

CITY COUNCIL PROCEEDINGS

March 12, 2003

The Mayor and City Council of the City of David City, Nebraska met in open public session in the meeting room of the City Office, 557 4th Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner-Press on March 6, 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, Ted Lukassen, Bill Schatz, and Nick Hein, Attorney Jim Birkel, Street Supervisor Jim McDonald, Electric Supervisor Tim Kovar, Water/Sewer Supervisor Gene Divis, Park/Auditorium Supervisor Bill Buntgen, Police Chief Stephen Sunday, City Clerk-Treasurer Joan E. Kovar, Norm Andrews, Max Birkel, Allen Covault, Darlene Divis, Jan Engel, Sheriff Mark Hecker, Jim Heins, Robert Hilger, Mark Holoubek, Jackie Horan, Gary Janicek, Dr. Jack Kaufmann, Jack Klosterman, John Klosterman, Jerry Kosch, Roger Kotil, LaVerne Kozisek, Pat Kozisek and daughter, William J. Kozisek, Jim Kruse, Connie Lentz, Bill Magargal, Jim Masek, Mike Moravec, Tom Mountford of Lower Platte North NRD, Allan Nelson, Barbara O'Connell, Deputy County Attorney C. Jo Petersen, Banner Press Editor Larry Peirce, Jodi Prochaska of Scow, Rief, Kruse, & Schumacher, Rich Ronkar, Richard J. Sabata representing NRD, Amy Sanders, Dee Schatz, Mike Sousek of Lower Platte North NRD, and Jim Vandenberg,

Council member Kirby made a motion to advance to agenda item #7 - 7:00 p.m. Public Hearing concerning the Wellhead Protection Plan and Ordinance. Council member Smith seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Mayor Smith declared the Public Hearing open at 7:00 p.m. to discuss the Wellhead Protection Plan and Ordinance. Bill Magargal presented a Power Point presentation made in cooperation with NRD. The presentation explained the goal of the wellhead protection program is to minimize potential polluting activities on the land surrounding a community's public water supply. By participating in the Wellhead Protection Program, the City can take a proactive approach to protecting their groundwater. Magargal's presentation listed the activities that will be designated as potential threats to the water supply within the Wellhead Protection Area, and setback distance requirements for any allowed structure or activity.

Following Bill Magargal's presentation, Mark Holoubek read the following letter:

March 12, 2003

*David City City Council
David City, NE*

Dear Council Members:

The Nebraska Cattlemen (NC) provided comments on the proposed David City Ordinance No. 925 on December 6, 2002. The proposed ordinance establishes a wellhead protection area for the City of David

City. On behalf of NC and several livestock producers in Butler County, I submit this letter as a response to the now amended proposed David City Ordinance No. 925.

Livestock producers in Butler County and across Nebraska recognize the importance of clean water to a community. Unfortunately, the amended proposed ordinance takes an inappropriate approach to that important goal, while limiting the opportunity for Butler County citizens to continue their livestock operations. This letter reviews the provisions of the amended proposed ordinance that remain simply impractical for any rural community, and more specifically, incorrectly interpret the application of state law.

Section 2 of the amended proposed ordinance states "The City of David City adopts the Wellhead Protection Area...." The original proposed ordinance stated "The City of David City adopts the Wellhead Protection Plan and Area...." Perhaps this was an oversight. Regardless of the reason for the omission of the two words, the two words should be included in the sentence to insure accuracy and clarity of the proposed ordinance.

Section 4 of the amended proposed ordinance includes a list of activities or structures that the Planning Commission deems as potential threats to the water supply within the wellhead protection area. The sixth structure listed, livestock confinement facilities, is followed by an inaccurate statement that reads, "restricted by Section 4." This statement should be deleted.

NC continues to oppose the proposed ordinance sections that concern "wellhead structure or activity." The current sections 4 and 5 continue to effectively provide the David City Planning Commission with sole discretion to permit new and existing wellhead structures or activities within the city. Rural Butler County residents do not have access to a municipal-type sewage system. Septic tanks are currently regulated by state law, and the provisions of the proposed ordinance inappropriately subject these systems to another level of regulation. While NC does take note of the improved setback distances listed in current section 6, NC remains opposed to setbacks that are unnecessarily more stringent than those required by the Nebraska Department of Environmental Quality (NDEQ).

