

**CITY COUNCIL PROCEEDINGS**

**January 31, 2002**

The Mayor and City Council of the City of David City, Nebraska met in open public session at 5:30 p.m. on January 31, 2002 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 24<sup>th</sup>, 2002 and an affidavit of the publisher is on file in the office of the City Clerk. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agenda which is a part of these minutes. The advance notices to the Public, Mayor and Council members conveyed the availability of the Agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection during regular office hours. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Stephen Smith, Council members Mark Kirby, Gary Kroesing, Gary Smith, Bill Schatz, and Nick Hein, City Administrator Andrew Brannen, Electric Supervisor Tim Kovar, Park/Auditorium Supervisor Bill Buntgen, Police Chief Steve Sunday, and City Clerk Joan E. Kovar. Council member Lukassen was absent.

Also present were: Leo Stevens, Gary Janicek, Rob Scheffler, and Sherri Nun of the Banner Press.

Mayor Smith explained that the City went to court against Joe & Sharon Smith on Thursday, January 17<sup>th</sup>. Prior to the arrival of the judge, City Attorney Egr reached an agreement with Joe & Sharon Smith, and they agreed to sign a Stipulation for Order rather than proceed with the court case.

Council member Kirby made a motion to authorize Mayor Smith to execute a "Stipulation for Order" concerning the Joe & Sharon Smith property located on the E 1/2 of Lots 1 and 4, and the S 1/2 of the W 1/2 of Lot 4, Block 40, Original Town of David City. Council member Smith seconded the motion. Voting YEA: Council members Kirby, Schatz, Kroesing, Smith, and Hein. Voting NAY: None. Council member Lukassen was absent. The motion carried.

**IN THE DISTRICT COURT OF BUTLER COUNTY, NEBRASKA**

THE CITY OF DAVID CITY, NEBRASKA,	)	CASE NO. CI00-56
Nebraska Municipal Corporation,	)	
Plaintiff,	)	
vs.	)	
	)	STIPULATION FOR ORDER
JOSEPH J. SMITH and SHARON KAY SMITH,	)	
husband and wife,	)	
Defendants.	)	

COMES NOW the Plaintiff and Defendants in this above captioned matter and hereby stipulate and agree as follows:

WHEREAS, the Plaintiff is a Nebraska Municipal Corporation existing in Butler County, Nebraska and has adopted Zoning Regulations by Ordinance No. 616 adopted October 10, 1984 with Amendments thereto; and,

WHEREAS, the Defendants are residents and inhabitants of David City, Butler County,

Nebraska and own the following described real estate within the City Limits of the Plaintiff and subject to the Plaintiff's aforesaid Zoning Regulations, to-wit:

East Half (E 1/2) of Lots One (1) and Four (4) and the West Half (W 1/2) of Lot Four (4), EXCEPT the North Twenty-Five Feet (N25') of said Lot Four (4), all in Block Forty (40), Original Town of David City, Butler County, Nebraska hereinafter referred to as "Real Estate"; and,

WHEREAS, the Real Estate of the Defendants is located within a High Density Residential (H.D.R.) Classification under the Plaintiff's Zoning Regulations; and,

WHEREAS, the Plaintiff received a written complaint filed with the Plaintiff's Zoning Administrator concerning violation by the Defendants of the Plaintiff's Zoning Regulations for High Density Residential (H.D.R.) In the following particulars, to-wit:

- (1) Using the Real Estate or portion thereof for dismantling of machinery, farm machinery, or the storage or keeping for sale of parts and equipment resulting from such dismantling or wrecking or the storage or keeping of junk, including scrap metals or other scrap materials.

- (2) Permanent storage for a period of ten (10) or more consecutive days, and;

WHEREAS, the Defendants failed to abate their violations of Plaintiff's Zoning Regulations for High Density Residential (H.D.R.); and

WHEREAS, the Plaintiff's have no adequate remedy at law other than injunctive relief.

