

**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 **13th day of August, 2014**, in the meeting room of the City Office, 557 N 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 3rd day of July, 2014.

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 Gary L. Kroesing |
| 4. Minutes of the July 9 th , 2014, meeting of the Mayor and City Council; | |
| 5. Consideration of Claims; | |
| 6. Committee and Officer Reports; | <hr/> Council member Michael E. Rogers |
| 7. Public Hearing to consider annexation of the Holoubek property described as follows: The east 600 feet of the north half of the Southeast quarter, lying south of the Union Pacific Railroad right-of-way, Section Twenty-four, Township Fifteen North, Range Two East of the 6 th P.M. in the City of David City, Butler County, Nebraska, being a part of a tract of land recorded in Film Book Number 99-447, Butler County Register of Deeds, David City, Nebraska. | <hr/> Council member Ruddy L. Svoboda |
| 8. Consideration of Ordinance No. 1211, on first reading only, for the annexation of the Holoubek property as described above; | <hr/> Council member William Scribner |
| 9. Public hearing to consider annexation of the McPhillips property described as follows: A Tract of land located in part of the S ½ NW ¼ of Section 20, T15N, R3E of the 6 th P.M., in Butler County, Nebraska, more particularly described as follows:
COMMENCING AT THE NORTHWEST CORNER S 1/2 NW1/4 OF SECTION 20, T15N, R3E OF THE 6 TH P.M., IN BUTLER | <hr/> Council member Gary D. Smith |
| | <hr/> Council member John P. Vandenberg |
| | <hr/> City Clerk Joan E. Kovar |

COUNTY, NEBRASKA, AND ASSUMING THE WEST LINE OF SAID S ½ NW ¼ TO HAVE A BEARING OF S00°38'50"E

ON SAID WEST LINE S 1/2 NW1/4, 293.50 FEET, TO THE POINT OF BEGINNING; THENCE S89°46'54"E, 329.60 FEET; THENCE N00°34'16"W, 293.07 FEET TO A POINT ON THE NORTH LINE S 1/2 NW1/4 OF SECTION 20; THENCE S89°42'30"E ON SAID NORTH LINE S 1/2 NW1/4, 1010.05 FEET; THENCE S00°05'05"E, 293.05 FEET; THENCE S20°08'13"W, 166.91 FEET; THENCE S22°37'01"W, 71.80 FEET; THENCE N89°51'11"W, 695.05 FEET; THENCE N02°05'04"E, 49.50 FEET; THENCE 89°08'47W, 170.00 FEET; THENCE N01°26'14"W, 144.13 FEET; THENCE N89°46'54"W, 384.90 FEET, TO A POINT ON THE WEST LINE S1/2 NW1/4 OF SECTION 20; THENCE N00°38'50"W ON SAID WEST LINE S1/2 NW1/4, 30.00 FEET TO THE POINT OF BEGINNING, CONTAINING 11.54 ACRES, MORE OR LESS.

10. Consideration of Ordinance No. 1212, on first reading only, for the annexation of the McPhillips property as described above;
11. Public Hearing to consider annexation of the Fairgrounds (Butler County Agricultural Society) described as follows: A tract of land located in Lots One (1) and Two (2), Perkins and Thorpe's Place, and in portions of adjacent vacated roads, being a part of the Northwest Quarter (NW) of Section Nineteen (19), Township Fifteen (15), North, Range Three (3), East of the 6th P.M., Butler County, Nebraska, described as follows: Beginning at a point on the East line of said Lot One (1), said point being 200.17 feet South of the Northeast corner of said Lot One (1), and assuming the North line of said Lot One (1) to have a bearing of N89°25'07"W; thence N89°23'25"W, 256.54 feet; thence N0°30'35"E, 199.93 feet, to a point on the North line of said Lot One (1); thence N89°25 '07"W, 249.95 feet; thence S0°02'09"W, 523.87 feet; thence S87°52'00"E, 499.95 feet, to a point on the Westerly right-of -way line of the Burlington Northern Railroad; thence northerly, 337.42 feet, on said Westerly Railroad right-of-way line, to the point of beginning, containing 4.97 acres, more or less.
12. Consideration of Ordinance #1213, on first reading only, for the annexation of the Fairgrounds property (Butler County Agricultural Society) as described above;
13. Consideration of Resolution No. 16 – 2014 that the City proposes to apply for federal assistance from the Land and Water Conservation Fund program for the purpose of purchasing the David City Ball Association - ball field(s);
14. Consideration of Resolution No. 17 – 2014 showing support for the Butler County Landfill and an expansion project;
15. Presentation by Dan Duren of Benefit Management concerning the City's Health Insurance Plan and consideration of possible changes to the policy, plan year, etc.;
16. Consideration of advancing Water/Sewer Employee Kevin Betzen from a Plant Operator Step 3 (\$17.86/hr.) to a Plant Operator Step 7 (\$19.51/hr.);
17. Consideration of advancing Deputy Clerk Tami Comte from an Acct Clerk II Step 14 (\$19.90/hr.) to an Acct Clerk II Step 15 (\$20.35/hr.);
18. Consideration of updates concerning the David City Airport;
19. Consideration of Ordinance No. 1214 incorporating a 2% Cost of Living Increase;
20. Consideration of the proposed budgets for Fiscal Year October 1, 2014 – September 30, 2015;
21. Consideration of the Bingo Permit application from the Knights of Columbus Council 1717 to conduct the game of bingo at 517 4th Street in David City;
22. Adjourn.

CITY COUNCIL PROCEEDINGS

August 13, 2014

The City Council of the City of David City, Nebraska, met in open public session in the meeting room of the City Office, 557 N 4th Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on August 7th, and an affidavit of the publisher is on file in the office of the City Clerk. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agenda which is a part of these minutes. The advance notice to the Public, Mayor, and Council members conveyed the availability of the agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection during regular office hours. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Alan Zavodny, Council members Gary Kroesing, Mike Rogers, Ruddy Svoboda, Gary Smith, and John Vandenberg. Also present were City Attorney Jim Egr, and City Clerk Joan Kovar. Council member Bill Scribner was absent and City Administrator Abbie Cornett has resigned.

Also present for the meeting were: Mark & Willow Holoubek, Larry & Becky McPhillips, Attorney Steve Mossman, Fair Board members Marilyn Smith, Marilyn Zeilinger, Colleen Coufal, Nancy Krenk, Daryl Crook, Donnie Steager, and Bob Kobza, County Board of Supervisors Greg Janak, Planning Commission members George Cunningham, Jim Vandenberg, and Janis Cameron, Ball Association members Mike Behrns, Neil Kuhlman, and Jason Lavicky, Dan Duren of Benefit Management, Hilary Christian of Christian Insurance, Jeff Schmid, Don Moravec, David McPhillips, Mike Jones, Rex Rehmer, Caroline Yates, Adam Osborn, Mike Draper, Banner Press Editor Larry Peirce, Park/Auditorium Supervisor Bill Buntgen, Electric Distribution Supervisor Pat Hoefft, Electric Plant Supervisor Eric Betzen and wife Darcy, Water Employees Kevin Betzen and Matt Fleming, and Street Foreman Rodney Rech.

The meeting opened with the Pledge of Allegiance.

Mayor Zavodny informed the public of the "Open Meetings Act" posted on the east wall of the meeting room.

The minutes of the July 9th, 2014 meeting of the Mayor and City Council were approved upon a motion by Council member Vandenberg and seconded by Council member Smith. Voting AYE: Council members Kroesing, Svoboda, Rogers, Vandenberg, and Smith. Voting NAY: None. Council member Scribner was absent. The motion carried.

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

Mayor Zavodny called for Committee and Officer Reports.

Council member Mike Rogers made a motion to accept the committee and officers reports as presented. Council member Smith seconded the motion. Voting AYE: Council members Vandenberg, Kroesing, Svoboda, Smith, and Rogers. Voting NAY: None. Council member Scribner was absent. The motion carried.

Mayor Zavodny stated the next item on the agenda was a Public Hearing to consider annexation of the Holoubek property described as follows: The east 600 feet of the north half of the Southeast quarter, lying south of the Union Pacific Railroad right-of-way, Section Twenty-four, Township Fifteen North, Range Two East of the 6th P.M. in the City of David City, Butler County, Nebraska, being a part of a tract of land recorded in Film Book Number 99-447, Butler County Register of Deeds, David City, Nebraska.

Mayor Zavodny opened the Public Hearing at 7:03 p.m.

Attorney Steve Mossman of Lincoln, Nebraska, introduced himself and stated that he was representing Mark & Willow Holoubek on Ordinance #1211 and also Larry & Rebecca McPhillips on Ordinance #1212.

Attorney Mossman stated: "I guess I would ask your leave; We have opened the Public Hearing on this one, but what I am going to say goes with both properties so I don't know if it would be proper to also open the Public Hearing on McPhillips' ordinance as well so that the comments could be heard together, or how would you want to proceed?"