It appears that section 7 in the amended proposed ordinance is a revision of sections 3 and 4 of earlier drafts of the proposed ordinance. NC commends the City Council for recognizing the flaw in the original provision which established a maximum animal density of one animal unit (AU) per 8 acres within a 15 mile radius of the City of David City. The new section 7 provides that a "livestock confinement shall be restricted to a maximum of three hundred (300) animal units per site as defined by Title 130 of the regulations of the Nebraska Department of Environmental Quality..." This provision is not accurate. Title 130 refers to livestock operations with less than three hundred (300) animal units as being generally exempt from statutory requirements of the Livestock Waste Management Act. Title 130 provides an inspection process for livestock operations in excess of three hundred (300) animal units. Title 130 does NOT restrict the capacity of a livestock confinement it merely provides different permitting requirements for different sizes of operations, based upon the number of animal units.

Further, section 7 addresses conditions that pose a high potential for waste discharge. Again, this is understandably a concern for the community of David City; as it is a concern for the state as a whole. This is precisely the reason NDEQ considers the issue of discharge in its permitting process. Simply, the state, through NDEQ governs livestock operations in the area of water quality to contain runoff up to and including the 25 year - 24 hour rainfall event. Certainly the Planning Commission can be privy to information that the livestock operation has not complied with the rules and regulations of NDEQ, and revoke a permit on this basis, but the Planning Commission does not have any greater or separate authority than NDEQ.

Please recall from my previous letter I emphasize that aside from the policy issues of the proposed ordinance and the incorrect interpretation and application of current law within the ordinance, the drafters of Ordinance No. 925 failed to consider the principle of preemption. The drafters should consider that Nebraska's Livestock Waste Management Act ("the Act") was built on the foundation of the Nebraska Environmental Protection Act (NEPA) and became operative on April 15, 1998. In keeping with the general history of NEPA, the Legislature assigned the Environmental Quality Council (EQC) the power to adopt rules and regulations for livestock facility permit and inspection programs. Specifically, NEPA

reserves all incidental powers necessary to carry out the Act to NDEQ. Therefore, local ordinances must be consistent with the regulations established by the EQC and the subdivision must seek contractual authority from NDEQ to adopt and enforce such local ordinances.

NEPA and the Act provide a consistent set of environmental regulations with which Nebraska's livestock producers must comply. The argument to allow a governmental subdivision to adopt local ordinances more stringent than state rules and regulations has been debated and lost in the Legislature. The Legislature has expressly stated on numerous occasions that public policy dictates that business owners (including livestock producers) need consistent environmental regulations throughout the state and the nation.

Clearly governmental subdivisions have the authority to adopt and enforce local zoning regulations related to nuisance issues, but to govern in the area of environment regulations is beyond the scope of local zoning authority.

Recently the courts in Nebraska have heard several cases brought by livestock producers whose livelihood has been negatively affected, if not destroyed by overly zealous local planning commissions or boards. Regardless of the adjudicated outcome, both producer and local governments are burdened by the costs of litigation. NC strongly suggest Butler County approve and implement ordinances that consider the health, safety, and welfare of all its citizens, rather than be faced with an unnecessary legal challenge. The livestock industry is a category of citizen that is adequately regulated by the state to insure the health, safety, and welfare of each and every local community.

I respectfully request that the City Council of David City not pass proposed David City Ordinance No. 925. I appreciate and understand the Council's concern for the water quality in David City. On behalf of the livestock producers in Butler County, and throughout the state, please understand that the proposed ordinance will not improve or protect the water quality in your community, it will simply eliminate livestock producers from your community. The elimination of the livestock industry in any community does not affect the water, but does affect the local economy.

Thank you for your consideration.

