

CITY COUNCIL PROCEEDINGS

May 11, 2011

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 May 5th, 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, Bill Scribner, John Vandenberg, Ruddy Svoboda, and Gary Smith, City Attorney Jim Egr, Interim City Administrator Joan Kovar and Interim Clerk-Treasurer Tami Comte.

Also present were: Police Chief Anthony McPhillips, Lieutenant Mike Hutchinson, Street Superintendent Jim McDonald, Bob Palik, Allen Covault, Mark Moseman, Paul Perske, Matt Rief, Jim Condon and Criag Reinsch of Olsson Associates, Phil Lorenzen of D.A. Davidson, Butler County Economic Development Director Keith Marvin, Carol Brehm, Mike Draper, Joy Fountain, Gene Divis, Roger Comte, Larry Sabata, Randy & Linda Kroft, Janis Cameron, Carolyn Yates, Russell Heller, Ryan Nelson, Laura Pelan 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 April 13, 2011 meeting of the Mayor and City Council were approved upon a motion by Council member Kroesing and seconded by Council member Smith. Voting AYE: Council members Svoboda, Smith, Vandenberg, Scribner, Kroesing and Rogers. Voting NAY: None. The motion carried.

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

Mayor Zavodny called for Committee and Officer Reports. Interim Administrator Kovar stated that the City Employees are looking at changing deferred compensation accounts. If the City puts their share in a 401(a) then they would save the FICA and Medicare tax. Council member Kroesing stated that he spoke with Phoebe Rech and Dr. Kaufmann and they are very pleased with how their trees were trimmed. (They were upset at how their trees were trimmed during the Moravec house move.) Council member Kroesing made a motion to approve the committee and officer reports as presented. Council member Vandenberg seconded the motion. Voting AYE: Council members Vandenberg, Smith, Svoboda, Rogers, Scribner and Kroesing. Voting NAY: None. The motion carried.

Council member Smith made a motion to advance to agenda item #11 Consideration of a Ground Lease Agreement with Randy R. Kroft to June 30, 2011. Council member Scribner seconded the motion. Voting AYE: Council members Svoboda, Scribner, Smith, Vandenberg, Kroesing and Rogers. Voting NAY: None. The motion carried.

Interim City Administrator Joan Kovar stated that the City had an airport ground lease agreement with Midland Products that was assumed by Randy Kroft and it expired in 2008 and was never extended.

Randy Kroft stated that he came in the City Office and spoke with City Administrator Joe Johnson several times about a lease extension but it was never executed and then Mr. Kroft forgot about it. He stated that he paid the lease fee every month in good faith.

City Attorney Egr stated that the City accepted the lease fee each month and therefore are held to those obligations.

Council member Kroesing made a motion to approve the ground lease with Randy R. Kroft retroactive to 2008 through June 30, 2011. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Smith, Svoboda, Vandenberg, Rogers, and Scribner. Voting NAY: None. The motion carried.

GROUND LEASE

THIS AGREEMENT, made and entered into this 11th day of May, 2011, by and between the CITY OF DAVID CITY, David City, Nebraska, a Municipal Corporation of the County of Butler, State of Nebraska, hereinafter referred to as Lessor, and **RANDY R. KROFT**, hereinafter referred to as Lessee (whether one or more in number.)

WITNESSETH: That the Lessor has been leasing unto the Lessee the following described real estate, to-wit:

A plot of ground at the David City Municipal Airport located on the Northeast Quarter (NE 1/4) of Section Thirty-one (31), Township Fifteen (15) North Range 3, East of the 6th P.M., Butler County, Nebraska, Two Hundred Fifty Feet (250') by Three Hundred Fifty Feet (350') North of the Access Road as more specifically shown on Exhibit "A" attached hereto and made part hereof

for a term to the 30th day of June, 2012, for the sum of \$600.00 per year, at \$50.00 per month, payable on the 1st day of each month during the term of said lease.

The following conditions are mutually agreed upon:

1. Lessee shall be in default hereunder if:
 - a. Lessee fails to pay rent due hereunder within thirty (30) days after the due date thereof, or
 - b. Lessee fails to perform any other agreement or covenant herein required to be performed by Lessee and such failure continues for thirty (30) days after Lessee has received written notice of such failure. Provided, however, that if such failure is of a nature that it cannot be remedied within such thirty (30) day period, Lessee shall not be deemed to be in default hereunder unless Lessee shall fail to commence the steps necessary to remedy such default within such thirty

(30) day period and diligently pursue such remedy.

In the event the Lessee shall be in default hereunder, it shall be lawful for Lessor to re-enter said premises and Lessee agrees to vacate said premises without further notice and if it is necessary to bring action at law to recover possession, to pay a reasonable attorneys fee therefor if permitted by law.

2. That Lessee covenants that it will not use said real estate, or permit same to be used, for any unlawful business or purpose whatsoever and it will use all due care and diligence in guarding said property, the buildings, gates, fences, etc., from damage by fire and the depredations of animals; will pay all water, sewer, and electric charges that shall become due thereon during this lease; that it will not permit any noise or nuisance whatever on said real estate to the disturbance of other tenants or do or permit anything on or about said real estate which will increase the rate of insurance; that the Lessor and its agent may enter at any time to view same or for any necessary purposes. The Lessee further agrees that it will in all respects comply with the city ordinances and with the requirements of the health authorities and particularly as to keeping said real estate and the streets and alleys adjacent thereto, free and clear from all filth, refuse and obstruction.

3. That at the expiration of the lease or upon a default by the Lessee, the Lessee will without further notice of any kind, quit, and surrender the possession and occupancy of said real estate in as good a condition as received.

4. The parties acknowledged that this is a ground lease with Lessor owning only the underlying real estate while Lessee owns the existing building and other improvements thereon. Lessee shall have the right to make any alterations or additions to the existing building or construct a new building on the premises provided the same is in full compliance with all the terms and provisions of this Ground Lease and provided further that Lessee shall indemnify and hold harmless Lessor from any liens, damages or responsibility whatsoever arising out of such alterations, additions or new construction.

5. The Lessor reserves unto itself, its successors and assigns, for the use and benefit of the public, the right of flight for the passage of aircraft in the airspace above the surface of the real estate hereinbefore described, together with the right to cause in such airspace such noise as may be inherent in the operation of the aircraft, now known or hereinafter used, for navigation or flight in said airspace for landing on, taking off from, or operating on the David City Municipal Airport.

6. The Lessee expressly agrees for itself, its successors and its assigns to restrict the height of structures, objects of natural growth or other obstruction on the hereinbefore described real estate to a height of not more than approximately 65 feet above land level, 1675 feet above M.S.L.

7. The Lessee agrees for itself, its successors, and its assigns, to prevent any use of the above described real estate which would interfere with landing or taking off of aircraft at the David City Municipal Airport, cause electronic interference or otherwise constitute an airport hazard including blowing papers or debris.

8. The Lessee will not, on the grounds of race, color, or national origin, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 21 of the Regulations of the Office of the Secretary of Transportation. The Lessor reserves the

right to take such action as the United States Government may direct to enforce this covenant.

9. That access to the real estate be restricted to the present access to the airport property.

10. All notices required or permitted under this Agreement shall be ineffective unless made in writing and forwarded to the parties as follows:

- to Lessor at P.O. Box 191, David City, NE 68632-0191

- to Lessee at 3271 "O" Road, David City, NE 68632

or to such other address as either party shall give the other party written notice of.

11. Lessee is hereby granted options to extend this lease for eight (8) additional terms of ten (10) years each and one (1) additional term of nine (9) years, with each additional term to commence on the expiration of the preceding ten (10) year term. All of the provisions of this Ground Lease shall apply during each such extension except that Lessor shall have the right to increase the monthly rental payable by Lessee as of the beginning of each such extended term and the rental as so increased shall be payable throughout such ten (10) or nine (9) year term. Provided, however, that no such increase in excess of \$25.00 per month shall be permitted. On or before the first day of March of any year in which the original term or an extended term of this lease expires, the Lessor shall notify the Lessee in writing of the amount of monthly rental which will be payable by second party during the next ten (or nine) year term if second party chooses to exercise its option to extend the term of this lease. Lessee shall have until June 1 of the same year in which to notify Lessor in writing of Lessee's exercise of such option. In the event Lessor fails to notify Lessee of any proposed increase in rental within the time period so allowed, the rental shall not be increased if Lessee exercises its option. In the event Lessee fails to so notify Lessor of its exercise of any such option during the time period provided, such option and all succeeding options herein granted shall expire and be of no further force or effect.

12. In addition to the foregoing this lease shall be subject to the following general terms and conditions:

- a. This lease constitutes the full agreement between the parties and no amendment or modification shall be effective unless made in writing and signed by the parties.
- b. No term or provision in this lease shall be construed to have been waived by Any party unless such waiver shall have been secured in writing.
- c. The terms and conditions of this lease shall be binding upon and inure to the benefit of the parties hereto in their respective successors and assigns.

IN WITNESS WHEREOF, the said parties have hereunto subscribed their names on the date above written.

LESSOR

LESSEE

By: _____

Alan Zavodny, Mayor for the
CITY OF DAVID CITY
David City, Nebraska
A Municipal Corporation

Randy R. Kroft

ATTEST:

Interim City Clerk Tami Comte

State of Nebraska)
) ss.
County of Butler)

The foregoing instrument was acknowledged before me on _____, 2011
by Alan Zavodny, Mayor for the CITY OF DAVID CITY, David City, Nebraska, a Municipal
Corporation, on behalf of the Corporation.

Notary Public

State of Nebraska)
) ss.
County of Butler)

The foregoing instrument was acknowledged before me on _____, 2011
by Randy R. Kroft

Notary Public

Council member Kroesing made a motion to advance to agenda item #12 Consideration
of a Ground Lease Agreement with Bryon Forney from July 1, 2011 to June 30, 2021. Council
member Smith seconded the motion. Voting AYE: Council members Smith, Kroesing,
Vandenberg, Rogers, Scribner and Svoboda. Voting NAY: None. The motion carried.

City Attorney Egr stated that there was a ground lease that was executed way back
when Dried Whey had the property. They basically entered into a 99 year lease. That's why
there's references in the old lease in paragraph 11 to a 10 year lease and then eight 10 year
renewals and a final renewal for 9 years. That's the background for how they put a building on
property that they don't own. The Industrial and Business Development Corporation was
involved in that and in order to put a building on City property, they wanted a 99 year lease.

Mayor Zavodny stated that there are two considerations here. One, do you want to
extend the lease to Bryon Forney and two, do you want to increase the rent to \$75 instead of
\$50 per month.

Council member Kroesing made a motion to approve a ground lease agreement at \$900
per year (\$75 per month) with Bryon Forney from July 1, 2011 to June 30, 2021. Council

member Smith seconded the motion. Voting AYE: Council members Kroesing, Smith, Svoboda, Scribner, Rogers and Vandenberg. Voting NAY: None. The motion carried.

GROUND LEASE

THIS AGREEMENT, made and entered into this 11th day of May, 2011, by and between the CITY OF DAVID CITY, David City, Nebraska, A Municipal Corporation of the County of Butler, State of Nebraska, hereinafter referred to as Lessor, and **BRYON FORNEY**, hereinafter referred to as Lessee (whether one or more in number.)

WITNESSETH: That the Lessor has this day leased unto the Lessee the following described real estate, to-wit:

A plot of ground at the David City Municipal Airport located on the Northeast Quarter (NE 1/4) of Section Thirty-one (31), Township Fifteen (15) North Range 3, East of the 6th P.M., Butler County, Nebraska, Two Hundred Fifty Feet (250') by Three Hundred Fifty Feet (350') North of the Access Road as more specifically shown on Exhibit "A" attached hereto and made part hereof

for a term of ten (10) years from the 1st day of July, 2011 to the 30th day of June, 2021, for the sum of \$ 900 per year, at \$75 per month, payable on the 1st day of each month during the term of said lease.

