

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

The undersigned members of the governing body of the City of David City, Nebraska, hereby acknowledge receipt of advance notice of a regular meeting of said body and the agenda for such meeting to be held at 7:00 o'clock p.m. on the **27th day of March, 2019**, in the meeting room of the City Office, 557 North 4th Street, David City, Nebraska.

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

Dated this 19th day of March, 2019.

AGENDA AS FOLLOWS:

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| 1. Roll Call; | <hr/> Mayor Alan Zavodny |
| 2. Pledge of Allegiance; | |
| 3. Inform the Public about the location of the Open Meetings Act and the Citizens Participation Rules; | <hr/> Council President Kevin N. Hotovy |
| 4. Minutes of the March 13 th , 2019 meeting of the Mayor and City Council; | |
| 5. Consideration of the Kathryn D. Treat property located at 715 4 th Street, David City, NE, legally described as Lots 7,8,9 & 10, Block 5, Original Town of David City; | <hr/> Council member Thomas J. Kobus |
| 6. Consideration of the request by the David City Housing Authority for the City to repair the manhole cover located in the sidewalk along 3 rd Street by the Sunshine Court; | <hr/> Council member Dana E. Trowbridge |
| 7. Consideration of advertising for an entry level employee for the water and sewer departments and discussion and consideration of the employment of John Kobus for a Water / Sewer Position; | <hr/> Council member Patrick J. Meysenburg |
| 8. Consideration of accepting the resignation of employment from Eric Betzen as the Power Plant Supervisor; | <hr/> Council member John P. Vandenberg |
| 9. Preliminary discussion concerning the power plant as we move forward; and consideration of such; | <hr/> Council member Gary D. Smith |
| 10. Consideration of the condition of the streets; | <hr/> City Clerk Joan E. Kovar |

11. Consideration of the Bob Wright / Louise Sanders property located on the Southeast corner of 8th & Nebraska, legally described as Lot Two (2), Block Twelve (12), Miles Fifth (5th) Addition to David City, and possibly going into Executive Session;
12. Adjourn;

CITY COUNCIL PROCEEDINGS

March 27, 2019

The City Council of the City of David City, Nebraska, met in open public session in the meeting room of the City Office, 557 North 4th Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on March 21st, 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 Agendas which are a part of these minutes. The advance notice to the Public, Mayor, and Council members conveyed the availability of the agendas, which were kept continuously current in the office of the City Clerk and were available for public inspection during regular office hours. No new items were added to the agendas 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 Smith, Tom Kobus, Pat Meysenburg, Kevin Hotovy, Dana Trowbridge, and John Vandenberg, City Attorney Jim Egr, and City Clerk Joan Kovar.

Also present for the meeting were: David Ziska of Olsson Associates, Jeff Hilger, Dale Kerkman, Jerry Kosch, Housing Authority Executive Director Renee Williams, Board of Zoning Adjustment member Roger Comte, Planning Commission Member Janis Cameron, Sheriff Tom Dion, Street Supervisor Chris Kroesing and wife Sarah, Building Inspector Ray Sueper, and Interim Water Supervisor Aaron Gustin.

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 asked those present to please silence their cell phones.

The minutes of the March 13th, 2019 meeting of the Mayor and City Council were approved upon a motion by Council member Kobus and seconded by Council member Trowbridge. Voting AYE: Council members Meysenburg, Smith, Hotovy, Vandenberg, Kobus, and Trowbridge. Voting NAY: None. The motion carried.

The Kathryn D. Treat property located at 715 4th Street, David City, NE, legally described as Lots 7, 8, 9, & 10, Block 5, Original Town of David City was discussed.

Mayor Zavodny stated: "We are at our deadline of 7:00 p.m. on March 27th and so what is our status?"

Building Inspector Ray Sueper stated: "The owners of that property have not met the standards that the Board of Zoning Adjustment set forth for them to release the condemnation."

Mayor Zavodny stated: "So next step; Counsel, I would defer to you at this time, as far as anything we need to dot i's and cross t's to proceed. Where does that bring us?"

