

CITY COUNCIL PROCEEDINGS

January 11, 2006

The City Council of the City of David City, Nebraska met in open public session in the meeting room of the City Office, 557 4th Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner-Press on January 5, and an affidavit of the publisher is on file in the office of the City Clerk. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agenda which is a part of these minutes. The advance 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 Stephen Smith, Council members Gary Smith, Gary Kroesing, Nick Hein, Bill Schatz, Ted Lukassen, and Mark Kirby, City Attorney Jim Egr, Police Chief Stephen Sunday, Electric Supervisor Tim Kovar, Electric Plant Supervisor John Kabourek, Water/Sewer Supervisor Jim Kruse, Dr. Jack Kaufmann, Jerry Kosch, Joe Proskovec, Jim & Pam Kabourek, Fred & Joan Vandenberg, Shelly Streeter, Wendy Isham, Gary & Mary Ann Mattingly, Brenda Eller, Jim Redler, Dale Cooper, Philip Lorenzen First Vice President of Kirkpatrick, Pettis, Banner Press Editor Larry Peirce, and City Clerk-Treasurer Joan E. Kovar.

The meeting opened with the Pledge of Allegiance.

The minutes of the December 14th, 2005 meeting of the Mayor and City Council were approved upon a motion by Council member Hein and seconded by Council member Lukassen. Voting YEA: Council members Kirby, Smith, Kroesing, Lukassen, and Hein. Voting NAY: None. Council member Schatz was absent. The motion carried.

Mayor Smith asked for Petitions, Communications and Citizens' Concerns in addition to those contained in the Agenda packets. There were no petitions, communications, or citizens' concerns.

Larry Peirce thanked Electric Supervisor Tim Kovar and his crew for bringing the Chamber of Commerce "David City sign" into town. The sign, located at the junction of Nebraska 64 and Hwy 15, was cut down by vandals with a chainsaw.

Mayor Smith asked for consideration of claims. Council member Smith made a motion to authorize the payment of claims. Council member Kirby seconded the motion. Voting YEA: Council members Kroesing, Lukassen, Hein, Kirby, and Smith. Voting NAY: None. Council member Schatz was absent. The motion carried.

Council member Schatz arrived at 7:06 p.m..

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

Police Chief Sunday stated that the fire department will not burn down the house at 915 N.

11th Street if the landowner is maintaining house insurance on the property. The fire department will only burn the house down after Sherry Benson signs an affidavit stating that she has no house insurance. Police Chief Sunday will work on this prior to the next council meeting.

Sargent Drilling performed well and pump tests on September 26, 2005 and reported:

Well #5: The average pump efficiency is 57%, this is bad. The well is producing 22 gallons of water per foot of drawdown. This is down just slightly from a year ago. The flow meter registers 1% low, this is very accurate. The electric motor was serviced and the packing was greased.

Well #8: The average pump efficiency is 68%, this is good. The well is producing 20 gallons of water per foot of drawdown. The flow meter registers 1% high, this is very accurate. The electric motor was serviced and the packing was greased. This pump has a bad vibration. Sargent Drilling would recommend pulling this pump and performing some maintenance.”

It was questioned why Sargent Drilling is recommending pulling Well #8 instead of Well #5. Water/Sewer Supervisor Jim Kruse will check on this and report back to the Council.

Mayor Smith stated that several applications were received for the city administrator position and asked how the Council would like to review them. The Council agreed that they would each like to take copies of the applications, have time to consider them, and then meet again to discuss them. Therefore, Council member Hein made a motion to schedule a special council meeting on Monday, January 23, 2006, at 6:00 p.m. at which time the Council can consider the applications received for the city administrator position. Council member Smith seconded the motion. All of the Council members were present, all voted YEA and the motion carried. A Committee of the Whole meeting will immediately follow the special council meeting.

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

Council member Kirby made a motion to pass Resolution No. 1 - 2006 concerning the public facilities construction and finance act. Council member Lukassen seconded the motion. Voting YEA: Council members Schatz, Kroesing, Smith, Hein, Lukassen, and Kirby. Voting NAY: None. The motion carried and Resolution No. 1 - 2006 was passed and adopted as follows:

RESOLUTION NO. 1 - 2006

"BE IT RESOLVED by the Mayor and Council of the City of David City, Nebraska as follows:

Section 1. The Mayor and City Council find and determine that under the provisions of Legislative Bill 217 as adopted by the Ninety-Ninth Legislature, First Session and codified as Sections 13-808 through 13-2531 revised Statutes of Nebraska, also known as the Public Facilities Construction and Finance Act, the City of David City (the "City") is authorized to enter into agreement with one or more other qualified public agencies to cooperate in joint projects which may be serviced by property taxes for the acquisition, construction, financing, operation and ownership of public buildings and related improvements.