*Sincerely,
Greg Ruehle
Executive Vice President*

Council member Schatz began clarifying the concerns addressed in the letter. *"The City of David City adopts the Wellhead Protection Area...."* The original proposed ordinance stated *"The City of David City adopts the Wellhead Protection Plan and Area...."* Perhaps this was an oversight. Regardless of the reason for the omission of the two words, the two words should be included in the sentence." Council member Schatz explained that "Plan" was omitted on purpose. The "Area" has been approved by the Nebraska Department of Environmental Quality; the "Plan" has not yet been accepted so it can't be adopted. *"The sixth structure listed, livestock confinement facilities, is followed by an inaccurate statement that reads, "restricted by Section 4." This statement should be deleted."* Council member Schatz explained this was a typographical error and has been corrected to read Livestock confinement facilities - restricted by Sections 6 & 7. This is evident by copies of the Ordinance distributed prior to the meeting.

After a brief period Attorney Jim Birkel interrupted the discussion stating that this wasn't going to get us anywhere because every attorney that read the ordinance could probably come up with a different interpretation.

It was noted that Section 17-536 of the Revised Statutes of Nebraska provides that the jurisdiction of the City to prevent pollution or injury to the source of its water supply shall extend

15 miles beyond its corporate limits. This ordinance is more restrictive than State Statute as Section 1 reads: The City of David City hereby declares the David City Wellhead Protection area to include the entire area within the one mile jurisdictional zoning map for the City of David City. Much discussion followed.

John Klosterman stated this is hypocrisy. Four blocks for this spot there was a nitrogen fertilizer plant leaking and nothing was ever done about it. Water/Sewer Supervisor Gene Divis stated that they were aware of it, a study was done, soil samples taken, and the report is on record.

Jack Klosterman stated that it is good that David City is looking at protecting the water source, but he is hearing indecision. Jack feels that he is trapped in the middle of this discussion. He stated the Klosterman's have always tried to help the community and they understand that the City wants to protect their water source, however, Jack is also a member of the Nebraska Cattlemen. Klosterman stated that he could almost guarantee that if the Ordinance is passed, David City will be in court over this with the Nebraska Cattlemen and the Nebraska Cattlemen have money. Klosterman stated that he is not a lawyer, he doesn't know who is right, but the Nebraska Cattlemen will use this case as a landmark for other cases. Mayor Smith stated he didn't appreciate "threats" but he will try to schedule a meeting with the Cattlemen's Association.

Dr. Jack Kaufmann stated that he was confused. Kaufmann asked if there were any cattlemen present that were opposed to the proposed ordinance, and if so, if they could explain "why?" in simple terms. No-one responded.

David City Wellhead Protection Committee member Richard Sabata stated that the ordinance reads "livestock confinement shall be restricted to a maximum of three hundred (300) animal units per site as defined by Title 130 of the regulations of the Nebraska Department of Environmental Quality and where allowed by Title 130 Rules and Regulations, zoning regulations and ordinances of the City of David City". Sabata has livestock that grazes on stalks within the City's 1 mile jurisdiction. This is allowed because the livestock is not confined to this area.

There being no further discussion, Mayor Smith declared the Public Hearing closed at 8:19 p.m..

Council member Smith made a motion to advance to agenda item #8 - Consideration of a wellhead protection plan and wellhead protection Ordinance No. 925. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Hein made a motion to table consideration of Wellhead Protection Ordinance No. 925 until the April 9, 2003, council meeting. Council member Lukassen seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

ORDINANCE NO. 925

AN ORDINANCE TO PROVIDE FOR PROTECTION OF THE CITY OF DAVID CITY

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

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

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

WHEREAS, pursuant to the Nebraska Wellhead Protection Area Act, Sections 46-1501 et. seq. of the Revised Statutes of Nebraska, the Mayor and City Council have adopted a Wellhead Protection Plan and Area;

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

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

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

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

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

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

Section 4. It shall be unlawful for any person, other than the City of David City, to place, install, construct or replace any of the following structures or conduct any of the following activities or any activity which shall be designated by the Planning Commission as a potential threat to the water supply within the Wellhead Protection Area, except as may be provided by permit herein, to wit:

Activity or structure

- Non-potable water well
- Sewage lagoon - not allowed
- Absorption or disposal field for waste - not allowed
- Cesspool - not allowed
- Dump - not allowed
- Livestock confinement facilities - restricted by Sections 6 & 7
- Pit toilet
- Sanitary landfill - not allowed
- Chemical or petroleum product storage
- Septic Tank and septic drain field
- Sewage treatment plant - not allowed
- Sewage wet well - not allowed
- Sanitary sewer connection
- Sanitary sewer manhole
- Sanitary sewer line

Section 5. The placing, installing, construction or replacing of any allowed structure or activity as set forth in Section 4 of this ordinance, hereafter termed "wellhead structure or activity", within the Wellhead Protection Area, shall not be permitted after the effective date of this ordinance unless a permit approved by the Planning Commission has been obtained. The owner of any wellhead structure or activity shall have the burden of establishing the existence and use of said wellhead structure or activity at the time of the effective date of this ordinance.

Section 6. No permit shall be issued by the Planning Commission within the following setback distances from any City of David City municipal water well:

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

Any activity described in Section 6 located within the defined setback distance shall be considered prima facie a hazard to the quality of the municipal water supply.

Section 7. For purposes of this ordinance, livestock confinement shall be restricted to a maximum of three hundred (300) animal units per site as defined by Title 130 of the regulations

of the Nebraska Department of Environmental Quality and where allowed by Title 130 Rules and Regulations, zoning regulations and ordinances of the City of David City. In the event conditions at the livestock facility at any time indicate there is a high potential for waste discharge which may threaten the municipal water supply or groundwater, as determined by the Department of Environmental Quality, the Planning Commission permit for the operation shall be subject to revocation, unless the owner of the operation can provide evidence to the Planning Commission that the threat has been eliminated.

Section 8. Any wellhead structure or activity not prohibited by Section 4 and Section 6 shall be allowed, subject to a determination of the Planning Commission that such activity does not constitute a hazard or threat to the quality of the municipal water supply or ground water and upon issuance of a permit.

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

Section 10. Prior to placing, installing, constructing, expanding or replacing any wellhead structure or activity, the owner of the real estate upon which the structure or activity is proposed shall file with the Planning Commission an application for a wellhead activity permit. Said application shall be on a form furnished by the City of David City and shall include supporting information indicating why approval would not adversely impact the municipal water supply and ground water. The application shall be submitted to the Planning Commission for review. Prior to acting upon the application, the Planning Commission may seek an engineering report, recommendations of the Natural Resources District, the Nebraska Department of Environmental Quality or any other party or agency in evaluating the impact of the proposed structure or activity on the municipal water supply. A permit shall be issued only after the Planning Commission determines that the structure or activity is unlikely to contaminate or pollute the municipal water supply and ground water. Replacement or repair of existing properly registered agricultural irrigation wells, when done in an expedited or emergency status process by the Natural Resources District, shall be exempt from the Planning Commission permit process and must meet all requirements of the Natural Resources District and the setback distance requirements of Section 6.

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

Section 12. Any person found guilty by a court of law of violating any provision of this ordinance shall be subjected to a fine not to exceed \$500. The continuation of a violation of this ordinance shall be deemed an additional offense for every 24 hours of such continued violation.

In addition, the City of David City may obtain injunctive relief and sue for damages and remediation and pursue other remedy available under laws of the State of Nebraska or other authority having jurisdiction over such matters.