City Attorney Egr stated: "Well, I've looked at the proceedings that have been followed in the particular matter, I know we see a gentleman from the Board of Zoning Adjustment here. It looks like all the notices have been filed, the appeal has been filed, the direction on the appeal has been filed, the Council has several routes to go. The Council can say we will proceed to direct that something be done. One of the things that can be done is to direct the owner of the property to demolish the building because of the problems with the building. The Council can direct that the buildings and contents be removed from the property, the Council can extend the period of time, or the council today can say, not do anything today, from that standpoint. I supposed if we wanted to, another alternative is we could bring nuisance charges from a criminal standpoint, wait until we pass the ordinance for an unsafe building or a dangerous building and proceed there. You've got several options. It appears to me, in looking at the proceedings, that we've got several options to go. It appears that the notices have been given, the due process has been followed as far as we can tell, as far as I can tell on there. I suspect if there is any particular order to proceed with the removal of the building and its contents or to proceed with demolition, or any of those types of things that would result in the removal of the building and contents that the City may face in between time, while we are taking bids and so forth, we have the potential of legal action and an injunction. I'm not saying that that should be a determining factor for you, but the potential is there, we have been contacted by legal counsel, but will that counsel do anything, I don't know. So, you have several options."

Mayor Zavodny stated: "Ok, forgive me if I didn't hear one that I guess I was expecting, can "we" take the action to do an RFP for a demolition?"

City Attorney Egr stated: "I think you can, yes."

Mayor Zavodny stated: "And then we would have to assess that against the property because that's an expense to us at this point."

Council member Kobus stated: "I myself think that they have had long enough, it's not going to get any better."

Council member Trowbridge stated: "Mr. Mayor, I would move that we reaffirm our prior condemnation of this property, seeing as how it was protested, and a hearing has been held, and the people failed to do what the hearing officer told them they had to in a timeline that matched the Board of Zoning Adjustment's desires, and we move from condemnation to advertising for demolition bids." Council member Kobus seconded the motion.

Mayor Zavodny stated: "Ok, you heard the motion and the second, further discussion."

Council member Hotovy stated: "Are we sure? This is kind of a deal where you have to take into account that this is a 100+ year old home. I'm not saying what has happened in the last decade is right, by any means it's terrible, but it is still a 100+ year old home. I would hate to see that piece of history go away over the fact that the property owners aren't addressing the problems. That's what is unfair in this whole situation."

Mayor Zavodny stated: "I think there are a large number of people who share that argument. The problem we have, as I see it at this point, is, if we don't move forward, and I still think with going the request for proposals for demolition, there is a last second chance for an eleventh hour save. But if we stop the process, it's like we get right up to the line and say we are going to do something, and then where do we go if we don't act. I just think we would be spinning our wheels."

Council member Hotovy stated: "Yes, that is setting a dangerous precedent. The conversations that are being had, either thru social media or thru the public, don't understand the process that has gone on the last ten years."

Council member Trowbridge stated: "And Kevin, I'm not sure they understand equity, because what makes this particular situation of neglect any different than the modular house two blocks down the street that we take down; and we've done it. How do we tell the next one that your house isn't historic enough?"

Mayor Zavodny stated: "I think where I am struggling the most with this is the fact, and it's going to seem small in comparison to what we are talking about, but we had the big snow storm. A responsible home owner has 24 hours to remove the snow; that snow was never moved. There are no efforts here to be the responsible homeowners, and I bear no ill-will towards them but the fact is, if it was less of a house, we wouldn't be having this conversation."

Council member Hotovy stated: "Correct, I completely agree with you. Now, is it too far gone? I've been asked that a million times in the last month; Is it too far gone?"

Building Inspector Ray Sueper stated: "Well, your community is subjecting its children and its vagrants' access to that property; we have determined that. There are people that have been accessing that house, whether it be teenagers up in that bedroom in the second story, or if it's been some 50-year-old gentleman who doesn't have a home, sleeping up there, but someone has been using that property for illicit and immoral purposes while Treats have been living in Colorado. So, there you go, it's your community."

Council member Hotovy stated: "But, that didn't answer my question. Is the house too far gone?"

Council member Meysenburg stated: "The foundations gone."

Building Inspector Sueper stated: "Well, the plumbing is shot, the structures there, other than porches that are collapsing, the main structure of the house is sound but the porches are gone...."

Council member Hotovy stated: "I understand that but a porch is pretty small in relation to everything else."

Mayor Zavodny asked: "What's the foundation condition?"

Building Inspector Sueper stated: "I haven't been in the basement."

Council member Hotovy said: "See, and that's where I'm going. Do we have definitive proof that we are better off putting an excavator through the roof than researching other alternatives?"

Council member Kobus stated: "Who's going to fix it?"

Council member Hotovy asked: "Are there grant funds available? I don't know, I am just brainstorming."