Mayor Zavodny stated: "The agenda also has a Public Hearing to consider annexation of the McPhillips' property described as follows: A tract of land located in part of the S ½ NW ¼ of Section 20, T15N, R3E of the 6TH P.M., in Butler County, Nebraska, more particularly described as follows: commencing at the Northwest corner S½ NW¼ of Section 20, T15N, R3E of the 6TH P.M., in Butler County, Nebraska, and assuming the west line of said S½ NW¼ to have a bearing of S00°38'50"E on said west line S½ NW¼, 293.50 feet, to the point of beginning; thence S89°46'54"E, 329.60 feet; thence N00°34'16"W, 293.07 feet to a point on the north line S½ NW¼ of Section 20; thence S89°42'30"E, on said north line S½ NW¼, 1010.05 feet; thence S00°05'05"E, 293.05 feet; thence 20°08'13"W, 166.91 feet; thence S22°37'01"W, 71.80 feet; thence N89°51'11"W, 695.05 feet; thence N02°05'04"E, 49.50 feet; thence 89°08'47"W, 170.00 feet; thence 01°26'14"W, 144.13 feet; thence N89°46'54"W, 384.90 feet, to a point on the west line S½ NW¼ of Section 20; thence N00°38'50" W, on said west line S½ NW¼, 30.00 feet to the point of beginning, containing 11.54 acres, more or less."

Mayor Zavodny stated: "What we will do then is we will open both Public Hearings simultaneously at 7:04 p.m."

Attorney Steve Mossman then distributed aerial maps indicating the location of the Holoubek and McPhillips' properties and a letter from the Nebraska Cattlemen to the Mayor, Council members, City Attorney Egr, and City Clerk Kovar.



READ DOT INDICATES THE LOCATION
OF THE HOUBER PROPERTY



United States Department of Agriculture
Farm Service Agency

February 08, 2011

Farm: 6161
Tract: 4298

Butler County, NE

1 inch equals 708.3 feet



Disclaimer: Wetland identifiers do not represent the size, shape or specific determination of the area.
Refer to your original determination (CPA-026 and attached maps) for exact wetland boundaries and determinations, or contact NRCS.

2010 Ortho-Photograph - Not to Scale



M Rd

Rd M

3531 M Rd

M Rd

HOLOUBEK'S

#



<http://butler.gisworkshop.com/>



August 11, 2014

"Working for Nebraska beef producers - pasture to plate."

City Council – David City Nebraska
557 North 4th Street
David City, Nebraska 68632

Dear City Council Members:

On behalf of the Nebraska Cattlemen association I write today in opposition to the proposed annexation of Mark and Willow Holoubek's property located at 3531 M Rd, David City, NE 68632. Nebraska Cattlemen is a grassroots membership organization representing and advocating for beef producers across the state.

Part of the strategic plan for Nebraska Cattlemen is to be the beef epicenter of the world. Beef production in Nebraska is uniquely situated and blessed with many advantages. One such advantage is the culture and support that flows from our rural communities. Beef producers live and work in harmony with their rural communities; adding to the tax base, contributing to the economy and providing for a way of life that can rarely be matched anywhere in this country.

The proposed annexation of the property located at 3531 M Rd pits the local community against beef production and sends the message to the broader public that the beef community is not welcome around David City. This is unfortunate in an era where continued support and growth in rural Nebraska is vital and one of the most effective ways for rural economies to grow is to invest and reinvest in livestock production.

In addition, the proposed annexation is at odds with Neb. Rev. Stat. § 17-405.01 which states annexation authority by a city of the second class or village "shall not be construed as conferring power to extend the limits of any municipality over any agricultural lands which are rural in character."

David City encompasses Section 19, Township 15, Range 3E, a 1 mile section that is directly east of the property being considered for annexation. However, the 1 mile section where the property sits, Section 24, Township 15, Range 2E, is entirely rural in character comprised of irrigated croplands, grasslands and farmsteads. There is no urban or city property located on this section and there is not any urban encroachment concerns either as David City has not grown in a westward direction like it has in Sections 18, 20 and 30 of Township 15, Range 3E.

This is further evidenced by the fact only 3 landowners own the majority of land in this 1 mile section and the ownership interests of these 3 landowners all exceed 40 acres, a clear indication these are truly agricultural or rural properties and have not become urban, "acreage-ette," type properties. These distinctions are important as the direction of city development and the urban or suburban character is what guides Nebraska courts in their understanding of what constitutes a valid exercise of annexation authority. *See Holden v. City of Tecumseh*, 188 Neb. 117 (Neb. 1972).

Thank you for your time and consideration of these issues. If you have any questions please contact Kristen Hassebrook, V.P. of Legal & Regulatory Affairs at 402-475-2333 or khassebrook@necattlemen.org.

Sincerely,

A handwritten signature in black ink that reads "Kristen J. Hassebrook". The signature is written in a cursive, flowing style.

Kristen J. Hassebrook

Attorney Mossman stated: "As I look at what has transpired with these two annexation ordinances, I don't believe that this City Council has the jurisdiction to even hear them this evening. Under the David City Municipal Code Section 2-102 it prescribes the duties of your Planning Commission and the code provision specifically states that the Legislative Body, which is, in this case, you the City Council, shall receive the advice of the Planning Commission before taking definite action on any contemplated amendment, supplement, change, modification, or repeal. Then it says no such regulation, restriction, or boundary shall become effective until after separate public hearings are held by both the planning commission and the legislative body in relation thereto. We are here at a public hearing tonight, so this body has held one, the Planning Commission held a public hearing as well but, has everyone had a chance to review the minutes of the Planning Commission as they related to the ordinance? (They were in the Council's packets.) What is very clear, crystal clear from the very detailed minutes of the Planning Commission is that they rendered absolutely no advice to this board. The Public Hearing was held on the Holoubek annexation, there was a motion to recommend approval to this body and that died for lack of a second. And the McPhillips' annexation, the Public Hearing was held, there was a motion to recommend approval by this body, and no second was gained for that motion either. So, you do not have before you this evening any advice from the Planning Commission and I believe it is a matter of law that divests your jurisdiction to even consider that. Under Nebraska law if the regulation or the ordinance uses the word "shall" that means that that is mandatory, and David City Code that was adopted by your predecessors says "the Legislative Body shall receive the advice..." You could have acted tonight if the Planning Commission had voted to recommend denial of the annexation or voted to recommend approval of the annexation, but they didn't vote on it at all, so I think that divests your jurisdiction to even hear or consider the annexation tonight. The second point that I would make is that your State Statute, as it relates to Cities of the Second Class like David City, the City Council cannot annex lands that are Agricultural lands and are rural in character. I've got packets for everybody with a number of aerial photos. The first four attachments are all aerial photographs and what State Statute 17-405.01 says that the City Council has the power to annex land, but then it says specifically, such grant of power shall not be construed as conferring power to extend the limits of any municipality over any agricultural lands which are rural in character. If you look at the maps, the red dots indicate the Holoubek and McPhillips' properties. If you look at the Holoubek property, that's a farmstead. I don't think there's any argument that's not what the Holoubeks have there and maintain there. They have 400 acres of farm ground there, they store equipment. It's a farmstead, simply. The McPhillips' property, if you look at that, there's a farm to the south of it, there's a farm to the east of it, there's a farm to the north of it. It's surrounded on three sides and it has just have that sliver that connects it to the road, but it's agriculture and rural in nature too. It's surrounded by farm land. So, I do not believe that the power of annexation granted to the City of David City, would allow it to annex land that is rural in character. The third thing I would say tonight is the Nebraska Court System has long held that City's may not annex property for revenue raising purposes only, and here, it would appear to the two property owners that are being annexed, that that's the reason the City Council is considering doing this. With respect to McPhillips' property, it was purchased, 11 acres in 2003. The City required it to have city water and electricity and that was put in at a cost of \$22,000 and that cost was borne by the land owners only. The City did not provide any of that. At that point, when it was agreed that the \$22,000 would be expended, one of the employees of the City looked at McPhillips and said "*Once you put that in we're just going to come out and annex you*", and then quote "*then it will be mine*", meaning the utilities that they paid money to put in. If the annexation goes through then it will be just to own that infrastructure and raise revenues. In the Holoubek case you are looking at changing this land from County to City with what impact that might have on the mil levy and you also have one of the largest lots in David City if that annexation goes through. There's a couple more issues dealing just with the Holoubek property

and not with the McPhillips property. I wanted to touch on those three things that were common to both of them, that being, the jurisdiction of this Board since it has not received any advice from the Planning Commission, that being the land being rural in character, and that being the annexation to raise revenue. With respect to the Holoubek property, we simply can't figure out why there is the 8.26 acres that is proposed to be annexed and it would be in effect subdividing that from the rest of the Holoubek farm land and that would impose, in my opinion, a burden on the tax authorities to try to figure out what is City and what is County, and the County Assessor says that the farmstead portion of that property is 5.5 acres and there's simply been no rhyme or reason and no justification for why the 8.26 acres has been proposed to be annexed by the City. And then the last point which affected the Holoubeks is, what has motivated this annexation? It would appear from their perspective that it started when they made the simple request to discontinue city water use. I sent City Attorney Mr. Egr a letter that talked about the condition of the water in the Holoubek house and why they wanted it disconnected. We went a little bit back and forth on whether they could disconnect or not and we got to the point where the City, as I understand, agreed that they could be disconnected from the City water because they were out of the corporate limits of the City and the Code couldn't require them to have it. Right after that happened, all of a sudden the Holoubeks get a notice that there's going to be a Public Hearing of the Planning Commission and they are going to be annexed and brought into the City. It would appear to me that, that and raising revenue, would be the other motive for the annexation of that property. You know, if we can't beat them then we'll just bring them into the City and force them into it that way. I don't believe that is a proper motivation for the annexation of property and for that reason, and for the other reasons I've talked about, and also the reasons that are identified in the last page of the packet that I handed to you which is a letter from the Nebraska Cattlemen's Vice President of Legal and Regulatory Affairs on much of the same issues that I talked about and I think that should be taken into consideration.