NOW, THEREFORE, IN CONSIDERATION OF THE AFORESAID statements and the terms and conditions hereinafter stated, the Plaintiff and Defendants stipulate and agree as follows, to-wit:

- (A) The Defendants are permanently enjoined from violating the Zoning Regulations of the Plaintiff on the Real Estate of the Defendants for High Density Residential (H.D.R.) In the following particulars, to-wit:

- (1) Using the Real Estate of the Defendants or portion thereof for dismantling of machinery, farm machinery, or the storage or keeping for sale of parts and equipment resulting from such dismantling or wrecking or the storage or keeping of junk, including scrap metals or other scrap materials with no burning allowed, other than that allowed by City Ordinance Sections 7-107 thru 7-107.03.

- (2) Using the Real Estate for permanent storage for a period of ten (10) or more consecutive days.

- (3) Continued use of the Real Estate of the Defendants in the manner it has been used and existed at the time of filing this lawsuit.

- (4) Continued use of the Real Estate of the Defendants in the following particulars, but not necessarily limited to such particulars, to-wit:

- (a) Parking of farm machinery, equipment, implements, un-licensed motor vehicles or pickups, or storing or placement of parts of such items.

- (b) Stacking, piling, accumulating, or in any way storing lumber, metal, parts, scrap materials, concrete blocks, concrete, stone, and related materials.

- (c) Stacking, piling, accumulating, or in any way storing household appliances, trash, junk, waste, or antique/old horse drawn or tractor drawn farm machinery, equipment or implements. However, ONE (1) AND ONLY (1) antique/old horse drawn or tractor drawn mower for decorative purposes may remain so long as it is properly displayed as a lawn ornament.

- (B) Upon the Plaintiff filing an Affidavit herein that Defendants have failed to abate their violation of the Zoning Regulations for High Density Residential (H.D.R.) Of the Plaintiff as outlined and contemplated hereinbefore on or before February 26,

2002, a Citation to Show Cause may be issued by the District Court of Butler County, Nebraska for failure of the Defendants to comply with this Stipulation, Injunction, and Order of the Court and said Citation to Show Cause will be set for March 5, 2002 at 9:30 A.M. or at such time the Court shall set for the Defendants to Show Cause, if any they may have, why they should not be accused, placed on trial, found in contempt of Court and punished.

- (C) Each party hereto will pay their own legal costs, and their own costs of this action.
- (D) This Stipulation is subject to approval by the District Court of Butler County, Nebraska and said Court executing the appropriate Order for the same.
- (E) This Stipulation will be binding on the heirs, successors, personal representatives, and assigns of the Plaintiff and Defendants.

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

DEFENDANTS:

original was signed by Joe                      1-17-02  
JOSEPH J. SMITH    Date

by: original signed by Mayor Smith 1-31-02  
STEPHEN SMITH, Mayor                      Date

original was signed by Sharon                      1-17-02  
SHARON KAY SMITH    Date

State of Nebraska        )  
  ) ss.  
County of Butler        )

The foregoing instrument was acknowledged before me on January 31<sup>st</sup>, 2002 by Stephen Smith, Mayor, on behalf of the City of David City, Nebraska, a Nebraska Municipal Corporation.

Signed by Elizabeth A. Dowse  
Notary Public

State of Nebraska        )  
  ) ss.  
County of Butler        )

The foregoing instrument was acknowledged before me on January 17<sup>th</sup>, 2002 by Joseph J. Smith and Sharon Kay Smith, husband and wife, as Defendants.

Signed by Elizabeth A. Dowse  
Notary Public

There being no further business to come before the Council, Council member Hein made a

motion to adjourn. Council member Kirby seconded the motion. Voting YEA: Council members Schatz, Smith, Hein, Kroesing, and Kirby. Voting NAY: None. Council member Lukassen was absent. The motion carried and Mayor Smith declared the meeting adjourned at 5:50 p.m..

Mayor Stephen Smith

City Clerk Joan E. Kovar



CERTIFICATION OF MINUTES  
January 31, 2002

I, Joan E. Kovar, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of January 31, 2002; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

Joan E. Kovar