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

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

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

PASSED AND APPROVED this _____ day of _____, 2003

(Tabled to the April 9th Council meeting)
Mayor Stephen Smith

Attest:

(Tabled to the April 9th Council meeting)
City Clerk Joan E. Kovar

Council member Smith made a motion to advance to agenda item #16 - Consideration of deeding a parcel of land to Butler County for the Butler County Jail and Courthouse Addition. Council member Kroesing seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Due to the construction of a vehicular sallyport on the north west side of the Butler County Jail and Courthouse addition, a variance of 6' -8 5/16" was requested. The Board of Zoning Adjustment approved the variance at their March 10, 2003 meeting. Sheriff Mark Hecker and Deputy County Attorney C. Jo Petersen were present to discuss deeding a parcel of land to Butler County for the Butler County Jail and Courthouse Addition. The sallyport will need approximately 7' x 34'. 7' x 60' would include the driveways to the sallyport. The Council discussed deeding 7' across the entire north end of Block 25 which would be approximately 7' x 300'. Council member Lukassen cautioned that this is zoned Downtown Commercial which requires no set-backs. If the Courthouse would ever decide on another addition and built all the way to the extended property line, this could obstruct vision causing safety issues. If the parcel of land containing the driveways was not included in the deed, this could possibly be a liability issue for the City. Discussion followed. Council member Smith made a motion to deed 7' x 150' on the northwest corner of Block 25, Original Town of David City, to Butler County with the stipulation the County will assume all legal fees concurred by this action. Council member Kirby seconded the motion. Voting YEA: Council members Smith, Kirby, Schatz, and Kroesing. Voting NAY: Council members Hein and Lukassen. The motion carried. The deed will read as follows:

DEED

KNOW ALL MEN BY THESE PRESENTS:

That I or We, City of David City, Butler County, Nebraska, by and through Steve Smith, Mayor, City of David City, Nebraska, herein called the Grantor, whether one or more, for the following consideration: One Dollar and No Cents (\$1.00) and other valuable consideration, Received from Grantee, do hereby grant, bargain, sell, convey and confirm unto the County of Butler, Nebraska, herein called Grantee whether one or more, the following described real property in David City, Nebraska:

That part of East E Street, adjacent to Block 25, Original Town of David City, Butler County, Nebraska, described as follows:

Beginning at the northwest corner of said Block 25; thence easterly, 150.00 feet, on the north line of said Block 25; thence northerly 7.00 feet, at a right angle to the last described line; thence westerly 150.00 feet, parallel with the north line of said Block 25; thence southerly, 7.00 feet, to the point of beginning, containing 1050 square feet, more or less.

To have and to hold the above-described premises together with all tenements, hereditaments and appurtenances thereto belonging unto Grantee to Grantee's heirs and assigns forever.

DATED this _____ day of March, 2003.

Steve Smith
Mayor, City of David City

Joan Kovar
City Clerk

The foregoing instrument was acknowledged before me on the _____ day of March, 2003, by Steve Smith, Mayor of the City of David City.

Notary Public

The foregoing instrument was acknowledged before me on the _____ day of March, 2003, by Joan Kovar, City Clerk of the City of David City.

Notary Public

Council member Kirby made a motion to advance to agenda item #9 - Presentation by Scow, Rief, Kruse, & Schumacher regarding the General Audit. Council member Smith seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Jodi Prochaska of Scow, Rief, Kruse, & Schumacher presented the Audit report for the financial statements for the year ended September 30, 2002. The City prepares the financial statements of the governmental fund types on a basis of accounting that demonstrates compliance with the cash basis and budget laws of Nebraska, which is a comprehensive basis of accounting other than generally accepted accounting principles. The tests disclosed no instances of noncompliance that are required to be reported under *Government Auditing*

Standards. The books are clean and in order. The overall theme of the audit was the Park improvements and new aquatic center; there is less cash than previous years because of these.

Council member Lukassen made a motion to accept the Auditors' Report as prepared by the firm of Scow, Rief, Kruse, & Schumacher. Council member Kroesing seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Kroesing made a motion to advance to agenda item #12 - Presentation by Mike Moravec, CPA PC concerning the Keno Audit. Council member Kirby seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Mike Moravec, CPA PC, reported that this was the first time he had performed the keno audit. There were nineteen (19) tests performed for compliance. Barb Hiatt and Mike traced all winning tickets of \$1,500 or more to ensure that payments were made in accordance with the regulations. Everything matched and was in compliance.