Section 2. The City owns a public building consisting of a city auditorium, which building requires renovation, remodeling and improvements in an estimated amount of \$40,000 and

School District No. 056 of Butler County Nebraska, in the State of Nebraska (the "School District") has agreed to enter into a joint project with the City, with the School District's participation of the cost in an amount of not less than 25% of the project cost and related financing and resulting debt service on bonds to be issued for project costs including legal costs, underwriting and other costs of issuance.

Section 3. Previous to the creation of a joint public agency and the issuance of bonds, a public hearing is required relative to the intention to proceed with a qualified project and the issuance of bonds, which public hearing must be preceded by public notice by publication in a newspaper of general circulation within the territory of the qualified public agency in at least one publication not less than ten (10) days prior to the date and time set for such hearing. Notice of said intention to enter into a joint project and issue bonds for the said improvements shall be given to the qualified electors of the City, as the qualified public agency, in the Banner Press, a newspaper printed and of general circulation in said City, and the City Clerk of the City be and hereby is directed to cause such notice to be published in the form attached to this resolution, which notice is hereby approved.

DATED this 11th day of January, 2006.

Mayor Stephen Smith

City Clerk Joan E. Kovar

NOTICE OF INTENTION TO ENTER INTO A JOINT ENTITY PROJECT

CONSISTING OF THE REMODELING, RENOVATION AND IMPROVEMENT
TO THE CITY AUDITORIUM, AND TO PROVIDE FOR THE ISSUANCE OF BONDS
TO PAY THE COSTS OF SAID PROJECT

PUBLIC NOTICE is hereby given by the City of David City, Nebraska, pursuant to Legislative Bill No. 217 adopted by the Ninety-ninth Legislature, the City intends to enter into a joint agreement with Butler County School District No. 056, in the State of Nebraska, for the remodeling, renovation, and improvement of the Auditorium of the City of David City, Nebraska (the "Project") and to issue bonds of the joint entity to pay the costs of such Project.

- (a) The City of David City, Nebraska (the "City") and Butler County School District 056, in the State of Nebraska, (the "District") shall constitute the qualifying joint entities for the issuance of the Bonds, with the City being obligated for seventy-five percent (75%) of project costs and resulting debt service on bonds to be issued and the District being obligated for twenty-five percent (25%) of project costs and related debt service on bonds to be issued. Bonds shall be issued by the City of David City as the primary lead public agency on behalf of such joint entity and joint agreement between the City and District.

- (b) The purpose of the bonds to be issued shall be for the Project of remodeling, renovation, and improvement of the City Auditorium owned by the City.
- (c) Bonds shall be issued in an amount of not to exceed \$40,000, which bonds shall be dated, bear interest, and mature as shall be determined by the joint entity at the time of issuance of said bonds and no bonds shall be issued until after public notice and a 60 day remonstrance period as set out by law.
- (d) **A hearing has been called to be held at 7:30 o'clock p.m., on February 8, 2006, in the Council Chambers at the City Office, 557 4th Street, in David City, Nebraska**, which hearing is open to the public and at such hearing information will be presented and objections and comments may be made by those persons in attendance, after which the Mayor and City Council will take such action as may be necessary or appropriate on behalf of the joint entity to continue the process of the Project and the issuance of bonds to pay the costs related to the Project.

City Clerk Joan E. Kovar

Council member Lukassen made a motion to accept the resignation of Jeanne Pope from the Library Board. Council member Kroesing seconded the motion. Voting YEA: Council members Smith, Schatz, Hein, Kirby, Kroesing, and Lukassen. Voting NAY: None. The motion carried.

Council member Hein made a motion to appoint Jami Olson to a four year term (Feb 2006 - Jan 2010) on the Library Board. Council member Lukassen seconded the motion. Voting YEA: Council members Smith, Schatz, Kirby, Kroesing, Lukassen, and Hein. Voting NAY: None. The motion carried.

