

## CITY COUNCIL PROCEEDINGS

September 12, 2012

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 4<sup>th</sup> Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on September 6<sup>th</sup>, 2012 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, John Vandenberg, Ruddy Svoboda, Gary Smith, City Attorney James Egr, Interim City Administrator Joan Kovar and Interim City Clerk Tami Comte. Council members Mike Rogers and Bill Scribner were absent.

Also present were: Electric Plant Supervisor Eric Betzen, Electric Distribution Supervisor Pat Hoeft, Water/Sewer Supervisor Gary Janicek, Library Director Kay Schmid, Street Supt. Jim McDonald, Robert J. Bitner of the Upper Big Blue NRD, Matt Rief of Olsson Associates, Jan Sypal, Bob Palik, Russ Heller, Milt Bemis, Denny Kirby, Deb Dinkelman, Joy Fountain, Amanda Stutzman, Carol Brehm, Carolyn Yates, and Banner Press Editor Larry Peirce.

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 August 8, 2012 and the August 28, 2012 meetings 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 Svoboda, Smith, Vandenberg, and Kroesing. Voting NAY: None. The motion carried. Council members Rogers and Scribner were absent.

Mayor Zavodny called for Committee and Officers Reports.

Council member Kroesing asked why there was a claim for fixing the Intrepid when it had been decommissioned and was at the wastewater plant.

Mayor Zavodny stated that he talked to Sheriff Hecker and he stated that they did not want the Intrepid.

Council member Smith stated that the Intrepid has new tires and a new front end.

City Attorney James Egr stated that the car will belong to the County as per the contract that was signed so they can do whatever they want to with it.

Council member Smith made a motion to accept the committee and officers reports as presented. Council member Vandenberg seconded the motion. Voting AYE: Council members

Svoboda, Vandenberg, and Kroesing. Voting NAY: None. The motion carried. Council members Scribner and Rogers were absent.

Matt Rief, representing Olsson Associates was present to explain Change Order #2 on the Industrial Drive, "O" Street and Street Improvement Projects. The Change Order was in the amount of \$37,674.65. Matt Rief stated that the project is almost completed.

Council member Smith made a motion to approve Change Order #2 in the amount of \$37,674.65. Council member Vandenberg seconded the motion. Voting AYE: Council members Vandenberg, Smith, Kroesing and Svoboda. Voting NAY: None. The motion carried. Council members Scribner and Rogers were absent.

Council member Smith made a motion to approve Payment No. 5 to Gehring Construction & Ready Mix Co., Inc. for Project No. 011-0758 for Street Improvements. Council member Vandenberg seconded the motion. Voting AYE: Council members Svoboda, Vandenberg, Smith and Kroesing. Voting NAY: None. The motion carried. Council members Rogers and Scribner were absent.



**CERTIFICATE OF PAYMENT NO. 5**

201 East 2nd Street, Grand Island, Nebraska 68801

Date of Issuance: September 12, 2012

Project: Industrial Drive and 'O' Street Improvements, Municipal Street Improvements, David City, Nebraska, 2012 Project No. 011-0758

Contractor: Gehring Construction & Ready Mix Co., Inc., 5424 West Meadow Drive, Columbus, NE 68601

DETAILED ESTIMATE		
Description	Unit Prices	Extension
See Attached		

PLEASE REMIT PAYMENT TO: Gehring Construction & Ready Mix Co., Inc.

Value of Work Completed and materials stored:	\$1,269,954.00
Original Contract Cost:	\$1,104,946.05
Approved Change Orders:	
No. 1 \$	153,466.70
No. _____	
Total Contract Cost:	\$1,258,412.75

Value of completed work and materials stored.	\$1,269,954.00
Less retained percentage ( 1 %)	\$12,699.54
Net amount due including this estimate	\$1,257,254.46

Less: Estimates previously approved:

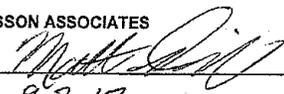
No. 1 \$101,027.52	No. 7 _____	No. 13 _____
No. 2 \$465,934.14	No. 8 _____	No. 14 _____
No. 3 \$280,595.61	No. 9 _____	No. 15 _____
No. 4 \$340,322.35	No. 10 _____	No. 16 _____
No. 5 _____	No. 11 _____	
No. 6 _____	No. 12 _____	

Total Previous Estimates \$1,187,879.62

**NET AMOUNT DUE THIS ESTIMATE \$69,374.84**

The undersigned hereby certifies that the work done and materials delivered have been checked as to quantity and conformance with the plans and specifications and the Contractor, in accordance with the contract, is entitled to payment as indicated above.