Mayor Zavodny stated: "You made some assumptions on motivation that I would be interested in understanding further what caused you to make those assumptions."

Attorney Mossman stated: "I think the timeline of it is right after the quasi agreement was made that the Holoubeks could discontinue City water usage. Within a few weeks after that is when the notice arrived in their mail that the City was going to be annexing. In all fairness Mr. Egr you did send me an e-mail indicating that that was also happening at the same time, but again the timeline of events would suggest that that was part of the motivation for this."

Mayor Zavodny stated: "I am going to give a different prospective on how we've approached and since we've opened both Public Hearings simultaneously, I acknowledge you've got to be community minded to be willing to be annexed and not put up a fight, you have to have that. I would also argue that if you'd look at any of the boundaries of our City there is farm land behind it for as far as you can see. My house was built in the middle of a bean field, originally, and they told me, "*as soon as your house is done we're going to annex you*" and I just said OK, and that's happened with a lot of the properties as the City's expanded and tried to grow. If we put limits on where we can expand; you want to shut off the west boundary, you want to shut off the east boundary to some extent, where does the City go and how do you meet your governmental responsibilities? Although your argument would be it's not just for revenue, although we all know that revenue is part of it. The other thing that I think was somewhat problematic is the Planning Commission granted the digging of a well for livestock purposes then once that was done it became domestic. So, we became worried about cross contamination because it was still set up with our system, we didn't know what was happening in their basement or that house and that caused a problem. This isn't the first time we've had the Holoubeks visit and it's used City resources and City time, several times for things, and I

think they should have the opportunity to have a vote on what happens in the City things because we've refereed things with the Daro property, there's been issues with the Northwest Drainage, this isn't the first time, so it would make sense that if the citizens of David City are expending resources, to have some resources."

Attorney Mossman stated: "I disagree with your perspective but I am glad you expressed it. One other question I have is did you pay for the utilities that went in on the house that you constructed in the bean field or was that something that the City put in?"

Mayor Zavodny stated: "We paid all the tapping fees and there was a house behind us so they ran to those things. The other thing is when we did annex another housing addition the streets and everything did become ours after annexing; the lift stations became ours, those type of things, our normal course."

Attorney Mossman stated: "I guess organically it would appear to me the City is not growing in the direction of the Holoubek property and the City is not growing in the direction of the McPhillips property either."

Mayor Zavodny stated: "There have been efforts to do that, and the people directly to the south of them do plan on coming and building a house and I don't want to have the precedent set that we're just going to say "well, no, we're not going to annex you". They're across the street from the City; we agree on that? Do we agree on that?"

Attorney Mossman stated: "Oh we certainly agree on that Mr. Mayor. But, if we're talking about the motivation may I inquire then as to why the parcel is shaped that way?"

City Attorney Egr stated: "Steve, I've got to disagree with you on the part that you're saying; the motivation and the pictures. In cases under the Statute it also talks about *"the size of the tract as well as the purpose of the annexation do not decide if the annexation is lawful"*. I disagree with you, you said there is case law, there is also case law that says in there very specifically, and I'm not saying that I'm agreeing that it should be annexed or not annexed all I am saying is there is case law that says neither the shape of the annexed tract nor the purpose for the annexation determines whether an annexation is lawful; and that involves County of Sarpy versus the City of Gretna. I would disagree with that portrayal, you get five lawyers you're going to get five different opinions and we've known each other for a long time, all I am saying is that the portrayal you are giving to the Council is that the purpose is important and under case law too it doesn't say that even, it says the purpose is not something that enters into the picture. So, we have a difference of opinion on that, I am just pointing that out that that's not an absolute that you are portraying to the Council."

Mayor Zavodny stated: "Maybe you could help me out with explaining how when the Planning Commission agreed to the use, for them to dig a well for livestock only, that became part of their domestic? How does that happen?"

City Attorney Mossman stated: "I wasn't at the Planning Commission Mr. Mayor so I don't know."

Mayor Zavodny stated: "Also, just for the Councils benefit, I did call Kristen with the Nebraska Cattlemen and explained to her that I did not feel that our City was in any way, shape or form against livestock, and or that development in our County, explained to her that I grew up on a farm, I am certainly supportive of it, and she said she understood, she didn't feel the City

was being anti-livestock. What she did say is she wrote a letter of support for a member, and a strongly worded letter and that's what we got, but I think we had a very pleasant conversation and it certainly was not adversarial at all."

City Attorney Mossman stated: "And I guess I was still wondering about the 8.26 acres, how that was chosen out of the entire Holoubek parcel and does it conform with the acreage of the farmstead that's classified by the County Assessor. I was trying to figure out if there was a reason for it that was unbeknownst to us."

Mayor Zavodny stated: "I think that was a boundary that was determined by the Planning Commission."

City Attorney Mossman stated: "If there are no more questions I would appreciate a vote on first reading in opposition to the ordinances. Thank You."

Council member Rogers stated: "I came here tonight and I have to say I was disappointed in the Planning Commission and I know you don't want to hear that but they should have given us some guidance on this instead of just saying "*here it is*". I think we should send it back to the Planning Commission."

City Attorney Egr stated: "I was at that Planning Commission meeting, I was asked to be there. And again, you get five lawyers you're going to get five different opinions. I believe the City Council has jurisdiction over this matter, primarily because of the advice of the Planning Commission was, they didn't vote to say it should be annexed. I'm always a bit of the opinion from the seminars I've been to, is that a public body should not take a negative vote; namely that you should not, so-and-so moved and so-and-so seconded that we not annex. What you do in my opinion from the procedural standpoint is that you move to approve the annexation with a motion and two things could happen, it could fail because there wasn't a second and in fact that's the Planning Commission saying we don't approve the annexation, or there's a second and they go through a vote, and the vote is not enough to carry the annexation. I suggested to the Planning Commission they have two options: either it failed because of lack of a second or they can go to a vote, and that's how they decided to go. In effect by not having a second they are saying we don't think it should be annexed. And that's what I had advised them.

Mayor Zavodny asked the McPhillips and the Holoubeks: "What is your strongest reason to oppose annexation?"

Mark Holoubek stated: "We are absolutely rural in character, we are a farm. I need water to spray up to 400 acres of crops, four times, I need to wash my equipment, water my livestock, my 50 cows and calves, my bulls, my heifer lot. I can't politely think why a City would want to annex in a heifer lot, a calving pasture, and 50 cows. I believe that I am rural in character, I do not belong in the City."

Larry McPhillips stated: "I was at the meeting and someone from the body up there, they were point blank asked "*what are the criteria for annexing a property?*". The criteria they used was that when we put in the utilities, for one, and the other is if the City is encroaching on your property and that is two of the things that we looked at. When I looked at the property, all around me is strictly agriculture on all three sides. They said they were annexing me because they put in the infrastructure. I paid for that infrastructure entirely by myself. I paid \$22,000 to put in that infrastructure. At first I was told I only had to pay hook-ups but then when I met with

them they said I had to pay for all this here and then they said: "*then we'll annex you*". Then some gentleman in that meeting said: "*Why, what happens then, do you pay me back?*" and they said: "*No, no, no, then it's mine.*" That to me was kind of a lousy way to put it. So that clearly to me shows that your motive to do this if you wanted to annex it you would have probably paid for this and put it in, and this here shows that you wanted me to pay for it and then it is yours. So, that to me was something that I felt wasn't handled at all properly. Do I want to be annexed? That question was asked to me that night. If there was housing built up on one of the sides and I said if that was the case then annexation would be fine but right now there is nothing being built up around me."

Mayor Zavodny stated: "My concern is Dr. Carlson had the same type of situation with his and I know he has wondered about that as well. So would your objection not be in place had we annexed you and we paid for the extension of the services?"

Larry McPhillips stated: "Since I paid the \$22,000, you know, if that was paid for by the City I would understand more of what you said."

Becky McPhillips asked: "I want to know about our horses. They said our horses were going to be grandfathered in, will that change too?"

Larry McPhillips stated: "I was told by the "then" city administrator that "yes" my horse would be grandfathered in; that I could have a horse there."

City Attorney Egr stated: "There's some differences in case law. There's some case law that says once you're annexed the horse can stay there but you can't replace that horse."

Becky McPhillips asked: "Horses. What about breeding?"

City Attorney Egr stated: "I have never checked into case law for breeding."

City Attorney Egr stated: "The provisions in our Code says that the City doesn't pay for those streets, utilities, and all that for people who want to do a development and that came out at that Planning Commission meeting. Hildy Addition, Bemis Addition, they paid for all the streets, the sewer, the water, the electric, all that stuff, and once house started going up there they got annexed. Our Code doesn't provide for the City to pay for that. Dr. Carlson's was the same situation, he had to pay for it. That was not an official plat, I know because I live up there, I represented the Souba's. That first half where I lived was platted and accepted, the rest was a deferred plat, there is a distinction between that."

Larry McPhillips stated: "I'll make one personal comment. If this is how this City treats people that try to develop the town, which I have done a lot to develop this town, if that's how they treat people, my builder told me: "*Why would anybody even want to build here if that's the way they treat people?*" There's got to be a better way of handling this kind of matter instead of being so antagonistic and anti-everything just for the sake of adding to the coffers."

Becky McPhillips stated: "And we could have built our home anywhere. We could have been in Columbus but we chose to be here. And this is the way that it feels like we're being persecuted, we're trying to make a life here."

