that we are going to use this to mow around the lagoons and asked where else it could be used.

Water/Sewer employee Scott Steager stated that they could use it to mow the practice football field and the football field.

Mayor Zavodny stated that this is one of those things that he would feel a lot better about if he knew that they would cooperate and use it for other things. He stated that we need to work together as departments and we need to share our toys. We have not been all that great about that in the past.

Water/Wastewater Supervisor Janicek stated that included with this are a loader, a finish mower, a rear blade, and a three-point.

Mayor Zavodny stated that he would like to see the sewer department pay for the entire mower so that we can save the sales tax. That would amount to about \$3,000 to \$4,000 in sales tax. Mayor Zavodny asked if they were all comparable horse powers.

Janicek stated that they were all about the same with the exception of the one from Benes Service. The Massey Ferguson is actually a class IV tractor instead of a class III tractor which is actually bigger and wider. It is only \$800 more and it's local.

Water/Wastewater employee Scott Steager stated that the only thing that the John Deere has over the Massey Ferguson is that it has a three year power train warranty. The other three have two year warranties.

Mayor Zavodny stated that he would really like to see the sewer department pay for the entire tractor to save the sales tax.

Interim Administrator Kovar stated that the next time the sewer department needs to purchase something that they could have the water department pay for it.

Water/Sewer employee Scott Steager stated that he spoke with Doug Matulka at Benes Service and that he found a tractor on a lot in Michigan and the next closest one would not be coming until January.

Water/Wastewater Supervisor Janicek stated that the John Deere and Bobcat's were the same way. They have one available and after that it would be January 1st before any would be available.

Council member Kroesing made a motion to purchase the Massey Ferguson Utility Tractor from Benes Service out of the sewer department budget. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Smith, Svoboda, Vandenberg, Rogers and Scribner. Voting NAY: None. The motion carried.

Mayor Zavodny stated that we are very close on the Northwest Drainage Project and we need this resolution to get the process moving. We have everything except for two of the smaller easements. He stated that he has a meeting on Thursday with Jay Bitner. He stated that we are a long way from accepting bids but we need to get the process moving. We have paid for several easements already.

Council member Scribner introduced Resolution No. 25-2011 and moved for its passage and adoption. Council member Rogers seconded the motion. Voting YEA: Council members Kroesing, Rogers, Svoboda, Scribner, Vandenberg and Smith. Voting NAY: None. The motion carried and Resolution No. 25-2011 was passed and adopted as follows:

RESOLUTION NO. 25 - 2011

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

WHEREAS, the Mayor and Council of the City of David City, Nebraska, hereafter referred to as City, passed and approved a resolution of necessity, Resolution No. 5 – 2011, on March 9, 2011; and

WHEREAS, the Mayor and City Council determined that it is necessary and advisable to construct additions and improvements to the City's Storm Water System to include re-grading, shaping, and realignment of existing waterways and road ditches, replacement of culverts at driveways, roadway intersections and railroads, and construction of new storm sewer conduits with appurtenant inlet structures, hereafter referred to as the Project, and;

WHEREAS, the Mayor and City Council established a Storm Water Sewer District No 2010-1 (Northwest Drainage) for the Project, and;

WHEREAS, the City of David City, Lower Platte North Natural Resources District, and Upper Big Blue Natural Resources District entered into an **Interlocal Agreement** on November 12, 2008 for the purpose of cooperating and utilizing their respective powers and authorities to implement the Project, and;

WHEREAS, the Project boundaries have been outlined in Resolution No. 5 – 2011, and;

WHEREAS, in accordance with the **Interlocal Agreement**, the Construction Drawings, Specifications, and Contract Documents for said Project have been prepared and finalized by Robert J. Bitner, P.E., employed by the Upper Big Blue Natural Resources District, acting as Engineer for the Project, and;

WHEREAS, the Engineer's estimate of Total Project Cost for Storm Water System Improvements for said Storm Water Sewer District No 2010-1 (Northwest Drainage) is estimated at \$2,100,000;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that invitation for bids be requested from Contractors pre-qualified by the Nebraska Department of Roads as General Contractor (Work Code Index No. 10) for the purpose of furnishing all labor, material, equipment, and subsidiary items necessary to construct the proposed Storm Water System Improvement Project in accordance with the Contract Documents.

The invitation for bids will be advertised for three consecutive weeks: October 20th, 27th, and November 3rd, and all Bids shall be prepared in accordance with the City's Instructions To Bidders. Bids will be received at the City Office, 557 4th Street in David City, Nebraska, until 10:00 a.m. David City local time on December 5, 2011, at which time and place bids from pre-qualified bidders will be opened and the total bid price of each bidder will be read aloud.

Adopted this 12th day of October, 2011 at David City, Nebraska.