OLSSON ASSOCIATES

By: 

Date: 9-7-12

cc: Owner, Contractor, File

Council member Smith made a motion to approve Construction Progress Application Number 4 for the Northwest Drainage Project and payment to Van Kirk Brothers Contracting. Council member Vandenberg seconded the motion. Voting AYE: Council members Vandenberg, Svoboda, Kroesing, and Smith. Voting NAY: None. The motion carried. Council members Rogers and Scribner were absent.

**APPLICATION FOR PAYMENT**

PROJECT: David City NW Drainage Improvement Project

Page 1 of 4

ENGINEER: Upper Big Blue Natural Resources District

ENGINEER'S PROJECT NO.

TO: (OWNER) City of David City  
 557 4th Street  
 David City, NE 68632

CONTRACTOR: Van Kirk Bros. Contracting

CONTRACT FOR: Storm Sewer Installation

APPLICATION NO.: 4

FOR WORK ACCOMPLISHED THROUGH THE DATE OF: August 31, 2012

Application is made for payment, as shown below in connection with the Contract.

**CHANGE ORDER SUMMARY:**

The present status of the account is as follows:

ORIGINAL CONTRACT PRICE.....	\$ 1,891,889.00
Net Change by Change Orders & Written Amendments.....	\$ 14,750.65
CURRENT CONTRACT PRICE.....	\$ 1,906,639.65
TOTAL COMPLETED & STORED TO DATE.....	\$ 1,038,022.22
LESS RETAINAGE : 10% .....	103,802.22
TOTAL COMPLETED & STORED TO DATE	\$ 934,220.00
LESS PREVIOUS APPLICATION FOR PAYMENTS.....	\$ 678,380.08
AMOUNT DUE THIS APPLICATION.....	\$ 255,839.92

CO #	DATE	ADDITIONS	DEDUCTIONS
1	Mar-12		\$ (39,495.35)
2	Mar-12	\$ 39,500.00	
3	Apr-12	\$ 14,746.00	
TOTAL		\$ 54,246.00	\$ (39,495.35)
NET CHANGE		\$	14,750.65

The undersigned CONTRACTOR certifies that: (1) all previous progress payments received from Owner on account of Work done under the Contract referred to above have been applied to discharge CONTRACTORS legitimate obligations incurred in connection with Work covered by prior Applications for Payment numbered \_\_\_\_\_ through \_\_\_\_\_ inclusive; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to OWNER at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to OWNER indemnifying OWNER against any such Lien, security interest or encumbrance); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and not defective.

Payment of the above AMOUNT DUE THIS APPLICATION is recommended.

Engineer: Upper Big Blue NRD  
 BY: *[Signature]*  
 OWNER: City of David City  
 BY: *[Signature]*

CONTRACTOR: Van Kirk Bros. Contracting

By: *Melissa Shaidemann* Date: 8/31/12

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

Robert J. Bitner, representing the Upper Big Blue N.R.D., was present to give a project update for the Northwest Drainage Project. Robert Bitner gave a power point presentation and stated that the project should be completed by the end of October. The costs associated with the Northwest Drainage Project include the following:

Drainage channel and Box culverts .....	\$504,110
Burlington Northern Santa Fe Railroad .....	\$140,400
Inverted Siphon Structure .....	\$158,500
Draining channel – Timpfe .....	\$58,230
Storm Sewer .....	\$859,860

Council member Smith made a motion to advance to agenda item #13 Consideration of Resolution No. 15-2012 to erect stop signs at the intersection of 3<sup>rd</sup> and “L” Streets to stop north/south traffic and agenda item #18 Preliminary Electric Rate Study findings as presented by Andrew Ross of NMPP Energy. Council member Vandenberg seconded the motion. Voting AYE: Council members Smith, Vandenberg, Kroesing and Svoboda. Voting NAY: None. Council members Rogers and Scribner were absent.

City Attorney Jim Egr stated that he spoke to Matt Niemann from the State of Nebraska, Dept. of Transportation regarding the placement of stop signs within the corporate limits of David City. Mr. Niemann told City Attorney Egr that the manual that Street Superintendent Jim McDonald was referring to were “guidelines” and that a Second Class City has the right to do whatever they like and if the City Council votes to put them up then they have the right to do so.

Mayor Zavodny asked for the best argument in favor of putting up the stop signs.

Amanda Stutzman stated that there are small children in the area and there are elderly people at Sunshine Court.

Mayor Zavodny asked for the best argument against putting up the stop signs.

Council member Kroesing stated that the trees would need to be trimmed on the west side in order to see a stop sign if one was placed there.

Council member Svoboda introduced Resolution No. 15-2012 and moved for its passage and adoption. The motion died for lack of a second.