Mayor Zavodny stated: "You have been community minded. You have done a lot for the community but it's unfair to categorize this as we are picking on anybody. I got annexed in a very similar way."

At 7:48 p.m. Mayor Zavodny closed the Public Hearing on both the Holoubek and McPhillips properties.

Council member Kroesing introduced Ordinance #1211. Mayor Zavodny read Ordinance No. 1211 by title. Council member Kroesing made a motion to pass Ordinance #1211, on the first reading only, for the annexation of the Holoubek property. Council member Smith seconded the motion. Voting AYE: Council member Svoboda. Voting NAY: Council members Vandenberg, Smith, Kroesing, and Rogers. Council member Scribner was absent. The motion failed.

ORDINANCE NO. 1211 - FAILED

AN ORDINANCE PROVIDING FOR THE ANNEXATION OF CERTAIN CONTIGUOUS TERRITORY TO THE CITY OF DAVID CITY, NEBRASKA, DESCRIBED AS THE EAST 600 FEET OF THE NORTH HALF OF THE SOUTHEAST QUARTER, LYING SOUTH OF THE UNION PACIFIC RAILROAD RIGHT-OF-WAY, SECTION TWENTY-FOUR, TOWNSHIP FIFTEEN NORTH, RANGE TWO EAST OF THE 6TH P.M. IN THE CITY OF DAVID CITY, BUTLER COUNTY, NEBRASKA, AS SHOWN ON EXHIBIT "A", BEING A PART OF A TRACT OF LAND RECORDED IN FILM BOOK NUMBER 99-447, BUTLER COUNTY REGISTER OF DEEDS, DAVID CITY, NEBRASKA, REPEALING ANY ORDINANCES IN CONFLICT HEREWITH; AND DESCRIBING THE TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT.

WHEREAS, the Planning Commission of the City of David City, Nebraska, met on July 28, 2014, but failed to make a recommendation on the annexation of the territory previously described, due to the lack of a second to the motion, and,

WHEREAS, a majority of the City Council of the City of David City, Nebraska, favors the annexation of said territory.

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

Section 1. That the boundaries of the City of David City, Nebraska, be amended and changed in order to include the above described property.

Section 2. That this Ordinance be filed with the Office of the County Assessor and County Clerk of Butler County, Nebraska, and that the City Clerk be directed to amend the plat filed in her office to show the inclusion of the real estate described above and that the boundary of David City as amended by this Ordinance be certified and placed on record in the office of the City Clerk of David City, Nebraska.

Section 3. That any Ordinance, setting or establishing boundaries of the City of David City, Nebraska, which is in conflict with this Ordinance, be and the same is hereby repealed.

Section 4. That this Ordinance shall take effect and be in force from and after its passage and publication according to law.

Passed and approved this XXX day of XXX, 2014.

The motion FAILED
Mayor Alan Zavodny

The motion FAILED
City Clerk Joan E. Kovar

Council member Kroesing introduced Ordinance No. 1212 for the annexation of the McPhillips property. Council member Kroesing stated: I would like to tell Larry something. The only reason I looked at this is because I looked all the way along 11th Street; all the way from Hildy's Addition, Bemis Addition, all the additions along there have been annexed. Right to the south of you is Mrs. Rerucha's property, she's annexed. All the property to the north of you in Sabata's Addition is bordered by farm land and they've been annexed. That's what I looked at when I looked at this, and then I thought about Dr. Carlson's property too. It wasn't a money factor, it wasn't anything else, it's just how this all takes place."

Mayor Zavodny read Ordinance No. 1212 by title. Council member Rogers made a motion to pass Ordinance No. 1212 on the first reading only. Council member Smith seconded the motion.

Mayor Zavodny stated: "The one thing I want to be absolutely clear on before we go any further is, I'm still unclear on the issue of the horses, and it seems like there is some ambiguity. At least if they could replace them or if they have a colt, does that make it not allowable. I guess I would like to know where exactly we would be on that."

Council member Kroesing stated: "I had a property just a block north of me and they had sheep and goats forever, and as long as there were sheep and goats on that property they could be there. They were shuffled out to the country during the winter and they were brought back in in the Spring. So as far as continuous residence, there wasn't any, but they were there until the lady decided "*I'm done with this.*" But they were there, back and forth, forever."

Mayor Zavodny stated: "I'm glad you bring that up because that's been shared with me previously, as long as it's been continuous it's allowed. There's confusion on my part."

City Attorney Egr stated that he would research the matter.

Voting AYE to pass Ordinance #1212 on the first reading: Council members Vandenberg, Rogers, Kroesing, Smith, and Svoboda. Voting NAY: None. Council member Scribner was absent. The motion carried and Ordinance #1212 was passed on first reading only as follows:

ORDINANCE NO. 1212
(Passed 1st reading only 8-13-14)

AN ORDINANCE PROVIDING FOR THE ANNEXATION OF CERTAIN CONTIGUOUS TERRITORY TO THE CITY OF DAVID CITY, NEBRASKA, DESCRIBED AS A TRACT OF LAND LOCATED IN PART OF THE S ½ NW ¼ OF SECTION 20, T15N, R3E OF THE 6TH P.M., IN BUTLER COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER S½ NW¼ OF SECTION 20, T15N, R3E OF THE 6TH P.M., IN BUTLER COUNTY, NEBRASKA, AND ASSUMING THE WEST LINE OF SAID S ½ NW ¼ TO HAVE A BEARING OF S00°38'50"E ON SAID WEST LINE S ½ NW ¼, 293.50 FEET, TO THE POINT OF BEGINNING; THENCE S89°46'54"E, 329.60 FEET; THENCE N00°34'16"W, 293.07 FEET TO A POINT ON THE NORTH LINE S ½ NW ¼ OF SECTION 20; THENCE S89°42'30"E, ON SAID NORTH LINE S ½ NW ¼, 1010.05 FEET; THENCE S00°05'05"E, 293.05 FEET; THENCE S20°08'13"W, 166.91 FEET; THENCE S22°37'01"W, 71.80 FEET; THENCE N89°51'11"W, 695.05 FEET; THENCE N02°05'04"E, 49.50 FEET; THENCE 89°08'47"W, 170.00 FEET; THENCE N01°26'14"W, 144.13 FEET; THENCE N89°46'54"W, 384.90 FEET, TO A POINT ON THE WEST LINE S ½ NW ¼ OF SECTION 20; THENCE N00°38'50"W ON SAID WEST

LINE S ½ NW ¼, 30.00 FEET TO THE POINT OF BEGINNING, CONTAINING 11.54 ACRES, MORE OR LESS, PARCEL ID #120035624, REPEALING ANY ORDINANCES IN CONFLICT HEREWITH; AND DESCRIBING THE TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT.

WHEREAS, the Planning Commission of the City of David City, Nebraska, met on July 28, 2014, but failed to make a recommendation on the annexation of the territory previously described, due to the lack of a second to the motion, and,

WHEREAS, a majority of the City Council of the City of David City, Nebraska, favors the annexation of said territory.

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

Section 1. That the boundaries of the City of David City, Nebraska, be amended and changed in order to include the above described property. See Attachment "A"

Section 2. That this Ordinance be filed with the Office of the County Assessor and County Clerk of Butler County, Nebraska, and that the City Clerk be directed to amend the plat filed in her office to show the inclusion of the real estate described above and that the boundary of David City as amended by this Ordinance be certified and placed on record in the office of the City Clerk of David City, Nebraska.

Section 3. That any Ordinance, setting or establishing boundaries of the City of David City, Nebraska, which is in conflict with this Ordinance, be and the same is hereby repealed.

Section 4. That this Ordinance shall take effect and be in force from and after its passage and publication according to law.