The following conditions are mutually agreed upon:

1. Lessee shall be in default hereunder if:
 - a. Lessee fails to pay rent due hereunder within thirty (30) days after the due date thereof, or
 - b. Lessee fails to perform any other agreement or covenant herein required to be performed by Lessee and such failure continues for thirty (30) days after Lessee has received written notice of such failure. Provided, however, that if such failure is of a nature that it cannot be remedied within such thirty (30) day period, Lessee shall not be deemed to be in default hereunder unless Lessee shall fail to commence the steps necessary to remedy such default within such thirty (30) day period and diligently pursue such remedy.

In the event the Lessee shall be in default hereunder, it shall be lawful for Lessor to re-enter said premises and Lessee agrees to vacate said premises without further notice and if it is necessary to bring action at law to recover possession, to pay a reasonable attorneys fee therefor if permitted by law.

2. That Lessee covenants that it will not use said real estate, or permit same to be used, for any unlawful business or purpose whatsoever and it will use all due care and diligence in guarding said property, the buildings, gates, fences, etc., from damage by fire and the depredations of animals; will pay all water, sewer, and electric charges that shall become due thereon during this lease; that it will not permit any noise or nuisance whatever on said real estate to the disturbance of other tenants or do or permit anything on or about said real estate which will increase the rate of insurance; that the Lessor and its agent may enter at any time to

view same or for any necessary purposes. The Lessee further agrees that it will in all respects comply with the city ordinances and with the requirements of the health authorities and particularly as to keeping said real estate and the streets and alleys adjacent thereto, free and clear from all filth, refuse and obstruction.

3. That at the expiration of the lease or upon a default by the Lessee, the Lessee will without further notice of any kind, quit, and surrender the possession and occupancy of said real estate in as good a condition as received.

4. The parties acknowledged that this is a ground lease with Lessor owning only the underlying real estate while Lessee owns the existing building and other improvements thereon. Lessee shall have the right to make any alterations or additions to the existing building or construct a new building on the premises provided the same is in full compliance with all the terms and provisions of this Ground Lease and provided further that Lessee shall indemnify and hold harmless Lessor from any liens, damages or responsibility whatsoever arising out of such alterations, additions or new construction.

5. The Lessor reserves unto itself, its successors and assigns, for the use and benefit of the public, the right of flight for the passage of aircraft in the airspace above the surface of the real estate hereinbefore described, together with the right to cause in such airspace such noise as may be inherent in the operation of the aircraft, now known or hereinafter used, for navigation or flight in said airspace for landing on, taking off from, or operating on the David City Municipal Airport.

6. The Lessee expressly agrees for itself, its successors and its assigns to restrict the height of structures, objects of natural growth or other obstruction on the hereinbefore described real estate to a height of not more than approximately 65 feet above land level, 1675 feet above M.S.L.

7. The Lessee agrees for itself, its successors, and its assigns, to prevent any use of the above described real estate which would interfere with landing or taking off of aircraft at the David City Municipal Airport, cause electronic interference or otherwise constitute an airport hazard including blowing papers or debris.

8. The Lessee will not, on the grounds of race, color, or national origin, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 21 of the Regulations of the Office of the Secretary of Transportation. The Lessor reserves the right to take such action as the United States Government may direct to enforce this covenant.

9. That access to the real estate be restricted to the present access to the airport property.

10. All notices required or permitted under this Agreement shall be ineffective unless made in writing and forwarded to the parties as follows:

- to Lessor at P.O. Box 191, David City, NE 68632-0191

- to Lessee at 190 West B Street, David City, NE 68632

or to such other address as either party shall give the other party written notice of.

11. Lessee is hereby granted options to extend this lease for eight (8) additional terms of ten (10) years each and one (1) additional term of nine (9) years, with each additional term to commence on the expiration of the preceding ten (10) year term. All of the provisions of this Ground Lease shall apply during each such extension except that Lessor shall have the right to increase the monthly rental payable by Lessee as of the beginning of each such extended term

and the rental as so increased shall be payable throughout such ten (10) or nine (9) year term. Provided, however, that no such increase in excess of \$25.00 per month shall be permitted. On or before the first day of March of any year in which the original term or an extended term of this lease expires, the Lessor shall notify the Lessee in writing of the amount of monthly rental which will be payable by second party during the next ten (or nine) year term if second party chooses to exercise its option to extend the term of this lease. Lessee shall have until June 1 of the same year in which to notify Lessor in writing of Lessee's exercise of such option. In the event Lessor fails to notify Lessee of any proposed increase in rental within the time period so allowed, the rental shall not be increased if Lessee exercises its option. In the event Lessee fails to so notify Lessor of its exercise of any such option during the time period provided, such option and all succeeding options herein granted shall expire and be of no further force or effect.

12. In addition to the foregoing this lease shall be subject to the following general terms and conditions:

- a. This lease constitutes the full agreement between the parties and no amendment or modification shall be effective unless made in writing and signed by the parties.
- b. No term or provision in this lease shall be construed to have been waived by Any party unless such waiver shall have been secured in writing.
- c. The terms and conditions of this lease shall be binding upon and inure to the benefit of the parties hereto in their respective successors and assigns.

IN WITNESS WHEREOF, the said parties have hereunto subscribed their names on the date above written.

LESSOR

LESSEE

By: _____
Alan Zavodny, Mayor for the
CITY OF DAVID CITY
David City, Nebraska
A Municipal Corporation

Bryon Forney

ATTEST:

Interim City Clerk Tami L. Comte

State of Nebraska)
) ss.
County of Butler)

The foregoing instrument was acknowledged before me on _____, 2011 by Alan Zavodny, Mayor for the CITY OF DAVID CITY, David City, Nebraska, a Municipal Corporation, on behalf of the Corporation.

Notary Public

State of Nebraska)
) ss.
County of Butler)

The foregoing instrument was acknowledged before me on _____, 2011
by Bryon Forney

Notary Public

Council member Smith made a motion to advance to agenda item #13 Consideration of accepting the bid of \$2,350.00 for the 1998 Ford Expedition. Council member Kroesing seconded the motion. Voting AYE: Council members Smith, Kroesing, Vandenberg, Rogers, Scribner and Svoboda. Voting NAY: None. The motion carried.

Interim City Administrator Kovar opened the sealed bid for the 1998 Ford Expedition at the Committee of the Whole Meeting on April 27, 2011 and it was as follows:

Patrick Hoeft of David City	\$2,350.00
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Council member Smith made a motion to accept the bid of \$2,350.00 which was submitted by Patrick Hoeft of David City for the sale of the 1998 Ford Expedition. Council member Vandenberg seconded the motion. Voting AYE: Council members Vandenberg, Scribner, Svoboda, Smith, Rogers, and Kroesing. Voting NAY: None. The motion carried.

Council member Kroesing made a motion to advance to agenda item #17 Consideration of the request by Bone Creek Museum that the City act as the pass through agency for grants. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Rogers, Scribner, Smith, Svoboda and Vandenberg. Voting NAY: None. The motion carried.

Mayor Zavodny stated that Paul Perske attended the Committee of the Whole meeting on April 27, 2011 to ask that the City act as a pass through agency for grants for the Bone Creek Museum.

Council member Scribner made a motion to grant the request of Bone Creek Museum that the City act as a pass through agency for grants. Council member Svoboda seconded the motion. Voting AYE: Council members Scribner, Svoboda, Kroesing, Rogers, Vandenberg and Smith. Voting NAY: None. The motion carried.

Council member Scribner made a motion to advance to agenda item #21 Consideration of appointing a representative to address the County Board concerning a possible lease agreement. Council member Vandenberg seconded the motion. Voting AYE: Council members Scribner, Vandenberg, Smith, Svoboda, Rogers and Vandenberg. Voting NAY: None. The motion carried.

Mayor Zavodny stated that the best option right now for the police department offices

would seem to be in the Courthouse. He stated that the county has been very good to work with and so we need representatives to meet with them at their next meeting on May 16, 2011 at 9:15 a.m. Mayor Zavodny stated that he has it on his calendar and is planning to go. Council member Kroesing stated that he would also be willing to attend the meeting.

Council member Smith made a motion to authorize Mayor Zavodny and Council member Kroesing to represent the City at the County Board meeting on May 16, 2011 at 9:15 a.m. Council member Scribner seconded the motion. Voting AYE: Council members Smith, Scribner, Vandenberg, Rogers and Svoboda. Voting NAY: None. Council member Kroesing abstained. The motion carried.

Council member Scribner made a motion to advance to agenda item #14 7:30 p.m. Public Hearing on an Engineering Report for construction of Wastewater Treatment Plant Improvements, as required by the Nebraska Department of Environmental Quality, and consideration of. Council member Smith seconded the motion. Voting AYE: Council members Scribner, Smith, Vandenberg, Rogers, Svoboda and Kroesing. Voting NAY: None. The motion carried.

Mayor Alan Zavodny declared the public hearing open at 7:30 p.m. for an Engineering Report for construction of Wastewater Treatment Plant Improvements, as required by the Nebraska Department of Environmental Quality.

Jim Condon and Craig Reinsch of Olsson Associates were present to present an overview of the proposed project at the David City Wastewater Treatment Facility. Jim Condon stated that there were three things that needed to be accomplished in the public hearing. The first is a brief description of the project, the second is a discussion of the environmental impact and the third is how this project affects the sewer rates.

Craig Reinsch stated that they are planning to move forward with the construction of an anaerobic lagoon cell that will be built within one of the existing lagoon cells. It will be the west half of Cell E. That will equalize the flows partially coming from Henningsen Foods and provide some additional treatment prior to entering the SBR basins. Other components that are required for that include site piping, a pacing and metering structure, a lift station to pump it from the anaerobic basin up to the SBR's, as well as a cover for the anaerobic lagoon to harvest methane gas and a gas management building to take care of that as well. We will also include electrical upgrades and scada components as well. We are also proposing to add VFD's to the blowers at the SBR's to increase electrical efficiency and to provide some pay back as well.

Jim Condon stated that in addition to this project that they are talking about relocating the main pump station to the system. They are working on that as a separate issue and trying to get some FEMA grant funding for that. If they do get that is should be about a 75% grant for that part of the project. As for the environmental impact, there are several positive impacts from this project. We are reducing energy costs so we are saving a significant amount and we are reducing greenhouse gas emissions by harvesting the methane and keeping the anaerobic lagoon covered and in addition to that we are improving the operation of the plant by leveling out the flows that we get from Henningen's and pretty much making it a constant process rather than all of the ups and downs that you get when you are in operation and then off for the weekends. For the most part, we have no significant impacts. There will be some impacts during construction. You will have the noise during construction and the dust and maybe some temporary cut-in types of issues but very minor and certainly not anything that will generate any violations of your permits. So, overall, we have something that we feel has a positive environmental impact. With that, the only other item is the actual impact on the sewer rates that you have already felt because you've already raised the

sewer rates. You've already raised the sewer rates, at this point, to cover the cost of this project so there should be no further impact on sewer rates to the users at this time.

Craig Reinsch also stated that the improvements will all be conducted either within the existing wastewater treatment facilities or on City property. There will be no additional land required. If the grant goes through for the relocation of the primary pump station, that will be located on City property that is located on the east side of Road M. In the negotiations with Henningsen Foods, they will be paying approximately 65% of the capital cost of the project as well. That is another financial benefit to the City.

Jim Condon stated that Henningsen Foods feels quite good about this because of the energy savings and the reduced costs that they are going to have it ends up being about neutral to them. It is a very positive project.

Discussion followed.

Mayor Zavodny declared the public hearing closed at 7:54 p.m.

Council member Smith made a motion to advance to agenda item #7 Consideration of the Downtown Improvement District. Council member Vandenberg seconded the motion. Voting AYE: Council members Vandenberg, Smith, Scribner, Rogers, Svoboda and Kroesing. Voting NAY: None. The motion carried.

Matt Rief of Olsson Associates was present to give an update concerning the Downtown Improvement District. He stated that in the previous months we had applied for downtown revitalization funds and that leadership application was denied for various reasons.

Keith Marvin, Butler County Economic Development Director stated that one of the primary reasons that the application was denied was that we don't have a building inspector program in the community. That is a mandatory process in order to get your leadership community designation and to get downtown improvement funds. There was a number of other things that they wanted to see that are currently under way and trying to accomplish in the community but we aren't far enough along in those processes that they felt that they were going to accept our application at this time.