**RESOLUTION NO. 15 - 2012**

WHEREAS, Chapter 5, Section 216 of the David City Municipal Code provides that the Governing Body of said City may by resolution provide for placing of stop signs or other signs and signals in any street or alley within the Municipality’s jurisdiction for the purpose of regulating or prohibiting traffic thereon, and,



**ORDINANCE NO. 1178**

AN ORDINANCE TO AMEND CHAPTER 4, HEALTH AND SANITATION, SECTION 4-701, PENAL PROVISIONS, OF THE MUNICIPAL CODE; TO REPEAL ORDINANCES IN CONFLICT HEREWITH; TO PROVIDE FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM, AND TO PROVIDE FOR AN EFFECTIVE DATE THEREOF.

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

Section 1: That Chapter 4, Article 4, Section 4-701 of the Municipal Code of David City, Nebraska shall read as follows:

~~§ 4-701 VIOLATION; PENALTY. Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this Chapter, set forth at full length herein or incorporated by reference shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not more than one hundred (\$100.00) dollars for each offense. A new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply.~~

§ 4-701 VIOLATION; PENALTY. Any person who shall violate or refuse to comply with the enforcement of any of the provisions of this Chapter, set forth at full length herein or incorporated by reference shall be fined three hundred (\$300.00) dollars per day for being in non-compliance.

Section 2: That any other Ordinances or part of Ordinance passed and approved prior to the passage, approval, and publication of this Ordinance and in conflict with its provisions, is hereby repealed.

Section 3: This Ordinance shall take effect and be in full force and effect from and after its passage, approval, and publication as required by law.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

ATTEST:

Failed on 2<sup>nd</sup> reading  
Mayor Alan Zavodny

Failed on 2<sup>nd</sup> reading  
Interim City Clerk Tami Comte

Council member Kroesing made a motion to pass Ordinance No. 1179 on 2<sup>nd</sup> reading only. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Smith, Svoboda, and Vandenberg. Voting NAY: None. Council members Rogers and Scribner were absent. The motion carried and Ordinance No. 1179 was passed on 2<sup>nd</sup> reading only as follows:

**ORDINANCE NO. 1179**

AN ORDINANCE TO AMEND ORDINANCE NO. 1040 CODIFYING THE GENERAL ORDINANCES OF THE MUNICIPALITY BY AMENDING CHAPTER 10: BUSINESS REGULATIONS; ARTICLE 1: ALCOHOLIC BEVERAGES §10-117 ALCOHOLIC BEVERAGES;

HOURS OF SALE; TO PROVIDE FOR THE REPEAL OF ANY ORDINANCE OR RESOLUTION IN CONFLICT THEREWITH; TO PROVIDE FOR AN EFFECTIVE DATE THEREOF; AND TO AUTHORIZE PUBLICATION IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, BUTLER COUNTY, NEBRASKA, THAT CHAPTER 10, ARTICLE 1, §10-117 OF THE MUNICIPAL CODE BOOK BE AMENDED AS FOLLOWS:

§10-117 ALCOHOLIC BEVERAGES; HOURS OF SALE.

Section 1. For purposes of this section, "on sale" shall be defined as alcoholic beverages sold at retail by the drink for consumption on the premises of the licensed establishment. "Off sale" shall be defined as alcoholic beverages sold at retail in the original container for consumption off the premises of the licensed establishment.

It shall be unlawful for any licensed person or persons or their agents to sell any alcoholic beverages within the Municipality except during the hours provided herein:

**HOURS OF SALE**

**Alcoholic Liquors (except beer and wine)**

**Secular Days**

Off Sale ..... 6:00 A.M. to 1:00 A.M.

On Sale ..... 6:00 A.M. to 2:00 A.M.

**Sundays**

Off Sale ..... 12:00 Noon to 1:00 A.M.

On Sale ..... 12:00 Noon to 2:00 A.M.

**Beer and Wine**

**Secular Days**

Off Sale ..... 6:00 A.M. to 1:00 A.M.

On Sale ..... 6:00 A.M. to 2:00 A.M.

**Sundays**

Off Sale ..... 12:00 P.M. (Noon) to 1:00 A.M.

On Sale ..... 12:00 P.M. (Noon) to 2:00 A.M.

**Alcoholic Liquors / Beer and Wine**

**Secular Days and Sundays**

Off Sale ..... 6:00 a.m. to 1:00 a.m.

On Sale ..... 6:00 a.m. to 2:00 a.m.

No person or persons shall consume any alcoholic beverages on licensed premises for a period of time longer that fifteen (15) minutes after the time fixed herein for stopping the sale of alcoholic beverages on the said premises. Nothing in this section shall be construed to prohibit

licensed premises from being open for business on days and hours during which the sale or dispensing of alcoholic beverages is prohibited by this section. (Ref. 53-179 RS Neb.)