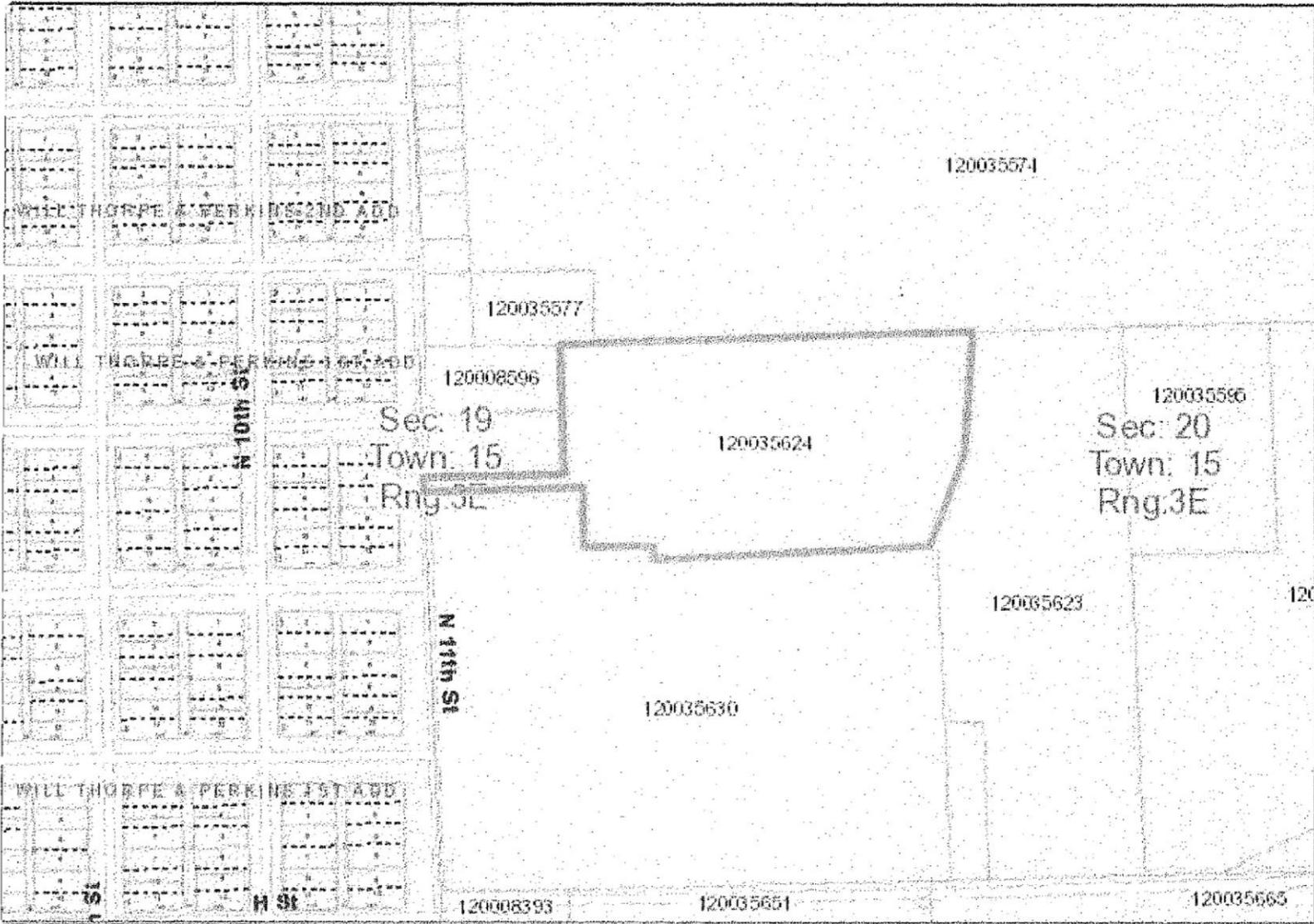
Passed and approved this _____ day of _____, 2014.

ATTEST:

Passed on 1st reading only – 8/13/14
Mayor Alan Zavodny

Passed on 1st reading only – 8/13/14
City Clerk Joan E. Kovar

ATTACHMENT "A"
McPhillips property



Mayor Zavodny declared the Public Hearing open at 7:58 p.m. to consider annexation of the Fairgrounds (Butler County Agricultural Society).

Mayor Zavodny stated: "I will start this one by saying, if there is no really good reason to consider this at this time...in my opinion, I could see if we were trying to have continuity to annex a subdivision to the west or north of the Fairgrounds, however that is not the case. There is no taxable issue here because they are tax exempt. I don't want to worry about the alcohol, I just don't think this is a great idea. Anybody else have a different opinion?"

There being no comments, Mayor Zavodny closed the Public Hearing at 8:00 p.m.

Council member Rogers introduced Ordinance No. 1213.

Mayor Zavodny stated: "Ordinance No. 1213 for the annexation of the Fairgrounds (Butler County Agricultural Society) described as follows: A tract of land located in Perkins and Thorpe Place, described as follows: A tract of land located in Lots One (1) and Two (2), Perkins and Thorpe's Place, and in portions of adjacent vacated roads, being a part of the Northwest Quarter (NW) of Section Nineteen (19), Township Fifteen (15), North, Range Three (3), East of the 6th P.M., Butler County, Nebraska, described as follows: Beginning at a point on the East line of said Lot One (1), said point being 200.17 feet South of the Northeast corner of said Lot One (1), and assuming the North line of said Lot One (1) to have a bearing of N89°25'07"W; thence N89°23'25"W, 256.54 feet; thence N0°30'35"E, 199.93 feet, to a point on the North line of said Lot One (1); thence N89°25 '07"W, 249.95 feet; thence S0°02'09"W, 523.87 feet; thence S87°52'00"E, 499.95 feet, to a point on the Westerly right-of -way line of the Burlington Northern Railroad; thence northerly, 337.42 feet, on said Westerly Railroad right-of-way line, to the point of beginning, containing 4.97 acres, more or less. How would you like to proceed?"

Council member Kroesing made a motion to approve Ordinance #1213 on the first reading only. Council member Smith seconded the motion. Voting AYE: None. Voting NAY: Council members Rogers, Vandenberg, Kroesing, Svoboda, and Smith. Council member Scribner was absent. The motion failed.

ORDINANCE NO. 1213 - FAILED

AN ORDINANCE PROVIDING FOR THE ANNEXATION OF CERTAIN CONTIGUOUS TERRITORY TO THE CITY OF DAVID CITY, NEBRASKA, THE FAIRGROUNDS (BUTLER COUNTY AGRICULTURAL SOCIETY) DESCRIBED AS FOLLOWS: A TRACT OF LAND LOCATED IN PERKINS AND THORPE PLACE, A/K/A PERKINS AND THORPES PLACE, BEING A PART OF THE NW ¼ OF SECTION 19, T15N, R3E OF THE 6TH P.M., BUTLER COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS: BEGINNING AT THE SW CORNER OF THE NW ¼ OF SAID SECTION 19, AND ASSUMING THE WEST LINE OF SAID NW ¼ TO HAVE A BEARING OF N0°00'00"E; THENCE N0°00'00"E , 1580.57 FT., ON THE WEST LINE OF SAID NW ¼ ; THENCE S89°25'07"E, 33.00 FT., ON THE NORTH LINE OF PERKINS AND THORPE PLACE, A/K/A PERKINS AND THORPES PLACE; THENCE N0°00'00"E, 208.71 FT., PARALLEL WITH THE WEST LINE OF SAID NW ¼, TO A POINT ON THE NORTH LINE OF PERKINS AND THORPE PLACE, A/K/A PERKINS AND THORPES PLACE; THENCE S89°25'07"E, 744.18 FT., ON THE NORTH LINE OF PERKINS AND THORPE PLACE, A/K/A PERKINS AND THORPES PLACE; THENCE S 0°02'09"W, 523.87 FT.; THENCE N 87°52'00"W, 466.56 FT., THENCE S0°00'00"W, 1080.30 FT., PARALLEL WITH THE WEST LINE OF SAID NW¼, TO A POINT ON THE SOUGH LINE OF SAID NW ¼ ; THENCE N 88°12'34"W, 519.57 FT., ON THE SOUTH LINE OF SAID NW ¼ , TO THE POINT OF BEGINNING, CONTAINING 23.45 ACRES, MORE OR LESS, PARCEL ID #120035532, REPEALING ANY ORDINANCES IN CONFLICT HEREWITH; AND DESCRIBING THE TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT.

WHEREAS, the Planning Commission of the City of David City, Nebraska, met on July 28, 2014, but failed to make a recommendation on the annexation of the territory previously described, due to the lack of a second to the motion, and,

WHEREAS, a majority of the City Council of the City of David City, Nebraska, favors the annexation of said territory.

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

Section 1. That the boundaries of the City of David City, Nebraska, be amended and changed in order to include the above described property. See Attachment "A"

Section 2. That this Ordinance be filed with the Office of the County Assessor and County Clerk of Butler County, Nebraska, and that the City Clerk be directed to amend the plat filed in her office to show the inclusion of the real estate described above and that the boundary of David City as amended by this Ordinance be certified and placed on record in the office of the City Clerk of David City, Nebraska.

Section 3. That any Ordinance, setting or establishing boundaries of the City of David City, Nebraska, which is in conflict with this Ordinance, be and the same is hereby repealed.