Gross Proceeds:	\$152,214
Less Prize Payouts	- 113,974
Less operator's commission	- 21,310
Less state taxes	- 2,878
<u>Less audit fees</u>	<u>- 800</u>
Proceeds available for distribution=	\$ 13,252

City Clerk Joan Kovar reported that currently the "reserve account" showed a negative balance. This may need to be reviewed with the Department of Revenue Gaming Division.

Council member Kroesing made a motion to accept the Keno audit as prepared by Mike Moravec, CPA PC. Council member Hein seconded the motion. All of the Council members were present, all voted YEA and the motion carried.

Council member Kirby made a motion to advance to agenda item #13 - Public Hearing on the preliminary plat for Kozi 2nd Addition. Council member Kroesing seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Mayor Smith declared the Public Hearing open at 8:47 p.m. to consider the preliminary plat for Kozi 2nd Addition. The location of the sewer line was discussed. Water/Sewer Supervisor Gene Divis stated he agreed to the location change for the sewer line. Council member Kroesing made it clear that he doesn't want issues like the Council had with Kozi 1st Addition concerning curb and gutter. The grading for curb and gutter should be completed before anyone begins building. Mayor Smith reported that we will consider the preliminary plat, the final plat, annexation, and then we will consider the petition LaVerne Kozisek has filed for curb and gutter. An engineer will draw up plans and specs for the curb and gutter. The total costs, which would include all aspects of the project, will be assessed to the property owners. (In the past, the Council has concluded that an 80/20 split with the property owners share at 80% of total costs,, and the City's cost at 20% of the total costs is a reasonable amount to assess the property owners).

Council member Kroesing made a motion to accept the preliminary plat for Kozi 2nd Addition. Council member Smith seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Mayor Smith declared a ten minute recess at 9:00 p.m. The meeting resumed at 9:10 p.m..

Council member Lukassen made a motion to advance to agenda item #11 - Consideration of purchasing a volleyball net and new curtains for the Auditorium. Council member Smith seconded the motion. Voting YEA: Council members Kirby, Schatz, Smith, and Lukassen. Voting NAY: None. Council members Kroesing and Hein had not yet returned from break. The motion carried.

Connie Lentz and Amy Sanders, representing David City Public Schools, reported that the volleyball standards at the City Auditorium have become a hazard. Amy stated that the volleyball system is the same set-up as when she played at the Auditorium in the 80's. It is a liability and a safety issue. Players trip over the cables during warm up and the cables cause a restrained area for the refs. Teams have refused to play unless extra padding is placed on the cables. The current set-up does not meet the National Federation standards. Lentz and Sanders requested that the City purchase a Bison portable Volleyball standards which would include: standards, floor anchors, volleyball net, antennas, and padding for standards for a cost of \$1,995.00 + freight. Because the volleyball court is located on the upper level of the auditorium it is necessary to go with a portable unit. A regular net and standards requires you to drill in 6" and put in concrete. We don't have the depth and would go through the ceiling of the lower level. Council member Hein advised Buntgen to check to see if the company installs the floor anchors, and asked if the floor anchors will cause problems with basketball. Buntgen noted that the anchors will not cause a problem. Park/Auditorium Supervisor Bill Buntgen stated that the upper level of the Auditorium is in need of improvements. Buntgen would like to paint the ceiling and replace the window curtains. Buntgen priced ceiling paint at \$1,000 and window curtains at \$6,500. Buntgen visited with Mrs. Davis, the home economics teacher at David City High School to see if she would be interested in making the curtains. Mrs. Davis stated that she doesn't have the time to make the curtains. Buntgen will check with the Fabric Shop in David City to see if they would make the curtains and if so what the cost will be.