Mayor Alan Zavodny

Attest: Tami Comte, Interim City Clerk

Mayor Zavodny stated that regarding the City/Utility budget for 2011-2012 that this item will probably be on the agenda a lot. He went through the year-end reports. There are some good things in there that a lot of people probably don't know about, such as, the last payment on the swimming pool. He stated that we certainly have some major considerations. He stated that what he feels that we need to do is as our year progresses that we need to evaluate where we are, year to date, and prioritize and re-prioritize and stay on top of it. He stated that he feels

that it's important to stay on top of it and to know why we are spending money. He didn't have anything major at this time since we are only two weeks into the fiscal year.

Council member Scribner stated that he didn't want to have department heads with money left at the end of the year just spend it so that they got the same amount the following year.

Mayor Zavodny stated that Council member Scribner brought up a good point. He stated that there is nothing wrong with coming in under budget. He stated that he would never penalize anyone for not spending their full authorized budget.

Interim Administrator Kovar asked the council if they would like to see Income Statements and Balance Sheets for every month.

Mayor Zavodny stated that he would like to see that for every month. If they start this type of practice then they will start to learn where they ebb and flow each year.

Mayor Zavodny stated that he had a problem with the 30 question written interview with one of the City Administrator applicants. Her spam blocked the questionnaire so she had not received it. She is now working on it and he should be receiving it shortly. Mayor Zavodny stated that by November he is hopeful that he will have a name to present to the Council for their consideration to approve. He stated that there is still a lot of debate as he goes around the town, and they want to know what we are getting from that position.

Council member Scribner stated that he has seen a decline without an administrator and he would like to see us have one again.

Council member Svoboda asked Council member Scribner where the decline was.

Council member Scribner stated that we barely got the budget in on time and a lot of the problems that are weighing on the mayor's shoulders would be on an administrator's shoulders who is trained to know how to handle those things. An administrator would be able to get grants for the City. Council member Scribner stated that there is nothing against what is in place now, he just felt that it could be better.

Mayor Zavodny stated that we need to approach it differently than we have. We had some really good administrators and we had some budget issues in the past and if we are not actively engaged in it that, we don't know how they are crafted. We had some issues with last year's budget. Mayor Zavodny stated that the other thing that we need to be really clear on is how personnel is handled. The administrator really doesn't supervise employees.

Council member Kroesing stated that the administrator before the last one was not a city administrator, he was more of a city manager. He was doing things that were far and above what a city administrator should do. He had more authority than he should have had.

Mayor Zavodny stated that Council member Kroesing was making a very important distinction. There are big differences between a City Administrator and a City Manager.

Interim Clerk Kovar stated that she agreed with Council member Kroesing. Kovar said, "The gentleman that left was not the gentleman that was hired." Kovar stated that at first he

would keep the council involved and at the end there were meetings behind closed doors and the council was not kept involved.

Council member Kroesing stated that they did not know what was going on until it was placed in front of them for approval or disapproval.

Council member Scribner stated that it was nothing against Interim Administrator Kovar or Interim Clerk Comte. He stated that they have really stepped up to the plate and he really appreciated their efforts and he could not thank them enough.

Mayor Zavodny stated that he has been asking himself if the alley thing would have had a different outcome if there had been an administrator. An administrator would oversee the day to day operations of the City. Mayor Zavodny stated that by November he will bring the Council a name for administrator. He stated that he wanted to make sure, one last time, that it is the way they wanted to go. He stated that the website is embarrassing. It needs a lot of work.

Council members Svoboda and Rogers stated that they felt that we don't need a City Administrator.

Council member Scribner stated that he feels strongly that we do need an administrator.

Mayor Zavodny asked what the Council members felt that they were missing the most by not having an administrator.

Interim Administrator Kovar stated that they may be able to get grants.

Mayor Zavodny stated that we need to evaluate where we are as a whole and he would like to see the City functioning better by the time the next Mayor comes in.

Mayor Zavodny stated that he is going to finish the written interviews and then he's going to bring them both in and have one last talk and come November he is going to bring in a person and then they can decide what they want to do.

Council member Smith stated that there has to be more communication between the Council and the Administrator.

Mayor Zavodny stated that they need to share their expectations with the administrator and make sure that everybody is kept "in the loop".

Council member Scribner made a motion to go into executive session to discuss personnel matters. Council member Vandenberg seconded the motion. Voting AYE: Council members Kroesing, Vandenberg, Svoboda, Smith, Scribner, and Rogers. Voting NAY: None. The motion carried.

Mayor Zavodny stated, "Now at 8:37 p.m. we are going into executive session to discuss personnel matters." Mayor Zavodny, all of the Council members, City Attorney Egr, Interim City Administrator Kovar and Interim City Clerk Comte went into executive session at 8:37 p.m.

City Attorney Jim Egr stated that a motion and second was not needed to come out of executive session. Therefore, Mayor Zavodny declared the City Council out of executive session at 9:45 p.m.

There being no further business to come before the Council, Council member Kroesing made a motion to adjourn. Council member Rogers seconded the motion. Voting AYE: Council members Kroesing, Vandenberg, Rogers, Scribner, and Smith. Voting NAY: Council member Svoboda. The motion carried and Mayor Zavodny declared the meeting adjourned at 9:46 p.m.



CERTIFICATION OF MINUTES
October 12, 2011

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 October 12, 2011; 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