Section 2. That any ordinance or section of any ordinance passed and approved prior to or subsequent to the passage, approval, and publication or posting of this ordinance and in conflict with its provisions, is hereby appealed.

Section 3. This ordinance shall be published in pamphlet form and shall take effect and be in full force from and after its passage, approval, and publication or posting as required by law.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Passed on 2<sup>nd</sup> reading only  
Mayor Alan Zavodny

Passed on 2<sup>nd</sup> reading only  
Interim City Clerk Tami L. Comte

Council member Vandenberg made a motion to approve CDBG housing reuse fund loan #64 for \$5,000 for down payment assistance. Council member Smith seconded the motion. Voting AYE: Council members Smith, Kroesing, Vandenberg and Svoboda. Voting NAY: None. The motion carried. Council members Rogers and Scribner were absent.

Mayor Zavodny stated that the City has a siren that works that has been taken out of service.

Electric Supervisor Pat Hoefft stated the he would like to give the siren to the Village of Garrison. They will pay to get it set and wired.

City Attorney Egr stated that the City can give the siren to another political subdivision.

Council member Kroesing made a motion to give the out of service siren to the Village of Garrison, Nebraska. Council member Vandenberg seconded the motion. Voting AYE: Council members Kroesing, Vandenberg, Smith and Svoboda. Voting NAY: None. The motion carried. Council members Rogers and Scribner were absent.

Milt Bemis, Dennis Kirby and Deb Dinkelman were present representing the Park & Recreation Committee. The Park & Recreation Committee presented their request for \$100,000 of Sales Tax revenues for fiscal year 2012-2013 as follows:

Ball Association .....	\$15,000
AYSO Soccer Association.....	\$15,000
Auditorium ceiling and lights .....	\$40,000
Fence for basketball court.....	\$5,300
Picnic Tables and mulch .....	<u>\$24,700</u>
Total .....	\$100,000

Dennis Kirby stated that he feels that the ceiling and lights in the auditorium should be a City capital improvement project.

Mayor Zavodny stated that he agreed with Mr. Kirby; however, there is not money in the budget for any capital improvements. Mayor Zavodny stated that he thinks that the City has to get Northwest Drainage paid for first and then he would be willing to give some money to the Park & Rec committee.

Milt Bemis stated that the Sales Tax Committee promoted that the Park & Recreation was to be a big portion of the sales tax and he feels that is why the sales tax passed by an overwhelming margin.

Mayor Zavodny stated that he understood what they were saying, however, he did not want to allocate more than the \$20,000 per year for the next two years to the Park & Rec committee until Northwest Drainage Project was paid for in its entirety.

Mayor Zavodny declared a break at 9:19 p.m. The meeting resumed at 9:25 p.m.

Council member Kroesing began the discussion of the budget by stating that he was not happy that the finance committee didn't meet to go over the budget line item by line item. Council member Kroesing stated that there is not a City Administrator, and including the police officers, there are nine positions that will not be filled at the start of the next fiscal year. Also, there should be \$118,000 less with contracting for law enforcement with the County and, given that, he just did not understand how we could be short \$155,000.

Mayor Zavodny stated that we just didn't expend the \$118,000 and for years we didn't adjust how we did business. Mayor Zavodny stated that the City's long term planning is poor. We need to look at replacing the water mains and replacing equipment.

City Attorney Egr stated that there are several cities that are in the same situation.

Mayor Zavodny stated that he is committed to submitting a balanced budget and it will be up to the Council on September 18<sup>th</sup> to decide what they want to do.

Mayor Zavodny stated that he has a proposal from Pekny & Associates, CPA's to do financials for the City. The cost would be approximately \$240/mo. for three months and then it would be evaluated based on the amount of time that is involved.

Interim City Clerk Comte stated that she provided a copy of the financial statement that she used to do and asked if that was similar to what Pekny's were going to provide.

Interim City Administrator Joan Kovar stated that she felt that if the office staff knew what the Mayor and Council wanted that they were capable of providing it.

Mayor Zavodny stated that he just didn't want to cause more work for the office staff but he was willing to let them try to provide the financials if they wanted to do so.

There being no further business to come before the Council, Council member Kroesing made a motion to adjourn. Council member Vandenberg seconded the motion. Voting AYE: Council members Kroesing, Vandenberg, Svoboda, and Smith. Voting NAY: None. Council

members Scribner and Rogers were absent. The motion carried and Mayor Zavodny declared the meeting adjourned at 10:16 p.m.



CERTIFICATION OF MINUTES  
September 12, 2012

I, Tami L. Comte, duly qualified and acting Interim City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of September 12, 2012; 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.

---

Tami L. Comte, Interim City Clerk