Mayor Zavodny stated, "Just to quantify that it was \$350,000 that we are not getting."

Matt Reif handed out two applications that he would like to see the City try to obtain funding through. The first was through the Dept. of Economic Development. This is community block grant through the public works application. This is kind of an initial screening process for a community development process and we can go under limited clientele. He stated that he has not previously done this however Northeast Development District has done this before at Wayne and they were successful with it. Basically, what it looks at is disabled and LMI and the sidewalks and the curb ramps for ADA compliance. What this application is basically for is an eligible project and its due on May 22, 2011. This really doesn't take a council action. Northeast Economic Development is putting together the application. Hopefully, this will fill the void of the \$350,000 of downtown revitalization funds the City didn't receive. A big chunk of the downtown is the sidewalks.

Mayor Zavodny asked how competitive this grant was.

Matt Reif answered by saying that it depended on how many applications they receive and if they meet low to moderate income then it will be pretty difficult. We will know from this initial

screening. What we will have to do is have a public hearing in June if they accept this initial screening.

Keith Marvin stated that Northeast Economic Development District does this for the City and it is part of the dues that the City pays to them.

Matt Reif stated that the other grant application is the Transportation Enhancement Program and this would be for historic lighting. This one is 80/20 so it takes a 20% City match.

Mayor Zavodny stated that the City will be buying them anyway so we don't have anything to lose.

Matt Reif stated that this follows an early 1900's photo and is contiguous with what is currently there.

Mayor Zavodny stated that he has been reading a lot about grants if we were to go with LED lighting and asked Matt what he thought about that.

Matt Reif stated that they looked at LED lighting and it wasn't quite cost effective but they could put that in if that is what the council wants.

Mayor Zavodny stated that he has seen that several other communities have gone to that because they basically had it paid for.

Keith Marvin stated that what this grant is going to look at more than anything is the style of lighting. They aren't going to care if you put in high pressure sodium, metal alloy or LED.

Matt Reif stated that he knew what Mayor Zavodny was talking about and they are energy grants where some of the communities transferred their existing lights over to LED. It's about a wash in electricity over about five years or two or three years. He asked if David City applied for that with the methane.

Keith Marvin stated that the only grant that was applied for is the same as the courthouse got a grant for to do the window replacements in the old facility plus a new boiler if they met a certain level of energy efficiency.

Mayor Zavodny asked Matt Rief and Keith Marvin if they would check on the availability of grant funds for LED lighting.

Keith Marvin stated that was through the stimulus money.

Mayor Zavodny stated that if we are going to be doing this that we should consider all of our options. If it's not available then it's not available but at least we explored all of our options.

Matt Reif stated that this grant would cover LED lighting if that is what you want to put in. It would cover that cost. Right now there is a due date of May 20, 2011 and it's this one page form. This doesn't take any council action either. It's just a one page form that we submit to see if the project is eligible. Matt Rief also stated that he pretty much has the form filled out, it talks about the historic lighting and it just needs some signatures. He stated that Keith made a call in and it should be a historic district or eligible.

Mayor Zavodny asked what that takes.

Keith Marvin stated that this community is being held hostage to a decision that was made 50 years ago and that would be when they decided to tear down the old court house. Now the preservationists won't give us the ability to make this downtown a historic district or deem it eligible because we tore our courthouse down in the 60's. He also stated that he has been involved with three of four of these that he has helped write that were successful and that is to expect a minimum of 20% and we should be prepared to go higher because it is competitive and the more that we put in as a match, the better we score. The scoring sheet looks at that whole thing and if you only did the minimum you only got 1 point or zero points so the more you match the more points you get.

Mayor Zavodny stated that we should apply for both of these grants because, as he stated earlier, we are going to do the project anyway.



Nebraska Department of Roads
Transportation Enhancement Program
Intent-to-Apply Form

For Office Use Only
 Date Received: _____

TYPE OF LOCAL PUBLIC AGENCY (LPA) (Check One):		<input type="checkbox"/> Village	<input checked="" type="checkbox"/> City	<input type="checkbox"/> County
LPA NAME: City of David City		<input type="checkbox"/> NRD	<input type="checkbox"/> State	<input type="checkbox"/> Other
LPA CONTACT PERSON: Joan Kovar			TITLE City Clerk	
MAILING ADDRESS: (Street) PO Box 191		CITY: David City	STATE: NE	ZIP: 68632
DAYTIME PHONE NUMBER: 402-367-3135	FAX NUMBER: 402-367-3126	E-MAIL: JKovar@davidcityne.com		
SIGNATURE OF CONTACT PERSON:		ESTIMATED FEDERAL FUNDING REQUESTED: \$ 400,00		
LPA SIGNATURE: (Mayor or Chairperson)		TITLE:		
PROPOSED PROJECT NAME: David City Historic Downtown Lighting		PROJECT TYPE: (Select One Category) <input type="checkbox"/> Trails <input checked="" type="checkbox"/> Historic Preservation <input type="checkbox"/> Scenic or Historic Byways		
PLEASE DESCRIBE THE PROPOSED PROJECT AND ITS PURPOSE: Historic lighting for the downtown business district to include approximately 10 blocks. Historic lighting was a proposed improvement identified in Downtown Revitalization Improvement Plan completed in 2008. Part of this study was a public involvement phase that resulted in bringing back a historic theme for future improvements. Photographs of David City from the early 1900s provide a glimpse into history and offer a lighting design that can be replicated today. These photo resources show an acorn type fixture on a decorative pole. The downtown streets are brick with of the many downtown district buildings dating back to the early 1900's including the Thorpe Opera House that is on the Historic Registry. Another part of the project, if eligible, is repairing the driving lanes of the brick streets.				

Philip Lorenzen, with D.A. Davidson stated that this is the Ordinance that was tabled at the last meeting. He said, "The timing at the last meeting to go ahead and process this as a conventional street improvement district would not fit the calendar. It seemed that this project is essential to completing the drainage work that would come off of Industrial Drive and from the drainage area to the south and to the west. So, this is an important step. Like the other actions that you have taken with the Resolution of Necessity and prior street improvement districts, until you actually go to bids and let a contract, you are not obligated to do this project. This simply provides the mechanism and the vehicle for going ahead and contracting for the project and financing the project. We would expect that the project will be financed to a large extent through tax increment financing. The City would be the guarantor because you would issue general obligation bonds and we would pay as much as you could over the course of time from tax increment financing. The process is to create a thoroughfare district. If you have a street that connects a highway with another highway or a highway with a county road, which "O" Street does (Highway 15 with County Road 36) then that is a thoroughfare. This Ordinance does two things. It finds that it is a thoroughfare and it creates, in case you want to move forward with this project, a street improvement district as the contracting vehicle and a financing vehicle to go ahead and do the improvements. We would need to hold a hearing at the regular meeting in June on the matter but the Ordinance could be published next week if you waive the statutory rule requiring three readings. It could be published next week and publish the notice of creation twice and then we would have a hearing on the determination and the verification that it is a thoroughfare at that meeting in June and that's the same time that we have a hearing on the downtown improvement district so they would both run together at that point in time. Again, this is the vehicle to do the financing and the contracting if you wish and it doesn't mandate that you do the project but it is the first step to put you on the road to success."

Mayor Zavodny stated that in order to do this we will need to suspend the rules and pass the Ordinance on third and final.

Philip Lorenzen stated that he would recommend that was the best way to go.

Council member Smith introduced Ordinance No. 1144. Council member Kroesing made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Vandenberg seconded the motion. Voting AYE: Council members Scribner, Svoboda, Rogers, Smith, Vandenberg and Kroesing. Voting NAY: None. The motion carried.

Council member Kroesing made a motion to pass and adopt Ordinance No. 1144 on the third and final reading. Council member Smith seconded the motion. Voting AYE: Council members Svoboda, Scribner, Rogers, Vandenberg, Smith, and Kroesing. Voting NAY: None. The motion carried and Ordinance No. 1144 was passed and adopted as follows:

ORDINANCE NO. 1144

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA, DESIGNATING A MAIN THOROUGHFARE IN THE CITY OF DAVID CITY, CREATING A STREET IMPROVEMENT DISTRICT WITHIN THE CITY OF DAVID CITY TO BE KNOWN AS STREET IMPROVEMENT DISTRICT NO. 2011-3; DEFINING THE BOUNDARIES OF SAID DISTRICT AND THE PROPERTY CONTAINED THEREIN; AND, PROVIDING FOR THE CONSTRUCTION OF IMPROVEMENTS THEREIN CONSISTING OF GRADING AND CONSTRUCTION OF CURB AND GUTTER, CONCRETE PAVING, AND STORM SEWER IMPROVEMENTS

TOGETHER WITH SUCH OTHER APPURTENANCES AS MAY BE INCIDENTAL
THERE TO.

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

Section 1. The Mayor and City Council of the City of David City, Butler County, Nebraska, hereby find, determine and order that the following street is hereby designated as a main thoroughfare in and for the City of David City, Nebraska: West O Street from the east right-of-way line of North 4th Street (Nebraska State Highway 15) west to the connection of said O Street with east/west County Road 36 at the City's western Corporate Limits, and that all actions necessary for the creation of a street improvement district under Section 17-512 of the Reissue Revised Statutes of Nebraska, 2007, have been taken.

Section 2. The Mayor and City Council further find and determine that within said main thoroughfare of O Street, it is in the best interests of the City that West O Street from the east right-of-way line of North 4th Street (Nebraska State Highway 15) west to the west corporate limits of the City (also being the centerline of the Burlington Northern Railroad trackage) including the intersections at 4th Street and North Industrial Drive, be improved as hereinafter described; and that it is in the best interests of the City of David City to create a street improvement district for the construction of the said improvements.

Section 3. There is hereby created within the City of David City, Nebraska, a street improvement district to be known and designated as Street Improvement District No. 2011-3, the outer boundaries of which shall contain the following property:

BEGINNING AT THE POINT OF INTERSECTION OF THE EAST RIGHT-OF-WAY (R.O.W.) LINE OF 4TH STREET AND THE NORTH R.O.W. LINE OF O STREET; THENCE SOUTHWESTERLY TO THE POINT OF INTERSECTION OF THE SOUTH R.O.W. LINE OF O STREET AND THE EAST R.O.W. OF 4TH STREET; THENCE SOUTH ALONG SAID EAST R.O.W. LINE TO THE POINT OF INTERSECTION OF SAID EAST R.O.W. LINE AND THE EASTERLY EXTENSION OF THE SOUTH LINE OF LOT 3, BLOCK 2 OF GREEN ACRES ADDITION TO THE CITY OF DAVID CITY; THENCE WEST TO THE SOUTHWEST CORNER OF LOT 4, BLOCK 1 OF HILGERS ADDITION TO THE CITY OF DAVID CITY, SAID POINT ALSO BEING ON THE EAST R.O.W. LINE OF 2ND STREET; THENCE WEST TO THE SOUTHEAST CORNER OF THE NORTH 75' OF LOT 2, BLOCK 2 OF SAID HILGERS ADDITION, SAID POINT ALSO BEING ON THE WEST R.O.W. LINE OF 2ND STREET; THENCE WEST TO THE POINT OF INTERSECTION OF THE WESTERLY EXTENSION OF THE SOUTH LINE OF THE NORTH 75' OF SAID LOT 2 AND THE CENTERLINE OF B.N.S.F. RAILROAD R.O.W.; THENCE NORTHWESTERLY ALONG SAID CENTERLINE TO THE POINT OF INTERSECTION OF SAID CENTERLINE AND THE WESTERLY EXTENSION OF THE NORTH LINE OF LOT 1, SYPALS SUBDIVISION IN THE CITY OF DAVID CITY; THENCE EAST TO THE POINT OF INTERSECTION OF THE EASTERLY EXTENSION OF THE NORTH LINE OF SAID LOT 1 AND THE EAST R.O.W. LINE OF 4 STREET; THENCE SOUTH ALONG SAID EAST R.O.W. LINE TO THE POINT OF BEGINNING.