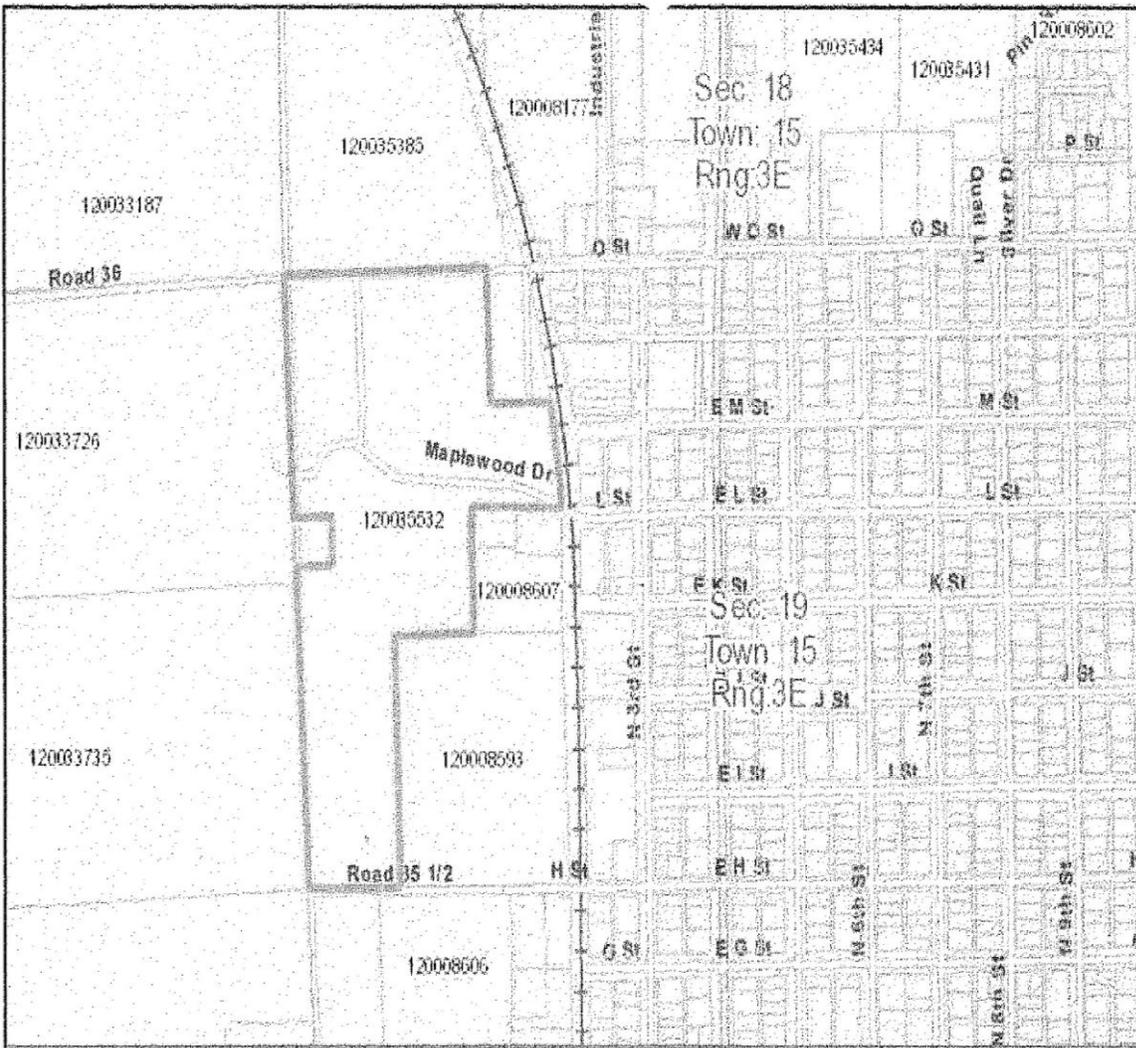
Section 4. That this Ordinance shall take effect and be in force from and after its passage and publication according to law.

Passed and approved this _____ day of _____, 2014.

FAILED _____
Mayor Alan Zavodny

FAILED _____
City Clerk Joan E. Kovar

ATTACHMENT "A"
Butler County Fairgrounds



7/11/2014

powered by: GIS

DISCLAIMER: This map is not intended for conveyance, nor is it a legal survey. The information is presented on a best-efforts basis, and should not be relied upon for making financial, survey, legal or other decisions.

Mayor Zavodny stated: "Consideration of Resolution No. 16 – 2014 that the City proposes to apply for Federal Assistance from the Land and Water Conservation Fund Program for the purpose of purchasing the David City Ball Association fields. My thought on moving forward on this is this: We are applying for this grant, we will know about it next July. I think it is a reasonable step to take. We are going to make a strong case and they have indicated to us that if there is concern about this ball field going away that it will certainly get really strong consideration. I think we should take that step. I've also heard some members of the community that they would also like to try some fund raising between now and the decision being next summer to see if we can generate some momentum in that regard. The question is the current obligations. This has come up fairly fast for us, it is a significant amount of money when we are trying to leverage certainly every penny. We don't want the Ball Association to go away but I think we need more time to try to figure out and exhaust all alternatives."

Neil Kuhlman stated: "Our expenses keep going up because we need to use our own money to stay in business because our funding from the sales tax basically went away." Discussion followed.

Jason Lavicky distributed a report showing the funds received from the City for the Ball Association. Jason stated: "There was a question where the additional funds came from. There is the money that has been given to the Ball Association through Sales Tax and general funding. As you can see in 2013 and 2014 that funding has gotten less as far as general operating."

DAVID CITY BALL ASSOCIATION
Funds Received from the City of David City
2002 - 2014

Year	Operating Funds Received		Special Projects
	Sales Tax	General	
2002	\$ 6,568.89	\$ 7,000.00	\$ -
2003	\$ 6,797.30	\$ 7,000.00	\$ -
2004	\$ 5,680.66	\$ 7,000.00	\$ -
2005	\$ 7,188.48	\$ 7,000.00	\$ -
2006	\$ 7,874.80	\$ 7,000.00	\$ -
2007	\$ 7,644.83	\$ 10,000.00	\$ -
2008	\$ 8,372.18	\$ 7,500.00	\$ -
2009	\$ 9,804.63	\$ 7,500.00	\$ -
2010	\$ 9,618.71	\$ 7,500.00	\$ -
2011	\$ 9,753.85	\$ 7,500.00	\$ -
2012	\$ 1,731.71	\$ 7,500.00	\$ -
2013	\$ -	\$ 7,500.00	\$ 10,000.00
2014	\$ -	\$ 7,500.00	\$ 10,000.00

Mayor Zavodny stated: "A concern for those sitting around the table, we absolutely do not want to run the place. I know we can make assurances, but once it's there it's like an asset and no entity to run it, there needs to be some understanding of the continuity. Now, for full disclosure, I did sit down with Jason and we talked about a lot of these things, and I actually felt much better after sitting down with him. There is continuity in place. I did not have the opportunity to look at "can you continue to meet your operating costs, I still haven't seen that."

Jason Lavicky stated: "And I can't argue that. That's a great debate to have. This is very similar to a business, a business can make it as long as you have customers. Our Association can make it as long as we have kids that keep going out for ball. We strive to have a program that affordable for all kids. As long as our numbers maintain as we believe they should, and have steadily for a great length of time, the burden of the principal of the debt being gone, the expense of the insurance being gone, sure gives us a shot in the arm."

Mayor Zavodny stated: "Now again for my clarification, when we talk about the insurance expense going away, I think we kind of touched on this last time, we are talking just for the properties, you will maintain liability for the participants. I just wanted to make that clear."

Jason Lavicky stated: "Now if we'd have a time when we didn't have 100 – 150 kids come out; I mean it's no different than if somebody quit buying gas here, or quit buying groceries here."

Mayor Zavodny stated: "But you face that challenge when it comes to it and you have to find an alternative to it. You find alternative funds; you do fund raisers. You know the targets you need to get to, to make it. We looked at this grant and discussed the park shelter but decided the Ball Association was the way to go with it. It impacts more young people, I think it is something important for the community. Having that facility in this community contributes tremendously to sales tax. People are buying gas, they buy a pop, junk food, etc."

Jason Lavicky stated: "It is a big marketing tool for the city and it's a quality of life issue. We have several other things in town such as the Library, Swimming Pool, Track, Park, etc. that offer those exact same things but are hard pressed to pay for themselves."

Mayor Zavodny stated: "We take this time to see if fund raising efforts can work to see if we're successful in this grant application that we started. You have a September 1st deadline obligation to the lender. Can you make that deadline work? It would be in next year's budget considerations that we have to figure out where we are at, at that point. Can you make it work?"

Jason Lavicky stated: "What if the lender's going to want a commitment from the City? If there is a possibility of a commitment from the City with a formal action to purchase it by next July, is that something the City would consider? Now here's my concern: You're up for re-election, other members are up for re-election, the council can turn. Where do we start "if" there's a high amount of turnover; does it have to get re-introduced? What is the procedure on that? That's the concern I have."

City Attorney Egr stated: "I have to interject. I am not against it but I did research State Statute #13-403:

Nebraska Revised Statute 13-403

[Revised Statutes](#) » [Chapter 13](#) » 13-403

[Print Friendly](#)

13-403. Real property; purchase, lease-purchase, or acquisition; appraisal required.

Notwithstanding any other provision of law, no political subdivision shall purchase, lease-purchase, or acquire for consideration real property having an estimated value of one hundred thousand dollars or more unless an appraisal of such property has been performed by a certified real property appraiser.

Source

Laws 1994, LB 681, § 1;
Laws 2006, LB 778, § 3.

City Attorney Egr continued: “The City has to do that. That is not on the agenda so the City can’t order an appraisal today. I’m not bringing that up because I am against it, I am bringing it up because those are the procedures. There is no sense of the council doing anything further until they get that part of it satisfied by the Statute, otherwise they can’t act.”

Mayor Zavodny stated: “And it is also true that we can’t bind the next elected body. Let us try the grant and see how we come out.”

Council member Smith stated: “What would you have to have to get by, to get you through till July when we hear about this grant?”

Neil Kuhlman stated: “Basically around \$9,000 to \$10,000 is what we’re short.”

Discussion followed concerning the obligations of the Ball Association and bills that they had accrued and already paid such as umpires, balls, bats, etc.

Mike Behrns stated: “I will tell you one thing, if it goes another two years like it is now, there won’t be a Ball Association running it. We’ll just be out of business with another \$40,000 - \$50,000 debt. We’ve come this close to calling it quits before. Without the grace of a few people around in town here, we would have been gone. There is no intention on our part whatsoever to have the City run the ball program, or we wouldn’t have stumbled along like this for 20 – 25 years“.

Council member Kroesing stated: “And by the same token Mike, we can’t do it. The City cannot do it. We don’t have the personnel, the man power, or the ability with the staff that we currently have.”

Following discussion the Mayor and Council decided to advertise for a special meeting on August 27, 2014, so that they can review and consider the itemized bills as paid by the Ball Association.