Council member Hein made a motion to approve spending up to \$2,000 from the Contingency Fund to purchase a Bison portable Volleyball standards and \$1,000 from the Auditorium budget for ceiling paint for the upper level of the City Auditorium. Council member Smith seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Kroesing made a motion to advance to agenda item #15 - Consideration of purchasing land for the site of a new water tower. Council member Kirby seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Water/Sewer Supervisor Gene Divis visited with Joe Sabata who owns land on the north east corner of 11th & "O" Streets to see if he would be willing to sell land to the City for a water tower site. Joe Sabata submitted the following proposal:

Joe Sabata
Tower Site Proposal

\$17,000 for the land of 100' x 133' with \$500 for right to drill test hole for soil condition and \$6,500 if satisfactory for tower.

\$10,000 paid January 2004, with 5% interest with owner having choice of 1 payment or 2 equal payments if requested in 2004 & 05.

\$250 for construction land easement for loss of crop.

Water/Sewer Supervisor Gene Divis noted that the current water tower has a twelve (12) year life expectancy. We would continue to use the current water tower as long as possible. Council member Hein stated that the 100' x 133' goes to the middle of the road, so the parcel is actually 100' x 100' of usable ground. Hein asked if this was a sufficient size. What if we decide to go with a larger sized water tower? Divis stated that normally the change of size is up above and the base of the tower won't change. This is the lot size recommended by Jacobson Helgoth Consultants.

City Clerk Kovar asked for clarity on the proposal as follows: \$500 would be paid up front to allow the City to drill test holes for the soil condition. The \$500 would apply to the purchase price if the City decides to buy the parcel. If the area is satisfactory for a water tower the City would then pay \$6,500. The 5% interest on the remaining \$10,000 begins when the \$6,500 payment is made. The \$250 would be paid when the tower is actually constructed - for construction land easement for loss of crop. The remaining \$10,000 + interest would be paid in January 2004 or 5,000 + interest in January 2004, and 5,000 + interest in January 2005. The total cost would be \$17,250 + interest if the City proceeds with the construction of the water tower.

Council member Lukassen made a motion to approve an initial investment of \$500 for the right to drill for a proposed water tower site, with the \$500 applied towards the purchase price if the City decides to buy, and with a two year option to purchase the land. Council member Kroesing seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Council member Hein made a motion to move agenda item #2 to the end of the council meeting - Consideration of starting each council meeting with the Pledge of Allegiance. Council member Smith seconded the motion. Voting YEA: Council members Kirby, Schatz, Lukassen, Smith, and Hein. Voting NAY: Council member Kroesing. The motion carried.

The minutes of the February 12th, 2003 meeting of the Mayor and City Council were approved upon a motion by Council member Smith and seconded by Council member Hein. All of the Council members were present, all voted YEA and the motion carried.

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

City Clerk Kovar read a letter from Nebraska Public Power District stating the David City Power Plant had received an excellent rating for their generating. Tim Arlt of NPPD stated that very few plants receive an excellent rating.

Council member Kirby had three citizens' concerns to address:

1) Neighbors and parents have expressed concern that the Burlington Northern/Santa Fe Railroad crossing by the ball fields is so dark. They feel it would be a good idea to install

security lights by the railroad crossing. Electric Supervisor Tim Kovar stated he would take care of this.

2) When traveling west on "O" Street, there are bushes (perhaps lilac) on the south side of "O" Street on the east side of the Burlington Northern/Santa Fe Railroad tracks that impair vision. Street Superintendent McDonald will check into this.

3) The old youth center is located at 660 5th Street. There is a storage building located east of the youth center and the Boy Scouts have a trailer parked on the north side of the storage building. They would like to move their trailer to the south side of the storage building. Council member Hein stated that some trailers are becoming unsightly and he could have an issue with trailers in the future. Street Superintendent Jim McDonald stated he had no objections as well as they don't block the doors to the storage building. McDonald will check on this and discuss it with a Boy Scouts leader.

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. All of the Council members were present, all voted YEA, and the motion carried.

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

City Clerk Kovar reported she received a letter from the State of Nebraska, Department of Revenue, Charitable Gaming Division, stating that according to their records, the only person authorized to sign applications is Andrew Brannen.