Within Street Improvement District No. 2011-3, West O Street from the east right-of-way line of North 4th Street (Nebraska State Highway 15) west to the west corporate limits of the City (also being the centerline of the Burlington Northern Railroad trackage) including the intersections at 4th Street and North Industrial Drive, in the City of David City, shall be and is hereby ordered improved by construction of improvements therein consisting of grading, construction of curb and gutter, concrete paving, and storm drainage, together with other necessary appurtenant improvements.

Section 4. All of said improvements shall be constructed to the established grades as fixed by ordinances of the City of David City, and shall be constructed in accordance with plans and specifications to be prepared by the City's Engineers and approved by the Mayor and City Council. Said improvements shall be made at public cost, but special assessments shall be levied to reimburse the City for the cost of the improvements as provided by law.

Section 5. Notice of hearing on the creation of said Street Improvement District No. 2011-3 shall be published in the Banner Press, a legal newspaper of general circulation within the City of David City, for two weeks after the publication of this Ordinance.

Section 6. If any section, paragraph, clause, or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause, or provision shall not affect any of the other provisions of this Ordinance.

Section 7. This Ordinance shall be published and take effect as provided by law.

PASSED AND APPROVED this _____ day of _____ 2011.

Mayor

ATTEST:

Interim City Clerk

(SEAL)

Publish May 19, 2011

NOTICE OF DESIGNATION OF MAIN THOROUGHFARE, AND
NOTICE OF CREATION OF STREET IMPROVEMENT DISTRICT
NO. 2011-3 AND NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the Mayor and City Council of the City of David City, Nebraska, have by Ordinance No. 1144 designated the following as a main thoroughfare in and for the City of David City, Nebraska: West O Street from the east line of north 4th Street (Nebraska State Highway 15) west to the connection of said O Street with east/west County Road 36 at the City's western Corporate Limits.

Notice is further given that the City by its adoption of said Ordinance, pursuant to Section 17-512, Reissue Revised Statutes of Nebraska, 2007, has created a certain street improvement district designated as Street Improvement District No. 2011-3, for the construction of improvements consisting of grading, construction of curb and gutter, concrete paving, and storm drainage, together with other necessary appurtenant improvements all as set out in said Ordinance and in accordance with plans, specifications and estimate of cost as prepared by the City's consulting engineers, Olsson and Associate, as approved by the Mayor and City Council.

The outer boundaries of said Street Improvement District No. 2011-3 shall contain the following property:

BEGINNING AT THE POINT OF INTERSECTION OF THE EAST RIGHT-OF-WAY (R.O.W.) LINE OF 4TH STREET AND THE NORTH R.O.W. LINE OF O STREET; THENCE SOUTHWESTERLY TO THE POINT OF INTERSECTION OF THE SOUTH R.O.W. LINE OF O STREET AND THE EAST R.O.W. OF 4TH STREET; THENCE SOUTH ALONG SAID EAST R.O.W. LINE TO THE POINT OF INTERSECTION OF SAID EAST R.O.W. LINE AND THE EASTERLY EXTENSION OF THE SOUTH LINE OF LOT 3, BLOCK 2 OF GREEN ACRES ADDITION TO THE CITY OF DAVID CITY; THENCE WEST TO THE SOUTHWEST CORNER OF LOT 4, BLOCK 1 OF HILGERS ADDITION TO THE CITY OF DAVID CITY, SAID POINT ALSO BEING ON THE EAST R.O.W. LINE OF 2ND STREET; THENCE WEST TO THE SOUTHEAST CORNER OF THE NORTH 75' OF LOT 2, BLOCK 2 OF SAID HILGERS ADDITION, SAID POINT ALSO BEING ON THE WEST R.O.W. LINE OF 2ND STREET; THENCE WEST TO THE POINT OF INTERSECTION OF THE WESTERLY EXTENSION OF THE SOUTH LINE OF THE NORTH 75' OF SAID LOT 2 AND THE CENTERLINE OF B.N.S.F. RAILROAD R.O.W.; THENCE NORTHWESTERLY ALONG SAID CENTERLINE TO THE POINT OF INTERSECTION OF SAID CENTERLINE AND THE WESTERLY EXTENSION OF THE NORTH LINE OF LOT 1, SYPALS SUBDIVISION IN THE CITY OF DAVID CITY; THENCE EAST TO THE POINT OF INTERSECTION OF THE EASTERLY EXTENSION OF THE NORTH LINE OF SAID LOT 1 AND THE EAST R.O.W. LINE OF 4 STREET; THENCE SOUTH ALONG SAID EAST R.O.W. LINE TO THE POINT OF BEGINNING.

Within Street Improvement District No. 2011-3, West O Street from the east right-of-way line of North 4th Street (Nebraska State Highway 15) west to the west corporate limits of the City (also being the centerline of the Burlington Northern Railroad trackage) including the intersections at 4th Street and North Industrial Drive, in the City of David City shall be and is hereby ordered improved by construction of improvements therein consisting of grading, construction of curb and gutter, concrete paving, and storm drainage, together with other necessary appurtenant improvements.

Said improvements are to be made in accordance with plans and specifications prepared by the City's Engineers and approved by the Mayor and City Council. Said improvements shall be made at public cost, but special assessments shall be levied to reimburse the City for the cost of the improvements as provided by law.

The Mayor and City Council will meet at the City Hall in David City, Nebraska, the regular meeting place, on the 8th day of June 2011, at 7:30 p.m. to conduct a hearing to determine if the required facts and conditions exist for the designation of the main thoroughfare, for the creation of Street Improvement District No. 2011-3 and, for the construction of the proposed improvements in said District

Dated this 11th day of May 2011.

Mayor

Attest:

Interim City Clerk

[SEAL]

Publish:

May 26, 2011

June 2, 2011

Matt Rief stated that the engineering agreement is an amendment to the Industrial Drive agreement. They are really tied together. We want to make sure that we take a good overall look at the drainage. So there are fees in there to look at the overall drainage.

Mayor Zavodny asked what they would do extra on the highway piece of the drainage.

Matt Rief stated that he would develop concepts and then run them by the district engineer and get some sort of approval right there and what you will have to do then is if we are going to do some changes there then you need to get a permit to occupy state right-of-way and submit those

plans to them. He said, "I do know that now they require the Cities to write a check saying that now they are going to make these improvements and follow these standards of the engineering plans. It gets reviewed by traffic, roadway, and a few other departments along the way".

Mayor Zavodny asked how long this process would take.

Matt Rief stated that after you hand in the application it usually get comments in about one to two months. These are pretty normal and he's done quite a few of them.

Council member Kroesing made a motion to authorize an engineering agreement with Olsson Associates relative to the "O" Street improvement district. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Vandenberg, Smith, Svoboda, Rogers and Scribner. Voting NAY: None. The motion carried.



1ST AMENDMENT TO LETTER AGREEMENT FOR ENGINEERING SERVICES

THIS AMENDMENT, made as of the 11th day of May 2011, by and between the City of David City, Nebraska, hereinafter called the "Client", and Olsson Associates, hereinafter called "Olsson", WITNESSETH, That whereas the Client intends to complete the Design for Industrial Drive Paving Improvements, David City, Nebraska, for which services were provided under the contract between the Client and Olsson dated April 8, 2011, and wishes to add Design of West "O" Street in conjunction with the Project. Said Additional Services shall be provided as set forth hereafter.

Scope of Services

GENERAL

We propose to render professional services in connection with the West "O" Street from BNSF Railroad to Highway 15 improvements. Olsson shall perform for Client professional services in all phases of the Project to which this Amendment applies as hereinafter provided. These services will include serving as Client's professional representative for the Project, providing professional consultation and advice, and furnishing customary services incidental thereto.

1. **Site Survey**
 - a. Horizontal and Vertical Control
 - b. Topographic Surveys
 - c. Download Survey and Create Base Map
 - d. Establish Highway 15 Right of Way

2. **Project Management**
 - a. Design Kickoff
 - b. Contract Administration
 - c. Council Meeting (1)

3. **Public Paving Improvements**
 - a. Establish horizontal alignments
 - b. Design vertical alignments
 - c. Develop alternative for Highway 15 and O St. Intersection Improvements
 - d. Cross sections.
 - e. Plan and profile sheets
 - f. Geometrics, joints and grades
 - g. Storm Sewer Plans
 - h. Construction and removal sheets
 - i. Erosion Control Design
 - j. Utility Coordination
 - k. NPDES Permit
 - l. Quantities and Cost Estimate
 - m. Notes, Details, Typical

- n. Submit plans to City for review
- o. Property owners meetings (2)
- p. City Review Meeting
- q. Finalize plans for Bidding
- r. Compile Bid Package
- s. NDOR Right of Way Permit

4. Drainage Study

- a. Review Existing Drainage Patterns
- b. Delineate Drainage Basins
- c. Coordinate with NRD and incorporate proposed NW drainage improvements
- d. Develop Proposed Improvements
- e. Develop Hydraulic Model
- f. Design Memo

5. Bid Phase Services

- a. Advertise for bids based upon approved plans and construction documents and authorization by the City.
- b. Answer questions and interpret construction documents.
- c. Open bids and evaluate proposals.
- d. Award and execute construction contract(s).

6. Assumptions

Construction Phase Services will be amended to this contract after award of the project to include construction staking, observation, testing, and administration.

Any major utility relocation design will be considered additional services.

7. Compensation

Client shall pay to Olsson for the performance of the Basic Services the actual time of personnel performing such Services on the basis of Salary Costs times a factor of 2.5 for services rendered by our principals and employees engaged directly on the Project plus Reimbursable Expenses, unless otherwise agreed to by both parties. Reimbursable expenses will be invoiced in accordance with the Schedule contained in the General Provisions attached to this Letter Agreement. Olsson's Basic Services will be provided on a time and expense basis not to exceed **Thirty-Seven Thousand Seven Hundred and 00/100 ----- Dollars (\$37,700.00)**. **Olsson shall submit invoices on a monthly basis, are due upon presentation and shall be considered past due if not paid within 30 calendar days of the due date.**

8. If this proposal satisfactorily sets forth your understanding of our agreement, please sign the Amendment in the space provided (indicating Client's designated Project representative if different from the party signing the Agreement). Retain a copy for your files and return an executed original to Olsson.
9. By signing below, you acknowledge that you have full authority to bind Client to this agreement.

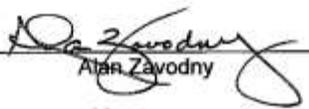
OLSSON ASSOCIATES

By 
Matthew R. Rief, Project Manager

By 
Dave D. Ziska, P.E.

Accepted this 11th day of
May, 2011.

CITY OF DAVID CITY, NEBRASKA

By 
Alan Zavodny
Title Mayor

ATTEST:

By 
Joan E. Kovar
Title City Clerk

G:\0ftw\PROPOSAL\DavidCity\Industrial Drive\Amendment 1.docx

Ordinance No. 1145 was introduced and passed on first reading only on April 13, 2011. Council member Smith made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Scribner seconded the motion. Voting AYE: Council members Scribner, Smith, and Vandenberg. Voting NAY: Council members Rogers, Svoboda and Kroesing. The motion failed.

Council member Smith made a motion to pass Ordinance No. 1145 on the second reading. Council member Scribner seconded the motion. Voting AYE: Council members Smith, Vandenberg and Scribner. Voting NAY: Council members Rogers, Svoboda and Kroesing. Since there was a tie Mayor Zavodny voted AYE and the motion carried and Ordinance No. 1145 was passed on second reading only as follows:

ORDINANCE NO. 1145

AN ORDINANCE TO AMEND ZONING ORDINANCE NO. 1060 BY AMENDING ARTICLE 4: GENERAL PROVISIONS BY DELETING SECTION 4.25 SWIMMING POOLS; 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 ARTICLE 4: GENERAL PROVISIONS OF ZONING ORDINANCE NO. 1060 BE AMENDED AS FOLLOWS:

ARTICLE 4: GENERAL PROVISIONS

Section 4.01 Planning Commission Recommendations. Pursuant to Neb. Rev. Stat. §19-901 (R.R.S.1996), it shall be the purpose of the Planning Commission to hold public hearings upon, and make recommendation to the legislative body, regarding proposed amendments to the comprehensive plan and zoning regulations within the jurisdiction of the city.

The Commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the City Council shall not hold its public hearings or take action until it has received the final report of the Commission.

Section 4.02 District Regulations, Restrictions, Boundary Creation. No such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearings shall be given by publication thereof in a paper of general circulation in the city at least one time ten days prior to such hearing.

Section 4.03 Jurisdiction. The provisions of this ordinance shall apply within the corporate limits of the City of David City, Nebraska, and within the territory beyond said corporate limits as now or hereafter fixed, for a distance of one mile, as established on the map entitled "The Official Zoning Map of the City of David City, Nebraska", and as may be amended by subsequent annexation.

Section 4.04 Provisions of Ordinance Declared to be Minimum Requirements. In their

interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. Whenever the provisions of this ordinance are in conflict with the provisions of any other ordinance or municipal law, the ordinance or municipal law with the most restrictive provisions shall govern.

Section 4.05 Zoning Affects Every Building and Use. No building or land shall hereafter be reused and no building or part thereof shall be erected, moved or altered unless for a use expressly permitted by and in conformity with the regulations herein specified for the district in which it is located, except that any structure damaged or destroyed may be restored if such structure does not involve a non-conforming use.

Section 4.06 Lot.

4.06.01 Every building hereafter erected, reconstructed, converted, moved or structurally altered shall be located on a lot or lot of record and in no case shall there be more than one principal building on a lot unless otherwise provided.

4.06.02 More than one principal building of a single permitted use may be located upon a lot or tract in the following instances if approved by the zoning administrator. The minimum setback for such buildings shall be ten feet measured from the nearest point of said buildings.

1. Institutional buildings
2. Public or semi-public buildings
3. Multiple-family dwellings
4. Commercial or industrial buildings
5. Home for the aged
6. Agricultural buildings

Section 4.07 Reductions in Lot Area Prohibited. No lot, even though it may consist of one or more adjacent lots of record, shall be reduced in area so that yards, lot area per family, lot width, building area, or other requirements of this ordinance are not maintained. This section shall not apply when a portion of a lot is acquired for a public purpose.

Section 4.08 Obstructions to Vision at Street Intersections Prohibited. On a corner lot, within the area formed by the center line of streets at a distance of 60 feet from their intersections, there shall be no obstruction to vision between a height of 2 ½ feet and a height of eight feet above the grades of the bottom of the curb of the intersecting streets, measured from the point of intersection of the centerline of the streets. At the intersection of major or other arterial streets, the 60-foot distance shall be increased to 90 feet for each arterial leg of the intersection. The requirements of this section shall not be deemed to prohibit any necessary retaining wall. The city administrator has right to increase this distance based upon subdivision design and speed limits along major or other arterials. See "Sight Triangle" as defined in Article 2 of this ordinance.

Section 4.09 Yard Requirements.

4.09.01 Yard requirements shall be set forth under the Schedule of Lot, Yard, and Bulk Requirements for each zoning district. Front, side and rear yards shall be provided in accordance with the regulations hereinafter indicated and shall be unobstructed from the ground level to the sky, except as herein permitted.

4.09.02 All accessory buildings that are attached to principal buildings (e.g., attached garages) shall comply with the yard requirements of the principal building, unless otherwise specified.

- 4.09.03 The zoning administrator may permit a variation in front yard setbacks to allow new or relocated structures to conform to the average existing setback provided that 1) more than 30 percent of the frontage on one side of a street between intersecting streets is occupied by structures on the effective date of this ordinance, and 2) a minority of such structures have observed or conformed to an average setback line.
- 4.09.04 Any side or rear yard in a residential district which is adjacent to any existing industrial or commercial use shall be no less than 25 feet and shall contain landscaping and planting suitable to provide effective screening.
- 4.09.05 Any yard for a commercial or industrial use located within any Commercial or Industrial Zoning District, which is adjacent to any residential use, or district shall be increased to 40 feet and shall contain landscaping and planting suitable to provide effective screening; except in the Downtown Commercial District. Included in the increased yard, a solid or semi-solid fence or wall at least six feet, but not more than eight feet high shall be provided adjacent to an adjoining residential district unless the adjacent residential district and industrial district are separated by a street right-of-way. The owner or owners of the property in the Commercial and/or Industrial District shall maintain said fence or wall in good condition. Said fencing shall be constructed of commercially available fencing.

Section 4.10 Through Lots.

- 4.10.01 Through Lots shall follow the following criteria:
1. Where a Through Lot abuts a major thoroughfare, such as Highway 15, etc., and access is made from the other frontage street and access along said thoroughfare is restricted, fences and screening devices shall meet all fence and screening requirements and shall be treated as if they were in a rear yard. The Rear Yard setback for primary and accessory buildings shall follow the prescribed setback within the zoning district.
 2. Where a Through Lot is part of a triple frontage lot and abuts a major thoroughfare, the Rear Yard shall meet the standards of number 1 above, while the other two frontages shall be treated as a Corner Lot with a Front Yard setback and a Street Side Yard setback.
 3. Where a Through Lot occurs, other than along a major thoroughfare, the following shall apply:
 - a. Where all principal structures in the development face the same frontage, then the Rear Yard setback for fences and screening shall be zero feet and all accessory buildings shall meet the prescribed setback within the zoning district. This shall apply similarly at triple frontage lots, provided the remaining two frontages are treated like a typical Corner Lot.
 - b. Where principal structures face different directions along both frontages, the setback for fences and screening to the rear of said structures shall be the same as any prescribed Front Yard setback within the zoning district. This shall apply similarly at triple frontage lots, provided the remaining two frontages are treated like a typical Corner Lot. All accessory buildings in this condition, shall comply with the minimum Front Yard setbacks rather than the reduced setback allowed for accessory buildings.

Section 4.11 Drainage. No building, structure, or use shall be erected on any land, and no change shall be made in the existing contours of any land, including any change in the course, width, or elevation of any natural or other drainage channel, that will obstruct, interfere with, or substantially change the drainage from such land to the detriment of neighboring lands. Anyone

desiring to build or otherwise change the existing drainage situation shall be responsible for providing to the City or their designated agent with data indicating that such changes will not be a detriment to the neighboring lands.

Section 4.12 Permitted Obstructions in Required Yards. The following shall not be considered to be obstructions when located in the required yards:

- 4.12.01 *All Yards:* Steps and accessibility ramps used for wheelchair and other assisting devices which are four feet or less above grade which will not exceed minimum requirements of the Americans with Disabilities Act are necessary for access to a permitted building or for access to a lot from a street or alley; chimneys projecting 24 inches or less into the yard; recreational equipment and clothes lines; approved freestanding signs; arbors and trellises; flag poles; window unit air conditioners projecting not more than 18 inches into the required yard; and fences or walls subject to applicable height restrictions are permitted in all yards..
- 4.12.02 *Front Yards:* Bay windows projecting three feet or less into the yard are permitted.
- 4.12.03 *Rear and Side Yards:* Open off-street parking spaces or outside elements of central air conditioning systems.
- 4.12.04 *Double Frontage Lots:* The required front yard shall be provided on each street, unless otherwise provided.
- 4.12.05 *Building Groupings:* For the purpose of the side yard regulation, a group of business or industrial buildings separated by a common party wall shall be considered as one building occupying one lot.

Section 4.13 Projections from Buildings

- 4.13.01 Cornices, eaves, canopies, belt courses, sills, ornamental features, and other similar architectural features may project not more than two feet into any required yard or into any required open space, provided that such required yard or open space meets the current minimum yard standards.
- 4.13.02 As a part of single and two family residences, open uncovered porches or decks no higher than 18 inches above grade of the lot on the side of the structure where such porch or deck is located may be permitted in any required yard for accessibility purposes to principle structure with a required zoning permit.
- 4.13.03 As a part of single and two-family residences, uncovered porches, decks, or ramps needed for medical reasons no higher than the first floor above grade on the side of the building to which they are appurtenant and in no event higher than 30 inches above grade of the lot on the side of the structure where such porch, deck or ramp is located, may be allowed and extend:
1. Three feet into any side yard that otherwise meets minimum side yard requirements provided that the other side yard also meets such minimum side yard requirements and remains free of encroaching structures of any kind; and that said new encroachment meets all separation requirements between structures as determined in the City's Regulations, except gated fences providing access to the rear yard.
 2. Eight feet into a front yard provided that the front yard otherwise meets minimum front yard requirements and provided further 1) that in no event may such porch or deck cover more than 96 square feet of the required front yard or extend beyond the side walls of the building structure, and 2) front decks or porches shall not be higher than 30 inches above ground and no higher than the first floor, except that on homes with front entryways at first floor level but driveway cuts and garage floors at basement level, there may be constructed a veranda-type uncovered deck or porch extending from the front deck or porch over the garage door or doors, which extended area shall be at the same elevation and shall have bracing as required by the zoning administrator, and 3) Covered

- porches, built of materials of the same or similar nature as the roof of the principal structure may be allowed with eaves not to exceed 12 inches.
3. Safety railings shall be installed as per the City's Regulations and as approved by the zoning administrator.
 4. One-half of the distance into the required rear yard, but in no event closer than 15 feet to any property line.
- 4.13.04 Provided further, that no railing or other shall be placed around such deck or porch in a rear yard or side yard and no such barrier which interferes appreciably more than 25 percent with the passage of light or air shall be constructed within the required front yard or within five feet of any side yard or 15 feet of any rear yard lot line. Any such deck or porch when located on a lot at the intersection of two streets or a street and an alley, shall comply with the provisions designed to ensure proper sight distances as set forth in this ordinance for fences and hedges. Any side yard on a corner lot may be considered as a front yard for purposes of determining permitted encroachments as provided herein.

Section 4.14 Accessory Buildings and Uses.

- 4.14.01 No accessory building shall be constructed upon a lot for more than six months prior to beginning construction of the principal building. No accessory building shall be used for more than six months unless the main building on the lot is also being used or unless the main building is under construction; however, in no event shall such building be used as a dwelling unless a certificate of occupancy shall have been issued for such use.
- 4.14.02 No detached accessory building or structure shall exceed the maximum permitted height of accessory structures in the proper zoning district.
- 4.14.03 No accessory building shall be erected in or encroach upon the required side yard on a corner lot or the front yard of a double frontage lot.
- 4.14.04 Detached accessory buildings or structures shall be located no closer to any other accessory or principal building than ten feet.
- 4.14.05 The maximum height of any use shall be decreased to 35 feet when located within 100 feet of any residential district.
- 4.14.06 Detached garages and outbuildings in R-1, R-2, R-3 and RM Districts for storage uses and other structures customary and appurtenant to the permitted uses and detached accessory garages shall be constructed and finished of materials customarily used in residential construction, similar color as the principle structure, and the following:
1. Be constructed of materials that are in good repair,
 2. The sidewalls of said building shall not exceed 10 feet in height,
 3. Garages shall have an overhang of at least six inches,
 4. Garages shall have a maximum width of 36 feet.
- 4.12.07. Regulation of accessory uses shall be as follows:
1. Except as herein provided, no accessory building shall project beyond a required yard line along any street, nor be located between the principle structure and the street in an R-1, R-2, R-3 or R-M District.
 2. Service station pumps and pump island may occupy the required yards, provided, however, that they are not less than 15 feet from street lines.
 3. Storage of any boat, boat trailer, camp trailer, or other vehicle shall not be permitted in any required yard; except that a boat, boat trailer, camp trailer may be placed on rock or concrete surfacing in a side yard or rear yard.

Section 4.15 Permitted Modifications of Height Regulations.

- 4.15.01 The height limitations of this ordinance shall not apply to the following, provided that the appropriate yard setbacks are increased by one foot for every two feet in excess

of the maximum height requirement for the given zoning district:

tall	Belfries	Public Monuments
	Chimneys	Ornamental Towers and Spires
	Church Spires	Radio/Television Towers less than 125 feet
	Conveyors	Commercial Elevator Penthouses
	Cooling Towers	Silos
	Elevator Bulkheads	Smoke Stacks
	Fire Towers	Stage Towers or Scenery Lots
	Water Towers and Standpipes	Tanks
	Flag Poles	Air-Pollution Prevention Devices

4.15.02 When permitted in a district, public or semi-public service buildings, hospitals, institutions, or schools may be erected to a height not exceeding 75 feet when each required yard line is increased by at least one foot for each one foot of additional building height above the height regulations for the district in which the building is located.