Council member Trowbridge stated: "Yes there are, but it's awful to ask for grant funds to rehabilitate something you have let go to hell on your own. So, I don't take care of my house, or I don't take care of my car, but I ask all of you to now pay for fixing it. I'm sorry, but that isn't right."

Council member Hotovy stated: "I can see that argument. I am just brainstorming this. Is this too far gone?"

Council member Trowbridge stated: "Let's ask another question, if we leave this property in the hands of the Treats, what will it be like ten years from now? It will be gone."

Mayor Zavodny stated: "That was actually the second part of the point I wanted to make. I started with the small one with snow removal and being a responsible home owner, but the bigger issue for me at least is, and granted it's anecdotal, but they've had some pretty viable offers, and I've heard more times than not, how do you sell a house but you don't have any contact information? No realtor. How true were those efforts?"

Discussion followed.

Mayor Zavodny stated: "You know, as much as this pains me tremendously, I just think we have run out of options. There are some responsible parties out there, that ownership of that property would do wonderful things with it, but we can't get from here to there without some cooperation from the homeowners and we just don't have it, that limits our options unfortunately, and probably in this case to a tragic end."

Board of Zoning Adjustment member Roger Comte stated: "I have a question. I am in favor of just clearing that place and getting it down the road. Are we sure we have taken all the necessary steps legally? You know, if we start demolition and they come back on the City somehow?"

City Attorney Egr stated: "I don't see us starting demolition without them filing an action before we started, and getting an injunction. I know they have contacted legal counsel, I know that."

BOZA member Comte stated: "I don't want to get us, meaning the City, in trouble. I think that's what needs to be done, just want to make sure it's done the right way."

City Attorney Egr stated: "Ray and I have gone over the papers and we've gone over the notices. If they file an injunction then that stops us until the Court rules. It would go to the District Court, and then once the District Court rules, they have the right to appeal. Once the Court sets a final order, it's done."

BOZA member Comte asked: "Another question, what if they don't file an injunction and we start the demolition, or get it torn down, is it too late for them to come back on us?"

City Attorney Egr stated: "They have the right to still file. We could demolish the house and clear it up and they could still file an action saying that they were damaged by the removal of the house, but they would have to say how they were damaged. Ray's done a real good job with pictures as to what the condition of the house was from the outside and what we've been able to determine from the outside. The toughest thing here is that's a house that demands maintenance all the time."

BOZA member Comte stated: "I just don't want the City to get into trouble by getting something going, getting it all down, and then they come back."

City Attorney Egr stated: "The potential of that happening is going to happen."

BOZA member Comte stated: "If they file an injunction before it starts, I think that's the best thing that could happen because then the Court says "you're right, or they're right" and then you go on with life from there."

City Attorney Egr stated: "You're exactly right."

Council member Trowbridge stated: "When we read them the paragraph that Roger Comte asked during the Board of Zoning Adjustment hearing, the Judge won't take long to rule, you made it clear, you did a very good job of that."

Mayor Zavodny stated: "The earliest we could get it advertised would be in next week's paper. Is everyone comfortable with opening bids we have for demolition at our May 8th meeting? Alright. Anything else on the discussion? We have a motion and second, Ok, Joan please."

Roll call for the motion that we advertise for bids for the demolition of the house at 715 4th Street. Voting AYE: Council members Meysenburg, Smith, Hotovy, Kobus, Trowbridge, and Vandenberg. Voting NAY: None. The motion carried.

Executive Director Renee Williams of the David City Housing Authority (Sunshine Court) was present to request that the manhole cover located in the middle of the sidewalk near the intersection of 3rd Street and the south cul-de-sac be repaired. Renee provided the following photo and stated that the manhole cover is a serious hazard and could cause someone to trip and fall.



Street Supervisor Chris Kroesing stated that he believed that this had been reported previously and that he was told by his previous supervisors that manholes in the City sidewalk was the responsibility of the property owner. Chris stated that he would take a look at it, and take care of it, if that was the Council's decision. It was noted that there is currently water in the manhole and electric wires running through an abandoned water line. Mayor Zavodny asked Chris to evaluate the situation, discuss this with the electric & water departments, get cost estimates, and then this will be discussed further at the April 10th Council meeting.

Mayor Zavodny stated the next agenda item was consideration of advertising for an entry level employee for the water and sewer departments and discussion and consideration of the employment of John Kobus for the water/sewer position.