Council member Smith made a motion to authorize City Clerk Joan Kovar to sign applications and other correspondence for the State of Nebraska, Department of Revenue, Charitable Gaming Division. Council member Lukassen seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

Mayor Smith reported that he was approached by Russ Daro who asked if the City would be interested in purchasing the land north of the police station, 475 No. 3rd Street. Police Chief Sunday stated he would like it as an impound yard. Council member Schatz suggested getting a proposal.

Mayor Smith also reported that Don Hilger had filed an application to build a new home for Garry Hazen in Sypals' Addition on the north side of "O" Street. Mr. Hazen does not want to put in sidewalks. This will be discussed at the Committee of the Whole meeting.

Mayor Smith scheduled a Committee of the Whole meeting for Monday, March 24, 2003 at 5:30 p.m. in the City Office meeting room.

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

Police Chief Sunday requested that the auditorium rental fee be waived for a town hall meeting with Police Chief Sunday and Sheriff Mark Hecker to discuss a "drug" dog and dog handler. Council member Kroesing made a motion to waive the auditorium rental fee for a town hall meeting with Police Chief Sunday and Sheriff Mark Hecker to discuss a "drug" dog and dog handler. Council member Kirby seconded the motion. Voting YEA: Council members Kroesing,

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

Police Chief Sunday reported that he has four bills for vehicles that were towed for snow removal, which have not been paid. The bills are \$35.00 + 2.28 tax = \$37.28 each. Sunday asked if he should file the bills with small claims court. Attorney Birkel stated that would probably not be feasible considering the filing fee and serving fee. The Council suggested more correspondence with the parties.

Council member Smith made a motion to advertise for lifeguards for the swimming pool. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried.

City Clerk Joan Kovar presented a resolution setting the fees for zoning permit applications, variances, rezoning, etc. Kovar explained that most of the fees listed were based on the City's actual expenses - publication fees, posting and mailing requirements - and did not include labor costs. Council member Smith recommended adding 20% to each fee for overhead, rounding up to the nearest \$5.00.

Council member Smith introduced Resolution No. 2 - 2003 and moved for its passage and adoption. Council member Kroesing seconded the motion. Voting YEA: Council members Lukassen, Kirby, Hein, Kroesing, Schatz, and Smith. Voting NAY: None. The motion carried and Resolution No. 2 - 2003 was passed and adopted as follows:

RESOLUTION NO. 2 - 2003

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

WHEREAS, the City has determined a need to charge fees for the following applications.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA that the following application fees are hereby approved and adopted.

Schedule of application fees:

Zoning Permit.....	\$25.00
Join / Divide Lots.....	\$20.00
Subdivision.....	\$150.00
Rezoning.....	\$75.00
Conditional / Special Use.....	\$55.00
Zoning Amendment	\$55.00
Zoning Variance.....	\$30.00

Dated this ____th day of _____, 2003.

Mayor Stephen Smith

City Clerk Joan E. Kovar

Mayor Smith declared a ten minute recess at 10:40 p.m. The meeting resumed at 10:50 p.m..

Council member Hein made a motion to go into executive session to discuss a letter received from a citizen concerning personnel and reciting the Pledge of Allegiance at Council meetings. Council member Kirby seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. The Council, Mayor Smith, and Attorney Birkel went into executive session at 10:50 p.m..

Council member Kirby made a motion to come out of executive session. Council member Kroesing seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. The Mayor and Council came out of executive session at 11:43 p.m..

Council member Kroesing made a motion to table consideration of starting each council meeting with the Pledge of Allegiance to the April 9, 2003, council meeting, at which time it will be the 2nd item on the agenda. Council member Smith seconded the motion. Voting YEA: Council members Hein, Lukassen, Kirby, Smith, and Kroesing. Voting NAY: Council member Schatz. The motion carried.

There being no further business to come before the Council, Council member Kroesing made a motion to adjourn. Council member Hein seconded the motion. All of the Council members were present, all voted YEA, and the motion carried. Mayor Smith declared the meeting adjourned at 11:45 p.m..

Mayor Stephen Smith

City Clerk Joan E. Kovar



CERTIFICATION OF MINUTES
March 12, 2003

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 March 12, 2003; 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