Section 4.16 Occupancy of Basements and Cellars. No basement or cellar shall be occupied for residential purposes until the remainder of the building has been substantially completed, and any required emergency egress provisions as required per State and life-safety codes.

Section 4.17 Non-Conforming, General Intent. It is the intent of this ordinance to permit lawful non-conformities to continue until they are removed, but not encourage their survival. Such uses are declared by this ordinance to be incompatible with permitted uses in the districts involved. It is further the intent of this ordinance that non-conformities shall not be enlarged upon, expanded or extended nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district except as may be authorized in this these regulations.

Section 4.18 Nonconforming Lots of Record. In any district, notwithstanding limitations imposed by other provision of this ordinance, a primary structure and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this ordinance. This provision shall apply even though such lot fails to meet the requirements for area or width, or both that are generally applicable in the district provided that the yard dimensions and other requirements not involving area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located; that such lot has been owned separately and individually from adjoining tracts of land at a time when the creation of a lot of such size and width at such location would have been lawful; and has remained in separate and individual ownership from adjoining lots or tracts of land continuously during the entire period in which this or previous ordinance would have prohibited creation of such lot. Variance of area, width and yard requirements shall be obtained only through action of the Board of Zoning Adjustment.

Section 4.19 Nonconforming Structures.

4.19.01 ***Authority to Continue:*** Any structure which is devoted to a use which is permitted in the zoning district in which it is located, but which is located on a lot which does not comply with the applicable lot size requirements and/or the applicable bulk regulations, may be continued, so long as it remains otherwise lawful, subject to the restrictions of this section.

4.19.02 ***Enlargement, Repair, Alterations:*** Any such structure described in Section 4.19.01 may be enlarged, maintained, repaired or remodeled, provided, however, that no

such enlargement, maintenance, repair or remodeling shall either create any additional nonconformity or increase the degree of existing nonconformity of all or any part of such structure. All enlargements shall meet all existing required setbacks unless provided elsewhere in this ordinance.

4.19.03 **Damage or Destruction:** In the event that any structure described in Section 4.19.01 is damaged or destroyed, by any means, to the extent of more than 50 percent of its structural value, such structure shall not be restored unless it shall thereafter conform to the regulations for the zoning district in which it is located; provided that structures located on a lot that does not comply with the applicable lot size requirements in Section 4.18, shall not have a side yard of less than five feet. When a structure is damaged to the extent of less than 50 percent of its structural value, no repairs or restoration shall be made unless a zoning permit is obtained and restoration is actually begun within one year after the date of such partial destruction and is diligently pursued to completion.

4.19.04 **Moving:** No structure shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot unless a zoning permit is granted and the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.

Section 4.20 Nonconforming Uses.

4.20.01 **Nonconforming Uses of Land:** Where at the effective date of adoption or amendment of this ordinance, lawful use of land exists that is made no longer permissible under the terms of this ordinance as enacted or amended, such use may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this ordinance;
2. No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this ordinance.
3. If any such nonconforming use of land ceases for any reason for a period of more than 12 consecutive months, any subsequent use of such land shall conform to the regulations specified by this ordinance for the district in which such land is located.

4.20.02 **Nonconforming Uses of Structures:** If a lawful use of a structure, or of structure and premises in combination, exists at the effective date of adoption or amendment of this ordinance, that would not be allowed in the district under the terms of this ordinance, the lawful use may be continued so long as it remains otherwise lawful subject to the following provisions:

1. No existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to use permitted in the district in which it is located;
2. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance but no such use shall be extended to occupy any land outside such building;
3. If no structural alterations are made, any nonconforming use of a structure or structures and premises may be changed to another nonconforming use provided that the Planning Commission and City Council, after each has completed a Public Hearing as per State Statute, either by general rule or by

making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Planning Commission and/or City Council may require appropriate conditions and safeguard in accord with the provisions of this ordinance;

4. Any structure, or structure and land in combination, in any or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which such structure is located and the nonconforming use may not thereafter be resumed;
5. When a nonconforming use of a structure or structure and premises in combination is discontinued or abandoned for 12 consecutive months, the structure or structure and premises in combination shall not thereafter be used except in conformance with the regulations of the district in which it is located;
6. Where nonconforming use status is applied to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

Section 4.21 Repairs and Maintenance.

- 4.21.01 On any building devoted in whole or in part to any nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs or on repair or replacement of non-bearing walls, fixtures, wiring or plumbing provided that the cubic content of the building as it existed at the time of passage of amendment of this ordinance shall not be increased.
- 4.21.02 Nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

Section 4.22 Uses under Conditional Use Permit to be Nonconforming Uses Upon Transfer. Any use for which a conditional use permit is issued as provided in this ordinance shall be deemed a nonconforming use upon transfer of property unless current owner has applied and is granted such conditional use permit.

Section 4.23 Drive-in Facilities. Any use permitted in an zoning district which intends to conduct a portion or all of its business with persons desiring to remain in their automobiles, or which allows products to be consumed on the premises outside the principal building, and which is not subject to the conditional use reviewed in the provisions in Article 6 or is not a part of a Clustered/Mixed Use District, must submit a site plan to be reviewed and approved by the City. In reviewing and approving the site plan for such a use, the City must be satisfied that the traffic circulation on and adjacent to the site conforms to the following criteria:

- 4.23.01 Traffic circulation shall be arranged so that internal pedestrian and vehicular movements are compatible and traffic hazards are minimal.
- 4.23.02 Traffic circulation, ingress and egress shall be arranged so as to avoid hazardous or adverse effects on adjacent sites and streets.

Section 4.24 Recreational Vehicles, Trailers, or Equipment. All vehicles, trailers, or equipment expressly designated or used for recreational or seasonal use shall not be used for dwelling purposes on any lot except as may be authorized elsewhere within this Ordinance. Such vehicles, trailers, or equipment shall not be parked or maintained in the required front yard.

Section 4.25 Prohibited Uses. All uses not specifically listed within a particular zoning district are deemed to be prohibited until some point where this ordinance is amended to include a given use.

Section 4.26 Fees. The payment of any and all fees for any zoning or subdivision related action or permit request shall be required prior to the issuance or investigation of any said action or permit request. Such fees shall be part of the Master Fee Schedule adopted and published by the City Council by separate ordinance.

This Ordinance shall be in full force and effect from and after passage, approval and publication or posting as required by law.

PASSED AND APPROVED THIS 11TH day of May, 2011.

Passed on 2nd reading only
Mayor Alan Zavodny

Passed on 2nd reading only
Interim City Clerk Tami Comte

Council member Scribner introduced Ordinance No. 1146 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.

Mayor Zavodny thanked Interim Administrator Kovar for talking to the other establishments in David City and getting their input on this issue. He stated that since they talked about this at the Committee of the Whole meeting that he has seen that many communities are dealing with this issue. Columbus had a big discussion about it. The law enforcement officials are probably not huge fans of this.

Ryan Nelson, of Ryan's Roadhouse, stated that if this passes that he is not going to be open every night until 2 a.m. and that it would probably just be weekends.

Larry Sabata stated that he spoke with Ron Sedlak, who is the owner of the Pawnee Bar in Columbus and that he said that after Duncan, Silver Creek and some other smaller towns passed the law that they could stay open until 2 a.m. that it really hurt his business.

Mayor Zavodny stated that they make a compelling argument and this is just one person's opinion but, just because we can doesn't mean that we should. Mayor Zavodny said, "There's a lot of pressure around and I know communities start to compare what others are doing. I worry about the fact that we are going to encourage people to now go move to a different place where they can. That part does concern me but as far as what happens within our corporate limits, which is all that we can really worry about, I think that there are some disadvantages to doing it as well".

Ryan Nelson stated that he thinks the safety thing is a huge issue as far as those people

thinking that they are going to travel. They are going to go somewhere at 1 o'clock. He would rather see them go home than out on the highway.

Council member Scribner made a motion to pass Ordinance No. 1146 on 1st reading only. Council member Smith seconded the motion. Voting AYE: Council members Smith, Scribner and Vandenberg. Voting NAY: Council members Rogers, Svoboda and Kroesing. Since there was a tie Mayor Zavodny voted AYE and the motion carried and Ordinance No. 1146 was passed on first reading only as follows:

ORDINANCE NO. 1146

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.

Provided that such limitations shall not apply after twelve (12:00) o'clock Noon on Sunday to a licensee which is a non-profit corporation holding a license pursuant to section 53-179(2) Reissue Revised Statutes of Nebraska.

No person or persons shall consume any alcoholic beverages on licensed premises for a period of time longer than 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 11th day of May, 2011.

Passed on 1st reading only
Mayor Alan Zavodny

Passed on 1st reading only
Interim City Clerk Tami L. Comte

Council member Kroesing introduced Ordinance No. 1147 to amend Section 15-Liability Insurance minimum amounts.

Mayor Zavodny stated that we've had a lot of talk about trees lately.

Interim Administrator Kovar stated that she spoke to Street Superintendent Jim McDonald at their department head meeting and we may need to table this Ordinance and discuss it at the Committee of the Whole meeting or have Jim take it to the tree board because there are sections in this Ordinance that Jim said we don't follow any more anyway so they probably shouldn't even be in here and part of it was the arborist. We don't give them a test. It says in here that they can come to the City Office and we will give them an arborist test. Jim said that he hasn't done that.

Council member Scribner made a motion to table Ordinance No. 1147 concerning the qualifications and necessary equipment required by qualified arborists. Council member Rogers seconded the motion. Voting AYE: Council members Scribner, Rogers, Svoboda, Kroesing, Vandenberg and Smith. Voting NAY: None. The motion carried.

ORDINANCE NO. 1147

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA, TO AMEND SECTION 15 - LIABILITY INSURANCE MINIMUM AMOUNTS AS FOLLOWS:

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA, TO CREATE AND

ESTABLISH A CITY TREE BOARD; TO PROVIDE FOR TERM OF OFFICE OF SAID MEMBERS; TO PROVIDE THAT THE SAID BOARD MEMBERS SERVE WITHOUT COMPENSATION; TO OUTLINE THE DUTIES AND THE RESPONSIBILITIES OF SAID BOARD MEMBERS; TO PROVIDE FOR THE OPERATION OF SAID BOARD, TO PROVIDE A LISTING OF SPECIES OF "STREET TREES" THAT ARE NOT TO BE PLANTED IN DAVID CITY, NEBRASKA; TO DEFINE PUBLIC TREE CARE; TO PROVIDE FOR THE REQUIREMENT OF ARBORIST QUALIFICATIONS; TO PROVIDE FOR THE REVIEW OF THE CONDUCT, ACTS AND DECISIONS OF THE CITY TREE BOARD BY THE CITY COUNCIL; TO PROVIDE GUIDANCE IN PLANTING REQUIREMENTS ON CITY PARQUETS; TO PROVIDE INFORMATION ON PROPER PRACTICES IN ARBORICULTURE TO BE PRACTICED ON "STREET TREES", TO PROVIDE FOR THE PENALTY FOR VIOLATION OF THIS ORDINANCE, TO REPEAL ALL ORDINANCES AND ALL PARTS OF ORDINANCES IN CONFLICT WITH THE PROVISIONS OF THIS ORDINANCE, TO PRESCRIBE THE TIME WHEN THIS ORDINANCE SHALL TAKE EFFECT AND BE IN FULL FORCE, AND TO PROVIDE FOR PUBLICATION IN PAMPHLET FORM.

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

SECTION 1. Definitions:

Street Trees: "Street Trees" are herein defined as trees, shrubs, bushes, and all other woody vegetation on street right-of-way, commonly called parquets, lying between property lines on either side of all streets, avenues, and ways within the City, and, the street driving surface.

Park Trees: "Park Trees" are defined as trees, shrubs, bushes, and all other woody vegetation in public parks and all areas owned by the City, or to which the Public has free access as a park.

Community Forester /Street Superintendent: The "Community Forester" shall be the City employee responsible for the funding and application of Tree City U.S.A. The community forester shall also serve as the appointed representative of the city as outlined in Section 17 of this ordinance. The community forester may also designate another city employee to carry out this function.