The parking of semi trucks on the Auditorium parking lot located west of 7th Street between Kansas and Ohio Streets was discussed. Complaints have been received from neighboring property owners that it disturbs the peace when the semi trucks are starting up. Jim Kabourek stated that he has been parking there for 23 years and there has never been a problem. Council member Smith stated that Kabourek has been really good and this isn't his fault. Council member Kirby stated that some of the semi-truck drivers have been driving over the new curb and gutter. Council member Schatz stated that he didn't feel the council made an effort to resolve the issue; they haven't come up with another location for the semi-trucks; there should be an alternative. Jim Redler who lives in the park house stated he was surprised and shocked as he doesn't even hear the semi trucks. A permit process, on a one on one basis, was discussed. After further discussion it was decided to form a committee consisting of Police Chief Sunday as coordinator, and Council members Hein and Schatz. The committee

will talk to the neighbors and semi-truck drivers and then come back to the council with some ideas and suggestions. Therefore, Council member Hein made a motion to table consideration of a resolution prohibiting truck parking on the city auditorium parking lot. Council member Kroesing seconded the motion. Voting YEA: Council members Lukassen, Smith, Schatz, Kroesing, and Hein. Voting NAY: Council member Kirby. The motion carried.

RESOLUTION NO. - 2006

WHEREAS, the City of David City is the owner of property located west of 7th Street between Kansas and Ohio Streets, which is being utilized as a parking lot for the City Auditorium, and,

WHEREAS, drivers have been parking semi-trucks on the property located west of 7th Street between Kansas and Ohio Streets, and,

WHEREAS, the City of David City, Nebraska, has received complaints from neighboring property owners regarding the parking of the semi-trucks on the City property located west of 7th Street between Kansas and Ohio Streets, and

WHEREAS, the noise caused by the starting of the semi-trucks is becoming a nuisance for the neighboring property owners,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that semi-truck parking is hereby forbidden on the City property being utilized as a parking lot located west of 7th Street between Kansas and Ohio Streets.

Passed and approved this 11th day of January, 2006.

Mayor Stephen Smith Tabled

City Clerk Joan E. Kovar Tabled

Water/Sewer Supervisor Jim Kruse reported that he contacted three companies for bids for painting updates at the water treatment plant but he has not received any. Therefore, Council member Hein made a motion to table consideration of bids received for painting updates at the water treatment plant. Council member Schatz seconded the motion. Voting YEA: Council members Kirby, Smith, Lukassen, Kroesing, Schatz, and Hein. Voting NAY: None. The motion carried.

Wendy Isham reported that this is the 3rd year that the skate park committee has been trying to get a skate park built and they almost have enough money to put in the cement. Isham is requesting that the Auditorium rental fee be waived for Saturday, April 1, 2006, for a craft show from 9:00 a.m. - 5:00 p.m. and a dance from 7:00 p.m. - 11:00 p.m. with the proceeds going to the Skate Park Fund Drive. Tom Osborn will speak, she is waiting to hear back from Eric Crouch, and they will have live radio broadcast. The Council stated that they made the decision in the past to no longer waive the auditorium rental fee. There are too many worthwhile organizations. Council member Schatz asked what the auditorium rental will be. City Clerk Kovar stated the rental is \$275 for the lower level of the auditorium and \$200 for a dance so approximately \$475.00. Bill Schatz stated that he felt it was a worthwhile cause, he planned to give a donation, so he instructed Wendy Isham that when she got the auditorium rental bill to give it to him and he will pay it.

Ordinance No. 1015 was introduced and passed on 1st reading on December 14, 2005. Council member Lukassen made a motion to suspend the statutory rule that requires an ordinance be read on three separate days. Council member Kirby seconded the motion. Voting AYE: Council

members Hein, Smith, Schatz, Kirby, and Lukassen. Voting NAY: None. Council member Kroesing had stepped out for a few minutes. The motion carried.

Council member Kirby made a motion to pass and adopt Ordinance No. 1015 updating Chapter 11: Municipal Planning of the David City Code Book on the third and final reading. Council member Smith seconded the motion. Voting AYE: Council members Hein, Lukassen, Schatz, Smith, and Kirby. Voting NAY: None. Council member Kroesing had stepped out for a few minutes. The motion carried and Ordinance No. 1015 was passed and adopted as follows:

ORDINANCE NO. 1015

AN ORDINANCE AMENDING CHAPTER 11: MUNICIPAL PLANNING OF THE DAVID CITY MUNICIPAL CODE BOOK; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

Section 1. Chapter 11: Municipal Planning of the David City Municipal Code Book be amended to read as follows:

Chapter 11

MUNICIPAL PLANNING

Article 1. Comprehensive Plan

§11-101 **COMPREHENSIVE PLAN; ADOPTED.** In order to accommodate anticipated long-range future growth, the Comprehensive Plan for the City of David City, Nebraska, as prepared by Olsson Associates, dated August 2005, is adopted by Ordinance No. 1012. Such Plan consists of maps, graphs, and text. Copies of the Plan are kept on file with the Municipal Clerk and available for inspection by any member of the public during office hours.