Mayor Zavodny stated: "Last week, Pat (Council member Meysenburg) and I did talk to Mr. Kobus and I asked him some questions because to me, why wouldn't we maybe contract, those kinds of things that seem to make sense to me. He said he's really not interested in that anymore and at his career of 40+ years he thinks he'd be okay coming to work and answering to somebody else. You know it's pretty rare you get that much level of experience. We are talking the high end of our salary schedule here, which is something we will have to consider, but we need to discuss all the nuances of what this means. We still haven't appointed a supervisor, so then you've got that issue. I'm going to make the two, in my mind, strongest pitches for considering this. One, we could go back to how we used to do and put some of our own water lines in, because he has that experience, instead of hiring Obrist to do the whole thing at a higher cost. So, that's one option to consider in this. The other one, which is of interest to me and it certainly is something we should consider especially with the next agenda item we have. He said he'd be willing to learn how to start and run those engines and he'd have the know how to probably understand that. I think one thing we need to do, and NPPD has contacted us, if we want to continue to collect our \$24,000/month they'd work with us and people from Ord would come show people, and if we can operate, we'd have to adjust how we do it, but that's a decision this council needs to make. Do we just go in there and sell / scrap all the metal we have there, or do we continue to try.we've invested in the scrubbers and all that, a fair amount of money, but not really have the full-time person there? My biggest short-term concern right now is, if we have a storm, we need some people, we need somebody, who can go in there and handle that part of it when the guys are out on the lines. That's probably our most immediate need with the resignation, and also so someone doesn't get killed. Obviously, you need someone in there competent; not making a line live when someone is out working on it in a bucket."

Council member Kobus stated: "As far as I'm concerned on that, I think Pat Hoeft ought to be there, no matter what, switching those switches."

Mayor Zavodny stated: "What Pat has done is tried to go in there, some stuffs written down, but we're not 100% sure on the sequencing and everything that goes into it when we have a storm and what parts you do when, so that's something we need to figure out fairly quickly. If John is willing to learn that kind of stuff and run the power, put water lines in, tap, he could be a good source of training for some of our less experienced employees. That is one option you have. Now, some of the problematic things with it are he doesn't really fit on our salary schedule with the job descriptions."

Discussion followed.

Council member Meysenburg made a motion that the City hire John Kobus and Council member Trowbridge seconded the motion. Voting AYE: Council members Hotovy, Smith, Vandenberg, Kobus, Meysenburg, and Trowbridge. Voting NAY: None. The motion carried.

The following was received from Power Plant Supervisor Eric Betzen:

March 18th, 2019

To whom it may concern,

It should be of no surprise that I am submitting my resignation. I don't believe I need to go into specifics, as most of you should know why.

I am grateful for the opportunity I had to work for the city, the knowledge I have gained, and working with the people who keep it running on a daily basis.

Thank you,



Eric Betzen

Council member Trowbridge made a motion to accept the resignation of Eric Betzen as the Power Plant Supervisor. Council member Kobus seconded the motion. Voting AYE: Council members Vandenberg, Meysenburg, Kobus, Hotovy, and Trowbridge. Voting NAY: Council member Smith. The motion carried.

The mowing that Eric used to take care of was discussed. He mowed around the plant, the property across from the plant, the water plant, the Jaycee Park, around the City Office, the well houses, and the water tower. Possibly bidding out the mowing will be placed on the April 10th agenda for consideration.

The power plant was discussed.

Council member Trowbridge stated: "We need to recognize our cost allocations at that particular property, and our cost allocation is somewhere around 85% personnel. It just doesn't cost much when you take the people out of it. I would hope we can stop doing rounds. I would hope we can turn the heat off for \$4,000 / month."

Mayor Zavodny stated: "I had a thought on that too, rounds are an expensive thing because it's time and one-half, and it causes personnel issues. I wish I trusted SCADA more, that thing has let me down several times, but with technology as it is now, you could put camera's in with a pretty simple system where someone could monitor the doors, pumps,

engines, etc. from their house. Some well-placed camera's and we could probably eliminate rounds totally."

Discussion followed.

The condition of the streets in town was discussed. It was noted that some of the streets have totally disintegrated. Mayor Zavodny stated: "What are we asking Chris (Street Supt. Kroesing) to do? He can't go fix something that isn't there. It doesn't do any good to put a patch in the mud. Some of that asphalt was really thin, it's pretty old, it's not sealed anymore and with the rough winter we had that probably accelerated some of problems."

Street Superintendent Kroesing stated: "We are going to start doing hot asphalt, patching, doing some small areas, but what do I do when it's the whole street? I don't have enough barricades to barricade all of these streets."