SECTION 2. Creation and the establishment of the City Tree Board.

There is hereby created and established a City Tree Board for the City of David City, Nebraska which shall consist of four members, who are residents of this City, and who shall be appointed by the Mayor with the approval of the City Council. Also to serve with voting rights will be the Community Forester.

SECTION 3. Term of Office

The term of office of the four persons appointed by the Mayor shall be two years. In the event that a vacancy shall occur during the term of any member, the successor shall be appointed for the unexpired portion of the term.

SECTION 4. Compensation

Members of the City Tree Board shall serve without compensation.

SECTION 5. Duties and Responsibilities

It shall be the responsibility of the City Tree Board to develop and administer a written plan for the maintenance, planting and removal of all Street and Park trees and shrubs. Such plans

will be presented annually to the City Council and upon their acceptance and approval shall constitute the official "Comprehensive City Tree Plan" for the City of David City, Nebraska.

The Tree Board, when requested by the City Council, shall research and make recommendations on any special matter within the scope of its duties.

SECTION 6. Operation

The City Tree Board shall choose its own officers, make its own rules and regulations, and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business. Quarterly meetings shall be conducted as a minimum.

SECTION 7. Species of trees not to be planted as Street and Park Trees

Austere	Black Locust	Black Walnut	Conifers
Cottonwood	Elm Trees	Fruit Trees	Poplars
Seedless Cottonwoods	Siberian Elm	Silver Maples	Tree of Heaven
Shrubbery of all types			

SECTION 8. Public Tree Care

The City shall have the right to plant, maintain and remove trees and shrubs on all public areas to ensure public safety and to preserve the continuity and aesthetic beauty of such public grounds.

The City Tree Board may remove or order removed, any tree or part thereof, which is in an unsafe condition, or which by reason of its nature is injurious to sewers, electric power lines, underground utilities, and other public improvements, or is infected with an injurious fungus, insect or other pest.

The City Tree Board shall also have cause to order removed any tree or part thereof which is deemed hazardous to private property or the general public.

Planting trees on adjacent property is not affected by this Ordinance except to the extent of provisions of Sections 11 and Attachment "A".

The adjacent property owners shall have the responsibility to perform appropriate tree care on their street trees.

SECTION 9. Clearance over Streets and Walkways

Clearance over Streets and Walkways shall be the responsibility of the adjacent property owner. A clearance of eight feet will be maintained over the walkways and clearance of fourteen feet will be maintained over streets and alleys.

Property owners are responsible for the trees on their own property.

It shall be the responsibility of the Utility Department to prune any trees in close proximity to utility lines.

SECTION 10. Distances for planting

Street trees may be planted in the parquette where there is more than eight feet between the edge of the sidewalk and the curb of the street. Trees planted in the parquette shall be equidistant from the sidewalk and the curb. Street or private property trees shall not be planted any closer

than five feet from a sidewalk.

No tree shall be planted closer than thirty-five (35') feet from the street corner, measured from the point of the nearest intersection of curbs or curb-lines. (See Attachment "A")

Large trees are those that reach mature heights exceeding forty (40') feet. Medium trees have a mature height of twenty-five (25') feet to forty (40') feet, and Small (ornamental) trees have a mature height of less than twenty-five (25') feet.

Large or Medium Street trees shall not be planted closer than thirty-five (35') feet from another tree.

Small (ornamental) trees shall not be planted closer than twenty-five (25') from another tree.

No tree shall be planted closer than ten (10') feet from a fire hydrant or utility pole.

SECTION 11. Tree Topping and Trimming

It shall be unlawful to top any tree. Topping is defined as the severe cutting back of limbs within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions will be pruned using other acceptable pruning techniques, such as drop crotch pruning or directional pruning.

SECTION 12. Tree Removal Agreement

It shall be unlawful for any person or firm to engage in the business or occupation, for hire or other valuable consideration, to prune, treat or remove any street or any park trees within the City without first applying for and procuring a permit. There shall be no permit fee. The permit is obtained at the City Office during regular business hours.

Work performed by any public service company or City employee in the pursuit of the public service endeavors shall be exempt from this requirement.

SECTION 13. Stump Removal

After any Street or Park Tree is removed, the stump shall be removed at least four inches below the surface of the ground and the remaining hole shall be filled with suitable soil.

SECTION 14. Arborist Qualifications

It shall be unlawful for any person or firm to engage in the business or occupation of pruning, treating or removing Street or Park Trees within the City of David City, Nebraska, without first filing evidence of passing a certification test given by the Nebraska Arborist Association or a written examination offered by the City of David City and approved by the City Tree Board, and paying a \$25.00 annual license fee based on a calendar year, due January 1. Individuals seeking to take the written examination offered by the City of David City would have the examination administered to them at the City Office by the Street Superintendent/City Forester, City Administrator, or City Clerk. The examination would be graded by one of these individuals and the results presented to the City Tree Board for approval.

The City of David City, Nebraska shall maintain a list of Qualified Arborists, recommended to provide maintenance and removal of trees within the City.

All Qualified Arborists doing work in the city limits of David City, Nebraska, must

Mayor Zavodny stated that the council has the expenses for the property located at 315 So. 4th Street as they have been presented. They are as follows:

**SOUTHERN XV
 PROPERTY
 315 So. 4th Street**

City's Expense:

Purchased property		Capital Imp #85-2511	\$22,500.00
Removal of Awning on the south side of building			\$239.00
Garage removal & landfill fees			\$618.00
Removal of cement	\$1,414.00		
Dug out fuel tanks	\$1,443.00		
Fuel Tank removal	\$1,110.50		
Labor to haul sand	\$1,203.00		\$5,170.50
Dirt: 40 yds @ \$4.00 yd.			\$160.00
Case Backhoe 4hrs @ \$60/hr			\$240.00
Central Sand & Gravel			
2/16/11 Fill Sand 25.38 Qty.	\$58.12		
2/18/11 Fill Sand 34.71 Qty.	\$78.57	Capital Imp #85-2511	\$136.69
Stanley Petroleum oversee & complete paperwork			\$1,300.00
Environmental Services evaluation of asbestos			\$490.00
			<hr/>
			\$30,854.19

Mayor Zavodny stated that the Cities basis in this property through today would be \$30,854.19. What he would caution us is that if we sell the property as it sits right now, without doing anything else, we know there will be additional expenses because of asbestos if anything is done with that building. So, if we choose to sell for this amount, it is only with the building on it, as is, without us doing anything to it.

Council member Kroesing stated that we put a reserve on it so we don't sell it for \$250 like we did the theater lot just so we could get rid of it.

Mayor Zavodny stated that to him the \$30,854.19 is a minimum bid.

Dan Sygal asked if they had any idea how much it would cost to remove the asbestos.

Mayor Zavodny stated that asbestos was found in the caulking, the bolts on top and the floor tiles.

Street Superintendent Jim McDonald stated that the estimated cost to remove the asbestos was somewhere between \$2,700 and \$3,000.

Larry Sabata asked how big the lot was.

Mayor Zavodny stated that was a good question and that we should find out how big the lot is.

City Attorney James Egr stated that you need to do this by Resolution. You can't just make a motion to sell. State Statute §17-503 says that you need to pass a resolution directing the sale at public auction or by sealed bid and the manner and the terms thereof.

Mayor Zavodny stated that they don't want to sell at public auction if they can't reject it.

City Attorney Egr stated that you can also have a public auction and set a reserve dollar amount.

Mayor Zavodny stated that he didn't see the harm in passing a resolution to do sealed bids and if that doesn't work then we look at other options.

Mayor Zavodny stated that we need to put a resolution on the next agenda as such and we don't need to take any other action on this tonight.

Mayor Zavodny thanked City Attorney James Egr for his opinion on the golf cart situation. He stated that he was pleasantly surprised with Egr's interpretation. Mayor Zavodny stated that he wants to make sure that we are complying with State Statute.

Mayor Zavodny stated that he really didn't want any of our citizens to be criminals, so if they ride their lawn mower from one street to the next are they technically breaking the law.

City Attorney James Egr stated that lawn mowers don't come under this, golf carts do as being a defined motor vehicle. He said, "It's an interesting thing. The Nebraska Dept. of Motor Vehicles takes the position that golf carts don't come under any of the Statutes. I don't know what the County Attorney would do with that. The definition of motor vehicles if she wanted to prosecute for DUI may be broad enough to take them in."

Police Chief Anthony McPhillips said, "That's not a problem. They can be arrested for driven while intoxicated on a golf cart, bike, scooter, whatever. The problem is the City of David City has long time turned their heads and have allowed golf carts to be driven on the street. I was told when I came here that there was an Ordinance that allowed that. There is no such Ordinance. The Mayor just made a comment that he doesn't want to make our citizens

criminals. Well, if we do not pass an Ordinance allowing those to be used as a handicapped vehicle or whatever you call them, then they can't be operating on the street, period. So, we will go through and make criminals out of our citizens that we have allowed to do this for a very long time. All I'm asking is to pass an Ordinance so that it's legal for them to do what they are already being allowed to do. We will take care of the drunks who drive. That's not a problem."

Mayor Zavodny stated that all he wants out of this is to follow the rules and not violate State Statute, which apparently, if we do an Ordinance that allows it, we would be fine.

Council member Bill Scribner asked if we can keep the Ordinance simple.

City Attorney Egr stated that they have written golf cart Ordinances for several towns and counties and it can be as simple or as complicated as you want it to be.

Discussion of criteria to be placed in the Ordinance followed. It was noted that lawn mowers can be driven from one mowing job to another without a problem.

Mayor Zavodny stated that the one thing that we don't want to do is over regulate this so we're making people criminals that aren't necessarily now.

City Attorney Egr will draft an Ordinance to deal with golf carts, ATV's and UTV's to be discussed at the Committee of the Whole meeting on May 25, 2011.

Mayor Zavodny stated that as far as locations for the police department, they have looked at a bunch of locations through this process. Mayor Zavodny said, "Are we on the same page that right now our number one objective is to get a deal worked with the County?"

It was decided that the Mayor and Council will work with the County to get the police department located in the court house.

Mayor Zavodny stated agenda item #22 is consideration and discussion of city water concerns. He said, "As I understand, we've had some of these deposits in our pipes since 1932. The plan was to up the chlorine a little bit right before the flushing and to give a really, really thorough flushing and that's an important thing. I've had calls from the Villa and other places and they are concerned about the health of the water. Is this something that people should be concerned about?"

Water Supervisor Gary Janicek said, "I've been taking bacterial samples all through the flushing. That's mandatory."

Mayor Zavodny said, "O.K. If we look at the bacterial part, I'm pretty sure we'll be o.k. on that due to chlorination. Are there any other adverse health things?"

Water Supervisor Gary Janicek said, "It's iron deposits that are in the City mains."

Mayor Zavodny asked Janicek if that was a health concern.

Water Supervisor Janicek said, "Absolutely not. People take iron supplements all the time which is the same thing just in a different form."

Council member Kroesing said, "Iron and manganese make rust and I've got it from the

State right here. Those two things together create arsenic problems. The higher your rust problems, then the higher your arsenic problems. Do you want to argue with the State laboratory?"

Water Supervisor Janicek said, "I take four arsenic samples every year required by the State."

Council member Kroesing said, "Now? With all these problems are going on?"

Water Supervisor Janicek said, "Yes."

Mayor Zavodny asked Janicek when the last time they tested for arsenic was.

Water Supervisor Janicek said, "A month ago. I have the results at the Water Plant and I didn't bring them with me.

Council member Kroesing said, "The last time that we had an iron check and a manganese check on our lines was 1986. This is off of the State web site for drinking water watch. She looked it up for me. Alan told me to go ahead and do some research. I did as much research as I could, right up til the end. Do you want to hear this?"

Mayor Zavodny said, "Go ahead."