Article 2. Zoning Regulations

§11-201 **ZONING REGULATIONS; ADOPTED.** For the purpose of setting minimum standards to promote the public health, safety, morals, and general welfare of the community, to prevent the overcrowding of land; to avoid undue concentration of population; and other public requirements, the General Plan / Zoning Regulations for the City of David City, Nebraska, have been adopted by Ordinance No. 616, dated October 10, 1984, as prepared by The Clark Enersen Partners, Inc.. A copy of the General Plan shall be kept on file with the Municipal Clerk and available for inspection by any member of the public during office hours.

Article 3. Subdivision Regulations

§11-301 **SUBDIVISION REGULATIONS; ADOPTED.** To provide for harmonious development of the municipality and its environs; for the integration of new subdivision streets

with other existing or planned streets or with other features of the Comprehensive Plan; for adequate open spaces for traffic, recreation, light and air; for the distribution of population and traffic in a manner which will tend to create conditions favorable to health, safety, convenience, or prosperity; to insure conformance of subdivision plans with the capital improvement program of the Municipality; and, to secure equitable handling of all subdivision plats by providing uniform procedures and standards for observance by Subdividers and the Planning Commission and Governing Body, the Subdivision Regulations for the City of David City, Nebraska, have been adopted by Ordinance No. 909, dated June 25, 2001, as prepared by Stahr & Associates. A copy of the adopted Subdivision Regulations shall be kept on file with the Municipal Clerk and available for inspection by any member of the public during office hours.

§11-302 IMPROPER SUBDIVISIONS; WAIVER OF OBJECTIONS. Pursuant to the authority granted the City Council in Neb. Rev. Stat. §76-2,110 (Reissue 2003), the City Council does hereby waive notice to the City of, or any objections it may have to, any and all conveyances purporting to subdivide real estate within, and one (1) mile beyond, the corporate limits of the City of David City, Nebraska, which are filed of record in the office of the County Clerk of Butler County, Nebraska, where such conveyances, or the recording thereof, have failed to comply with any requirement relating to subdivision approval. All such conveyances are hereby validated.

Article 4. Conflicts

§11-401 CONFLICTS. Where the provisions adopted by this Chapter conflict with one another or with the provisions of Chapter 9 of this Municipal Code, the most restrictive or stringent provisions shall govern.

Article 5. Penal Provisions

§11-501 VIOLATION; PENALTY. Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this Chapter, set forth at full length herein or incorporated by reference shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not more than one hundred (\$100.00) dollars for each offense. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply.

Section 2. Any other ordinance or section passed and approved prior to passage, approval, and publication or posting of this ordinance and in conflict with its provisions is repealed.

Section 3. This ordinance shall be published in pamphlet form and shall be in full force and effect from and after its passage as provided by law.

Passed and approved this 11th day of January, 2006.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Mayor Smith declared a ten minute recess at 8:00 p.m. The meeting resumed at 8:10 p.m.

Council member Schatz made a motion to advance to agenda item #15 - consideration of authorizing Mayor Smith to sign all appropriate paperwork concerning applying for \$250,000 Housing Rehabilitation Funds. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Louis Pofahl, Community Coordinator, Northeast Nebraska Economic Development District submitted a letter and a pre-application form for \$250,000 Housing Rehabilitation Funds. If the City is invited to submit a full application that will need to be done by March 20th. If approved this grant will provide up to \$20,000 to ten (10) homeowners to fix up their homes. The repairs can include new windows, doors, furnace, siding, roof repairs, and structural repairs. The homeowner must live in the home that is being repaired. No rentals can be done. No match is required from the City. Council member Kirby made a motion to authorize Mayor Smith to sign all appropriate paperwork concerning applying for \$250,000 Housing Rehabilitation Funds beginning with the pre-application form. Council member Hein seconded the motion. Voting YEA: Council members Smith, Lukassen, Schatz, Kroesing, Hein, and Kirby. Voting NAY: None. The motion carried.

Council member Hein made a motion to advance to agenda item #16 - consideration of additional pay for Mayor Smith and City Clerk Kovar due to the resignation of the City Administrator. Council member Kirby seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Mayor Smith reminded the Council that in the past \$750.00 per month extra was given to each the City Clerk and Mayor as additional compensation during the absence of a city administrator. Mayor Smith stated that he is again suggesting \$750.00 per month extra for City Clerk Kovar but only \$375.00 per month extra for himself as Mayor since this year he is working out of town and may not be as available. The Council decided to discuss this further in executive session.