City Attorney Egr stated: "Do you think this is the time to look at paving districts where people petition in, that the streets are so bad, that maybe they'll petition in to have a paving district?"

Mayor Zavodny stated: "That was my solution too."

Council member Trowbridge stated: "Have you been to Omaha lately? David City is really in nice shape."

Dave Ziska of Olsson Associates - Grand Island stated: "I made a little handout that talks about paving districts and how they can be created." Dave distributed the following:



Gap Paving — Resolution of the council with no right of remonstrance, no one can object. Gap paving statute allows you to pave from an existing paved surface to one block out. Another option allows you to pave between two paved streets a distance no more than 1,325 feet.

Petition District — If the residents wish to create a district, it has to represent no less than 60% -75% of the front footages. First class cities need 60%, while second class cities or villages need 75%. David City is a second-class city.

Thoroughfare District — Make a finding that the road is a thoroughfare connecting a state county or federal highway on one end with another state, county or federal on the other. (Highway 15 on the east end with county road on the west end, south side of town, Timpte?) This was done as a thoroughfare. As with gap paving, there is no right of objection.

Create Street Improvement District — The most common, created by ordinance, Publish notice of a hearing to create the ordinance three (3) times. Written objections have to be filed within 20 days of the first publication of notice. Only written objections can be accepted, nothing orally. If objections constitute the majority of frontage footage owners, both sides of the street, even a fraction of an inch, this constitutes a majority. Council initiative created.

Miscellaneous Notes To Paving Districts

Intersections, alleys, City owned property are not assessed to private property owners.

You can assess county property, schools, etc. Federal property cannot be assessed. A boundary street along corporate limits counts. A landowner with front footage but outside of the corporate limits can object. Generally, agricultural property owner won't object since they wouldn't be assessed until the zoning changes to develop or sell. They get a paved road without assessment as long as the property remains zoned ag.

Highway allocation funds can be used without creating a district. You can issue the debt right up front. David City receives \$360,000/year in highway allocation funds, approximately.

On creating the districts, you have to advance your own money to do the project. Bonds cannot be issued until after the project is finished and accepted by the City. Best plan is to issue bond anticipation notes.

The Highway 15 project has a lot of drainage work. Primary source of payment is sales tax. There is approximately \$750,000 generated per year.

Bonds outstanding other than Highway 15 are \$375,000 in various purpose bonds with 5 years to go, Debt service is about \$80,000 per year.

Ultimately, the City should have some capacity to do some street work. Allocation could be used but not sure how much is earmarked for maintenance right now.

LB 357 could possibly be used for specific projects. Maximum is 1 % cents. It would be best to partner with another taxing entity (e.g. School district, NRD, etc.), This "sunsets" after 10 years,

The most important step is to identify specific projects that the City wants completed! then pursue what funding could be used.

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Mayor Zavodny asked how the payment districts were structured; what portion does the City pay and the property owners contribute? Dave stated that a lot of that is up to the City Council's discretion. He said typically the price is \$100 - \$120 a running foot and then the assessments generally run 10 years.

Discussion followed.

The next agenda item was consideration of the Bob Wright / Louise Sanders property located on the Southeast Corner of 8th & Nebraska, legally described as Lot 2, Block 12, Miles 5th Addition to David City, and possibly going into executive session.

City Attorney Egr requested that the Mayor & Council go into executive session.

Therefore, Council member Hotovy made a motion to go into executive session to discuss a legal issue. Council member Trowbridge seconded the motion. Voting AYE: Council members Vandenberg, Kobus, Smith, Trowbridge, Hotovy, and Meysenburg. Voting NAY: None. The motion carried.

Mayor Zavodny stated, "At 8:28 p.m. we are going into executive session to discuss a legal issue." Mayor Zavodny, Council members Meysenburg, Kobus, Hotovy, Smith, Vandenberg, and Trowbridge, City Attorney Egr, and City Clerk Kovar went into executive session at 8:28 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 8:48 p.m.

There being no further business to come before the Council, Council member Hotovy made a motion to adjourn. Council member Meysenburg seconded the motion. Voting AYE: Council members Smith, Kobus, Vandenberg, Trowbridge, Meysenburg, and Hotovy. Voting NAY: None. The motion carried and Mayor Zavodny declared the meeting adjourned at 8:50 p.m.



CERTIFICATION OF MINUTES
March 27th, 2019

I, Joan Kovar, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of March 27th, 2019; 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 Kovar, City Clerk