Council member Smith introduced Resolution No. 16 - 2014 and moved for its passage and adoption. Council member Kroesing seconded the motion. Voting AYE: Council members Vandenberg, Rogers, Kroesing, Smith, and Svoboda. Voting NAY: None. Council member Scribner was absent. The motion carried and Resolution No. 16 – 2014 was passed and adopted as follows:

RESOLUTION NO. 16 – 2014

The City of David City, Nebraska proposes to apply for federal assistance from the Land and Water Conservation Fund program for the purpose of purchasing the David City Ball Association's Ball Fields.

The Mayor is authorized to sign documents to obtain financial assistance, including a Project Agreement with the State of Nebraska and the National Park Service.

The City of David City, Nebraska will, within thirty (30) days following federal approval, obtain the necessary consultant or appraisal service for this project as directed and as required by Nebraska Game and Parks Commission staff.

The City of David City, Nebraska has budgeted or currently has available its 50 percent match of the proposed total project funds and will allocate these funds toward this project upon project approval by the Nebraska Game and Parks Commission.

The City of David City, Nebraska, has the financial capability to operate and maintain the completed project and park property in a safe, attractive and sanitary manner.

The City of David City, Nebraska will not discriminate against any person on the basis of race, color, age, religion, disability, sex or national origin in the use of any property or facility acquired or developed pursuant to the project proposal, and shall comply with the terms and intent of Title VI of the Civil Rights Act of 1964, P.L. 88-354 (1964), and any of the regulations promulgated pursuant to such Act by the Secretary of the Interior and contained in 43 CFR 17.

No property acquired and/or developed under this project shall, without the approval of the Nebraska Game and Parks Commission and the Secretary of the Interior, be converted to other than public outdoor recreation use. And, such approval may be granted only if it is in accord with the then existing Statewide Comprehensive Outdoor Recreation Plan (SCORP), and only upon such conditions as deemed necessary to assure the substitution of other outdoor recreation properties of at least equal fair market value and of reasonable equivalent usefulness and location.

The City of David City, Nebraska will replace the land in the event of a conversion in use in accordance with Section 6(f)(3) of the Land and Water Conservation Fund Act of 1965, as amended.

The City of David City, Nebraska agrees to comply with all State and Federal requirements and standards where they can be applied in making the facilities developed under this project, and all future projects, accessible to and usable by the disabled.

This is to certify that this resolution is a true copy of the original document that was adopted and passed by the City of David City, Nebraska at a duly advertised public meeting held this 13th day of August, 2014.

Mayor Alan Zavodny

City Clerk Joan Kovar

Council member Smith introduced Resolution No. 17 - 2014 and moved for its passage and adoption. Council member Kroesing seconded the motion.

County Supervisor Greg Janak stated: "I do have a comment. Today the landfill withdrew their application for their expansion project. They pulled their application as of right now because we have been in negotiations with them and they're going smaller than they thought. So a letter of support or not; you guys do what you want."

City Attorney Jim Egr stated: "You have a two edged sword here. If you don't rescind it and you vote on it and say, *"Well we don't want to act on it yet because they withdrew it"*, then you have a record saying that you didn't support it. You might be better off rescinding it until you see what happens."

County Supervisor Greg Janak stated: "Chances are they will reapply later on."

Therefore, Council members Smith and Kroesing rescinded their motion and second.

Council member Vandenberg made a motion to table consideration of Resolution No. 17 – 2014 showing support for the Butler County Landfill and an expansion project. Council member Smith seconded the motion. Voting AYE: Council members Svoboda, Smith, Kroesing, Vandenberg, and Rogers. Council member Scribner was absent. The motion carried.

Dan Duren of Benefit Management stated: "We are the firm that handles the employee health insurance program. We're here tonight to talk about an offer that Blue Cross Blue Shield is making. Due to the Affordable Health Care Act one of the things that the State Insurance Department allowed us to do is continue your plan if you like it. Blue Cross is taking the position that if you renew September 1st you can stay on your plan in effect all the way to October 1, 2017. So, that prompted us to do some looking as far as what else is available to you. At this point in time you technically renew December 1st of this year. In so doing though we looked at some other carriers: Coventry, and CoOpportunity. CoOpportunity was developed by healthcare reform. It was through a loan that the Federal Government gave this insurance company and right now their rates have been extremely competitive.



City of David City										
Effective Date 9/1/2014										
	Current		Renewal Option		High Deductible Health Plan					
	BCBS BluePride 11	BCBS BluePride 11	CoOpportunity HSA Gold	CoOpportunity HSA Silver	BCBS BluePride 21	BCBS BluePride 10	Coventry Bronze Essential 1	Coventry Silver Security 2		
Deductible (Single)	2000/4000	2000/4000	1500/3000	2000/4000	2500/5000	1250/2500	3500/7000	2500/5000		
Deductible (Family)	4000/8000	4000/8000	3000/6000	4000/8000	5000/10000	2500/5000	7000/14000	5000/10000		
Co-insurance	100/60	100/60	80/60	70/50	100/80	80/60	90/70	100/70		
Out of Pocket (Single) (Not Includes, Deductible)	0/4000	0/4000	500/1400	2500/5000	0/4000	2000/4000	3850/12000	3000/20000		
Out of Pocket (Family) (Not Includes, Deductible)	0/8000	0/8000	1000/2800	6000/10000	0/8000	4000/8000	6700/14100	5000/30000		
MAX OUT OF POCKET (Single)	2000/8000	2000/8000	2000/4400	4800/10000	2500/9000	3200/4800	4350/11950	5000/15000		
MAX OUT OF POCKET (Family)	4000/14000	4000/14000	4000/9800	9000/18000	5000/18000	4500/13000	12700/38100	10000/30000		
Office Visit Co-Pay	Deductible	Deductible	Ded & Coins	Ded & Coins	Ded & Coins	Deductible	Ded & \$20	Deductible		
Specialist Co-Pay	Deductible	Deductible	Ded & Coins	Ded & Coins	Ded & Coins	Deductible	Ded & \$40	Deductible		
Drug Card	Deductible	Deductible	10/4082/150 after ded	13/10/98/150 after ded	Ded & Coins	Deductible	Ded & 3/10/45/75	Ded & 3/10/30/65		
Preventive Care	paid 100%	paid 100%	paid 100%	paid 100%	paid 100%	paid 100%	paid 100%	paid 100%		
Total Monthly	19	\$17,678.66	\$17,540.67	\$10,490.99	\$9,042.32	\$18,949.36	\$16,142.64	\$13,142.01	\$14,847.22	
Savings from Current			\$7,277.67	\$8,636.34	\$1,729.30	\$1,536.22	\$4,516.65	\$2,831.44		
Saving Annualized			\$87,332.04	\$103,636.08	\$20,751.60	\$18,434.84	\$54,199.85	\$33,977.20		
			0.76%	-41.17%	-48.86%	-9.76%	-8.69%	-25.55%	-16.02%	

Following discussion, it was decided that a meeting will be scheduled with the city employees at which time Dan Duren will present and explain this insurance information to them.

Hilary Christian was also present and stated that she had visited with previous City Administrator Cornett and had stated that she would like the opportunity to bid on the City's Health Insurance. Basically Dan and Hilary can both offer the same insurance so it is basically choosing a broker firm, although Hilary said she has other options she wants to pursue.

Council member Kroesing made a motion to advance Water/Sewer employee Kevin Betzen from a Plant Operator Step 3 (\$17.86/hr.) to a Plant Operator Step 7 (\$19.51/hr.) This will be retro-active to June 13, 2014 which was the date that he took over additional duties due to the resignation of Gary Janicek. Council member Rogers seconded the motion. Voting AYE: Council members Smith, Kroesing, Vandenberg, Svoboda, and Rogers. Voting NAY: None. Council member Scribner was absent. The motion carried.

Council member Kroesing made a motion to advance Deputy Clerk Tami Comte from an Account Clerk II Step 14 (\$19.90/hr.) to an Acct Clerk II Step 15 (\$20.35/hr.) effective August 24, 2014, as suggested by City Clerk Kovar. Council member Rogers seconded the motion. Voting AYE: Council members Vandenberg, Rogers, Kroesing, Smith, and Svoboda. Voting NAY: None. Council member Scribner was absent. The motion carried.

Mayor Zavodny stated: "Eric (of Kirkham Michael) flew in one day, I went and picked him up, we talked about different alternatives with Jared (Jared Storm of Storm Flying Service LLC) and we're going to be bringing to you some paperwork and resolutions to get Kirkham Michael.....when Kevin (Betzen) presented what it would cost to run water lines we sat down and said it would be nice if we could move that so we don't have to run it as far so we could save probably at least \$100,000 depending on where he wants to situate and he is willing to do that at this point but we have a lot of hoops to jump through to get to that point but I think we could save money doing that and get Jared here. He is saying 8 – 10 jobs just starting with the operation he wants to start with. He has been doing some soil surveys, he is interested in getting some dirt if he can, he's working with the Department of Aeronautics and they, as far as we've gone, have given us their blessing to continue that process. There are also some recommendations. We need to do some sealing and some things. We've filled cracks before, but we're probably getting close to where we actually have to put a sealer on it. When Eric landed he said, "*You know, it's not in terrible shape but you've got a few things.*" It's a big pour and you've got to keep up on that stuff. Well we will see what they say, we are continuing to work on our Airport, the card reader and stuff that in the future we will bring to you. Where Larry has his trailer now, just on the side of the driveway is where Jared is talking about putting his construction area and what we talked about. Eric is going to run it by the Department of Aeronautics. We would run a taxi way a certain distance away from the driving road and we'd have to pour, it would be like pouring a street, that would pick up hangars that would be east of where Jared is, so he could access that taxi way, or hangar people could access that taxi way. We might have to get rid of one hangar depending on where it goes just to have the width and clearance to get planes through. Probably just one of our smaller hangars. We thought it was a win-win, building a taxi way that could pick up the new hangars proposed and his business."