A request to place a privately sponsored nativity scene on the theater lot for next year's Christmas Season was discussed. The following letter was received along with a memorandum of law prepared by Liberty Counsel to offer guidance to public officials and schools regarding holiday celebrations. Liberty Counsel is a national public interest law firm specializing in constitutional law, particularly in free speech, religious freedom and church-state matters.

December 13, 2005

Jeffrey A. Fiegenschuh
City Administrator
PO Box 191
David City, NE 68632-0191

Jeff,

I request permission of the City Administrator and/or the David City City Council to include a simple nativity scene as a privately sponsored religious display in the same location as the other public display of three Christmas Trees and lighted boxes.

I would request permission to install the simple nativity scene on Sunday, December 18, 2005, and have it remain until the entire display is taken down after Christmas Day.

This proposed display is pictured as an attachment to this letter of request. I will be available by phone for any questions that you may have concerning this matter.

Thank you for your prompt consideration of this matter. Please approve or deny this request in a timely manner (by Friday, December 16, 2005 before 5 p.m.) if at all possible.

With anticipation,

Mark Holoubek
319 E Street
David City, NE 68632

Cc: Jim Egr
Larry Peirce

December 14, 2005

Mark Holoubek
319 E Street
David City, NE 68632

Dear Mark:

This letter is in response to your request to place a privately owned/sponsored nativity scene on old theater lot owned by the city. As the city administrator I do not have the authority to authorize your request. Since you are requesting the use of public property for a private use the city council will need to vote on the matter.

Unfortunately you did not turn in your request in time to be placed on the city council's agenda. According to the city attorney, the city can place new agenda items on the council's agenda up to twenty-four hours prior to the scheduled meeting. The only exception to this clause is in the case of an emergency situation. Your request was turned in on December 14th at 8:45 a.m. the same day as the council meeting. I would be happy to place this item before the city council at their January meeting. I realize this will not help you this year, but you will be able to begin discussing this with the council for next year's Christmas season. Please feel free to call me or stop by my office if you have any questions.

Respectfully Submitted,
Jeffrey A. Fiegenschuh
City Administrator

Jim Redler stated that this might be a sticky issue for some but it is time the silent majority spoke up "This issue reflects where you stand and where your beliefs are." Brenda Eller stated that the nativity scene would be in addition to the tree and presents that are currently placed on the lot, it would not replace it.

City Attorney Egr made reference to the memorandum of law prepared by Liberty Counsel which states "Publicly sponsored nativity scenes on public property are constitutional so long as there is a secular symbol of the holiday in the general context. Privately sponsored nativity scenes or religious symbols are also permissible on public property that has been opened to the general public for expressive activity. No secular symbol is necessary. A sign indicating the private sponsorship may be helpful." Egr stated that there may be other groups who may want to express their views which some may not agree. The Council will have to be tolerant. There was much discussion.

Council member Kroesing made a motion to approve the request of Mark Holoubek to place a privately sponsored nativity scene on the theater lot for next year's Christmas season. Mark

Kirby seconded the motion. Voting YEA: Council members Smith, Kirby, and Kroesing. Voting NAY: Council members Hein, Lukassen, and Schatz. The vote being a tie, Mayor Smith broke the tie and voted YEA. The motion carried.

Council member Kirby made a motion to go into executive session to discuss personnel matters and some potentially legal issues. Council member Smith seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. The Council, Mayor Smith, City Attorney Egr, and City Clerk Kovar went into executive session at 9:23 p.m..

Council member Kroesing made a motion to come out of executive session. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. The Council came out of executive session at 10:12 p.m..

An ordinance will be drafted concerning additional pay for the Mayor, Council President, and City Clerk for consideration at the special council meeting scheduled for January 23, 2006.

There being no further business to come before the Council, Council member Kroesing made a motion to adjourn. Council member Hein seconded the motion. Voting YEA: Council members Schatz, Kirby, Lukassen, Smith, Hein, and Kroesing. Voting NAY: None. The motion carried and Mayor Smith declared the meeting adjourned at 10:17 p.m..

Mayor Stephen Smith

City Clerk Joan E. Kovar



CERTIFICATION OF MINUTES
January 11, 2006

I, Joan E. Kovar, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of January 11, 2006; 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.

City Clerk Joan E. Kovar