Adam Osborn stated: "The last city administrator and I had a meeting with a gentleman, I don't know if his name was Eric or what his name was, and they told me I could build a hangar of my own out there if I wanted to and I could start tomorrow and I've been in the process of getting funds and doing that and then I was informed that our city administrator is no longer with us and now I just wonder where that all stands with you guys?"

Mayor Zavodny stated: "We have talked to them about private people wanting to put up hangars and it will have to be included in our Airport plan. Once we get Eric engaged, and we need to pass a resolution getting Eric named/changed with the Department of Aeronautics, then we can move forward on our Airport plan."

Adam Osborn stated: "So essentially I couldn't build tomorrow?"

Mayor Zavodny stated: "Essentially you could not. That is accurate."

Council member Kroesing asked: "How did we get from Olsson Associates to Kirkham Michael, and then supposedly we have an Olsson Associate engineer out there looking to get the water to the place?"

Mayor Zavodny stated: "Well we talked to Olsson's about doing all of our street work and those kinds of things, and engineering some of the water things; we're in transition with that. One of the reasons we are looking at making the change is Jared is very uncomfortable with the Olsson engineer, and to make that project work we wanted to have some comfort level for him, and that is why. I thought it wasn't worth losing 10 jobs."

Adam Osborn stated: "Where does the City stand on obtaining an Airport Board Authority to help resolve these types of issues regarding the Airport?"

It was noted that the City used to have an Airport Board but not an Airport Authority.

Mayor Zavodny stated: "I asked Jim Daro to serve on it; he said he'd be willing. I talked to Mike Burwell about it; he's expressed interest. That's what I have for you tonight."

Council member Kroesing introduced Ordinance No. 1214 incorporating a 2% Cost of Living Increase. Mayor Zavodny read Ordinance No. 1214 by title. Council member Kroesing made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Smith seconded the motion. Voting AYE: Council members Vandenberg, Smith, Kroesing, Svoboda, and Rogers. Voting NAY: None. Council member Scribner was absent. The motion carried.

Council member Smith made a motion to pass and adopt Ordinance No. 1214 on the third and final reading. Council member Kroesing seconded the motion. Voting AYE: Council members Vandenberg, Svoboda, Smith, Kroesing, and Rogers. Voting NAY: None. Council member Scribner was absent. The motion carried and Ordinance No. 1214 was passed on third and final reading as follows:

ORDINANCE NO. 1214

AN ORDINANCE ADOPTING A TWO PERCENT (2%) COST OF LIVING ADJUSTMENT (COLA) FOR FULL-TIME AND PERMANENT PART-TIME EMPLOYEES; REPEALING ALL ORDINANCES OR PORTIONS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM; AND PROVIDING FOR A TIME WHEN THIS ORDINANCE SHALL TAKE EFFECT.

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

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Bartenders	Begin @	\$7.58 /hr.	experienced	up to	\$8.10										
	Probationary	6 Mo	1	2	3	4	5	6	7	8	9	10	11	12	13
<u>Department Supervisors</u>															
Park & Aud Supt.	16.29	16.65	17.02	17.41	17.80	18.21	18.62	19.03	19.45	19.89	20.34	20.80	21.27	21.75	22.24
Street Supt.	20.15	20.59	21.06	21.52	22.01	22.51	23.01	23.53	24.06	24.61	25.15	25.73	26.30	26.89	27.51
	14	15	16	17	18	19	20	21	22	23	24	25			
	28.13	28.76	29.41	30.07	30.74	31.44	32.14	32.86	33.60	34.35	35.13	35.91			
Water Super w/Gr VI	19.83	20.29	20.75	21.22	21.69	22.19	22.67	23.17	23.70	24.24	24.78	25.36	25.92	26.50	27.09
	14	15	16	17	18	19	20	21	22	23	24	25			
	27.70	28.33	28.96	29.61	30.27	30.96	31.65	32.36	33.09	33.83	34.60	35.37			
Wastewater Super w/Gr VI	19.83	20.29	20.75	21.22	21.69	22.19	22.67	23.17	23.70	24.24	24.78	25.36	25.92	26.50	27.09
Power Plant Supervisor	20.77	21.24	21.71	22.21	22.70	23.22	23.74	24.27	24.81	25.38	25.94	26.52	27.12	27.72	28.35
Electric Supervisor	23.67	24.20	24.75	25.32	25.89	26.47	27.06	27.70	28.28	28.92	29.57	30.24	30.93	31.61	32.32

Notes:

- 1) 15 Steps Total
- 2) Approximately 2.25% between steps
- 3) The salary range from Probationary Salary to Step 13 (maximum) is 37%

Permanent Part-time Staff (Hourly Rate of Pay)

Permanent Part-time Workers	9.07	9.27	9.49	9.69	9.91	10.13	10.36	10.60	10.83	11.09	11.33	11.59	11.84	12.11	12.39
Zoning Inspector	17.15	17.53	17.93	18.33	18.74	19.17	19.59	20.04	20.48	20.94	21.41	21.89	22.40	22.90	23.41

Swimming Pool Staff:

Manager	11.61	11.86	12.13	12.41	12.68	12.97	13.27	13.56	13.86	14.18
Asst. Manager	11.17	11.41	11.68	11.94	12.20	12.48	12.77	13.05	13.34	13.65
Head Lifeguard	10.30	10.56	10.82	11.09	11.34	11.61	11.86	12.13	12.40	12.64
WSI Lifeguard	8.83	9.10	9.35	9.62	9.88	10.14	10.40	10.67	10.92	11.19
Lifeguard	8.09	8.20	8.30	8.40	8.51	8.62	8.72	8.82	8.93	9.04
Sw. Lesson Aid	7.58	7.68	7.79	7.89	8.00	8.10	8.21	8.31	8.42	8.52
Aerobics Instructor	9.57	9.67	9.77	9.88	9.99	10.09	10.19	10.30	10.40	10.51
Concessions	7.58	7.68	7.79	7.89	8.00	8.10	8.21	8.31	8.42	8.52
Games/Cleaning	7.58	7.68	7.79	7.89	8.00	8.10	8.21	8.31	8.42	8.52

Salaried Staff Pay Plan (Annual Rate of Pay)

Position	Minimum	Mid Point	Maximum
Clerk/Treasurer	\$47,048	\$60,231	\$73,416

Notes:

- 1) Exempt (salaried) Employees are subject to the same 2.25% annual step increase as non-exempt employees as well as any Cost-of-Living Adjustments (COLA) as approved by the City Council.
- 2) The range spread from Minimum Starting to Maximum is 37%.

SECTION 3. Any and all ordinances or sections thereof, passed and approved prior to the passage, approval and publication or posting of this ordinance, and in conflict with its provisions, are hereby repealed.

SECTION 4. This ordinance shall be published in pamphlet form and shall be in full force and effect on September 24, 2014 following its passage, approval, and publication as provided by law and city ordinance.

PASSED AND APPROVED this 13th day of August, 2014.

Mayor Alan Zavodny

City Clerk Joan Kovar

Mayor Zavodny stated the next item on the agenda was consideration of the proposed budgets for Fiscal Year October 1, 2014 – September 30, 2015. “I think we are at the very end of tweaking this so I hope we can get that done.”

The budget requests were discussed by Departments. The department heads explained Capital improvement requests, their needs, and the estimated costs. Street Foreman Rodney Rech discussed replacing the 2002 Cat Loader with a 2014 or 2015 Loader and replacing the 1993 Ford Pickup with a 2014/2015 ¾ ton pickup with a snow/tow package. Park Supervisor Bill Buntgen requested a lawn mower blade grinder estimated at \$700, and \$500 for a water line to flush out the camper dump site. It was noted that the water used to flush out the camper dump site will not be metered. Included \$20,000 for an Economic Development Director. Included \$90 per suit/ per lifeguard to be paid through payroll at the end of the season if the lifeguard worked almost the 1st day thru the last day of the season and is in good standing. The water mains to the Airport for Jared Storm’s business was discussed and estimated at \$120,000. A septic tank at the Airport was discussed. The replacement of the water mains by St. Joseph’s Villa (7th & I St.) which should be a project for next spring was estimated at \$200,000. The request for two Fiberglass Refrigerated Samplers for the Wastewater Department was discussed. It was determined that Henningsen

Foods should be asked to pay for both, or at least one, since it is used to get an accurate sample at Henningsen Foods. The Council did include the price of one in the budget request. Discussion continued concerning the budget requests.

Council member Smith made a motion to approve the Bingo Permit Application from the Knights of Columbus Council 1717 to conduct the game of Bingo at 517 4th Street in David City. Council member Rogers seconded the motion. Voting AYE: Council members Svoboda, Kroesing, Vandenberg, Rogers, and Smith. Voting NAY: None. Council member Scribner was absent. The motion carried.

There being no further business to come before the Council, Council member Smith made a motion to adjourn. Council member Rogers seconded the motion. Voting AYE: Council members Svoboda, Vandenberg, Kroesing, Rogers, and Smith. Voting NAY: None. Council member Scribner was absent. The motion carried and Mayor Zavodny declared the meeting adjourned at 9:38 p.m.



CERTIFICATION OF MINUTES
August 13, 2014

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 August 13th, 2014; 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, City Clerk