Council member Kroesing said, "The conversation started on May 4, 2011. It started with the State Health Laboratory and Mary Boden. She wanted to know what my concerns were for the town and what the problems were. She then explained the channel of people that I would have to talk to and what their jobs and responsibilities were. Before she let me go to the next person in line, she said that she was in progress of pulling up the State web site for the drinking water watch. Each town in Nebraska is represented on this watch. Last time checked, iron and manganese in David City was 1986. It showed arsenic at an 8.93 level in progress. Nitrates – O.K. Iron and Manganese is rust. When you have rust, you will also have higher levels of arsenic. The next person I was sent to was Howard Isaacs in the Federal building. This is the Drinking Water Regulators office. Howard is not only in charge of monitoring the compliance but also in charge of rural water managers and field service areas. I had to explain the entire problem of ours to Howard and he said that he was going to place me in touch with a field service rep. who Gary knows very well, for our area. I was contacted by Bob Byrkit, Keith Byrkit's brother, by the way. From the Nebraska rural water watch, both Howard and Bob had a wealth of information to share with me. Ultimately, when all was said and done, their main concern for the quality of our drinking water is when it enters and leaves the treatment plant. He then went on to explain to me some of the main contributing factors that are causing our water problems. The system of flushing and back flushing mains while opening and closing other valves, the length of time that they are open and closed, whether the water has completely cleared up before it is closed again, shutting mains off too soon and trapping the rust in the lines, water hammer used a lot during describing flushing and incorrect flushing which knocks the rust and junk off the lines and then traps it in the lines, shutting the plant down for work to be done and then how chlorine is reintroduced back into the system and how much. It can contribute to the condition of our water. After all of this, and a lot more, he explained that it might be in our best interest for us to contact Craig Reinsch from Olsson Associates about our concerns and after that we may want to consider having a 13 parameter test done on our water. The test will cost the City \$215 at their laboratory. Craig Reinsch was the guy that was in here tonight. That's what I got for you from them."

Mayor Zavodny asked Janicek how he thought the flushing has been going.

Water Supervisor Janicek said, "It's taken me twice as long this year as it did in the past and actually this hadn't been done since I started with the water department in 2000. I actually directional flushed this year by closing certain valves and forcing the water to go a different direction which creates a scouring effect to clean the pipes out better than they have in the past. I just completed the flushing as of about 3:30 p.m. I got caught on the last hydrant about 3:35 p.m. in the down pour. That's when I finished the last one up today."

Mayor Zavodny said, "So, what would we expect to see then from this point forward? Are we going to stop having these things or what?"

Water Supervisor Janicek said, "You're never going to stop having it but it sure is going to help and prior to the meeting that Scott and I had with you, we met with Bob Byrkit and we met with Doug Woodbeck, both from the State. We had an inspection of the plant and an inspection of the system, the well houses and the tower. They made recommendations but there were no violations. They did make recommendations about what we should do. A couple of them we brought to you. One was to bump up the chlorine levels before we flushed to break some of that stuff loose and then thoroughly flush it and they suggest directionally flushing too which helps with the scouring effect in the mains. We've done that."

Mayor Zavodny said, "So, you did dead end some and you hit it hard and let those things run."

Water Supervisor Janicek said, "I did it myself. I took a quart jar with me and I never shut it down until I saw nothing floating or anything in the jar when I got done. Monday and Tuesday I took a drink out of every hydrant that I flushed because it was so hot those two days. I personally did it myself. I didn't want anybody else to come back and say that I had one my other guys doing it so I did every hydrant this year by myself. Two of the mornings I started at six o'clock in the morning because of affecting restaurants and businesses downtown. I started early and worked late two or three evenings because I would just get to a certain end of town and I wasn't going to stop and not finish up a stretch that I was doing."

Mayor Zavodny said, "So, you did this over a two week period?"

Water Supervisor Janicek said, "Yes."

Mayor Zavodny thanked Council member Kroesing for checking on those things for the citizens of this community.

Water Supervisor Janicek said, "I did have a fourteen parameter test done on all of the wells and the water treatment plant in February and I have the results at the water treatment plant. I don't go through the State lab, I go through a private firm which is Servi-Tech. They are in Hastings."

Mayor Zavodny said, "So, this summer, after going through this process, it really should make a huge difference."

Water Supervisor Janicek said, "Both Doug and Bob Byrkit suggested that at least for a couple years to plan on flushing again in the fall. We've never done that since I've been here."

We did it the one time and that was it.”

Mayor Zavodny said, “Well, I’m going to tell you that I think we’d better be doing it twice a year and better run them a long time. You are always going to hear the complaints when you have a water main break and that stuff happens and you can’t control that but we can control giving a very good flush and making sure that we’ve done as much as we can. People have certainly been pretty vocal about it.”

Water Supervisor Janicek said, “In the file cabinet, in the office next door, there are probably five years of every test that we take that goes to the State Health Lab. I keep it there and I keep a copy at the water plant too. Anybody is welcome to check any of those. Every parameter test that the State makes us take.”

Mayor Zavodny asked Janicek how he knows that the plant is in balance. He asked what types of things tell us that we’re using the right amount of lime and what have you.

Water Supervisor Janicek said, “If we have too much lime the ph gets too high, which with our SCADA system calls out for that, and it calls out if it gets too low.”

Mayor Zavodny asked if that has happened recently.

Water Supervisor Janicek said, “It hasn’t happened since last year in July. I talked to Craig about it. Craig’s working on a project for me right now for the water treatment plant.”

Mayor Zavodny asked if everything was working in the plant.

Water Supervisor Janicek said, “Yes.”

Mayor Zavodny said, “It’s operating as designed and you’re meeting all your ph parameters?”

Water Supervisor Janicek said, “Since our meeting and the meeting with Doug and Bob, as long as I’m there, I daily take the ph readings to make sure that our ph is ok. When we had the high ph that time in July, the sensor was out of whack and it took a matter of cleaning it and recalibrating it. I have a portable ph sensor that I test both the raw water and the finished water to make sure that the probes and the sensors are in the range where they are supposed to be working. On request, I can come out and do a hardness test. I bought a brand new hardness test kit and I can do that on request. That’s also one of the parameters that is on the 13 parameter test that I took in February.”

Mayor Zavodny said, “I read earlier in your report that you don’t have a variable speed pump. Is that right?”

Water Supervisor Janicek said, “No, we do. The two new wells are both variable speed wells.”

Mayor Zavodny said, “Is that what you want to budget for?”

Water Supervisor Janicek said, “Yes, we’ve got three high service pumps in the basement that pump up the water to the tower and maintain the pressure in town. When pump #1 kicks on, it runs full blast, 100%, 100% of the time. We’ve put an electric valve in to slow it

down but it forces too much water into the system at the tower at one given time. We have BFD's on two of the other pumps that, according to the system pressure and the tower pressure, they ramp up and they slow down, according to what the requirements are of the City at one time. They run anywhere from 600 gpm to 900 gpm. The pump that doesn't have the BFD runs at 1220 gpm, 100% of the time."

Mayor Zavodny said, "Gary, what do those cost?"

Water Supervisor Janicek said, "I've got bids from \$7,000 to \$9,000. I am looking at budgeting that in next year's budget. We only run that pump as a back up now and as a spare for emergencies because it's just too hard on the system to run it."

Mayor Zavodny asked if there were any other questions for Gary.

Mayor Zavodny said, "When is a good time, in the fall, to do this again?"

Water Supervisor Janicek stated that you need to be careful to not do it too late because you don't want to get a hard freeze and crack the hydrant. He stated that he was looking at the end of October or the first part of November.

It was noted to put flushing when the mains were going to be flushed on the utility bills.

Mayor Zavodny asked Water Supervisor Janicek if he was 100% confident that the water was safe to drink.

Water Supervisor Janicek said, "I drink the same water that everybody else does and I make sure that it's as safe as I can. I don't have a water softener. I don't have filters. I take a drink right from the faucet."

Street Superintendent Jim McDonald asked if there were any long range plans to replace those old water mains. They are very old and have to have a build up of stuff in them. He stated that he was sure they needed to be replaced and wondered if there was a plan to do that.

Mayor Zavodny said, "Correct me if I'm wrong but we have roughly 22 miles of mains and probably not an extra 15 million."

Water Supervisor Janicek said, "35 % to 40% are four inch mains that look like that." (He referred to a sample of main in the council chamber that was corroded.)

Mayor Zavodny stated that we need to work with Craig Reinsch and evaluate our system and keep up with this.

Water Supervisor Janicek was asked to take a test an former Mayor Trowbridge's house because he is very upset with the water.

Council member Kroesing introduced Resolution No. 15-2011 and moved for its passage and adoption. Council member Scribner seconded the motion. Voting YEA: Council members Kroesing, Rogers, Svoboda, Vandenberg and Smith. Voting NAY: None. Council

member Scribner was absent. The motion carried and Resolution No. 15-2011 was passed and adopted as follows:

RESOLUTION NO. 15 - 2011

WHEREAS, David City Library Foundation, is the owner of Lots 1, 2, 3, and 4, all in Block 32, Original Town of David City, and,

WHEREAS, David City Library Foundation would like to subdivide Lot 4; and

WHEREAS, David City Library Foundation has filed a request to:

- 1) Sub-divide Lot 4, Block 32, Original Town of David City to enable them to sell the west 3.5' to The Thorpe, Inc., who own the adjoining Lots 5, and 6, all in Block 32, Original Town of David City, and

WHEREAS, there were no objections expressed concerning the request of the David City Library Foundation to subdivide Lot 4, Block 32, Original Town of David City.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the request of the David City Library Foundation to sub-divide Lot 4, Block 32, Original Town of David City, Butler County, Nebraska, by selling the west 3.5' of Lot 4 to The Thorpe, Inc., is hereby approved.

Dated this 11th day of May, 2011.

Mayor Alan Zavodny

Interim City Clerk Tami Comte

Council member Kroesing introduced Resolution No. 16-2011 and moved for its passage and adoption. Council member Scribner seconded the motion. Voting YEA: Council members Kroesing, Rogers, Svoboda, Vandenberg and Smith. Voting NAY: None. Council member Scribner was absent. The motion carried and Resolution No. 16-2011 was passed and adopted as follows:

RESOLUTION NO. 16 - 2011

WHEREAS, The Thorpe Inc., as the owner of Lots 5, and 6, Block 32, Original Town of David City, needs to repair the east wall of their current building, and

WHEREAS, The Thorpe Inc., has recently purchased the west 3.5' of Lot 4, Block 32, Original Town of David City, from the David City Library Foundation, and

WHEREAS, The Thorpe Inc., has filed a request to combine the west 3.5' of Lot 4, and Lot 5, and Lot 6, all in Block 32, Original Town of David City, to form one lot, and

WHEREAS, there were no objections expressed concerning the request of The Thorpe Inc. to combine the west 3.5' of Lot 4, Lot 5, and Lot 6, all in Block 32, Original Town of David City, Butler County, Nebraska, to form one lot.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the request of The Thorpe Inc. to combine the west 3.5' of Lot 4, all of Lot 5, and all of Lot 6, Block 32, Original Town of David City, Butler County, Nebraska, to form one lot, is hereby approved.

Dated this 11th day of May, 2011.

Mayor Alan Zavodny

Interim City Clerk Tami Comte

Mayor Zavodny stated that the next item on the agenda was additional compensation for the police department. He stated that Chief McPhillips told him that he did not want additional compensation because he knew what he was getting into when he took the job. Mayor Zavodny also stated that he felt that with a 3 officer rotation that the salaried employees were due some additional compensation.

It was noted that Officer Marla Schnell's shifts haven't changed. She has not worked any extra hours.

Council member Kroesing made a motion to pay Lt. Mike Hutchinson for all of his extra hours at his regular rate of pay and to pay Chief McPhillips for half of his extra hours at his regular rate of pay for March and April and in the future until a fourth officer is hired. Council member Scribner seconded the motion. Voting AYE: Council members Kroesing, Vandenberg, Svoboda, Smith, Scribner, and Rogers. Voting NAY: None. The motion carried.

Mayor Zavodny stated that he understood and regretted that police officer Brian Buresh needed to resign.

Council member Rogers made a motion to accept the resignation of police officer Brian Buresh. Council member Kroesing seconded the motion. Voting AYE: Council members Smith, Svoboda, Rogers, Kroesing, Vandenberg and Scribner. Voting NAY: None. The motion carried.

Council member Vandenberg made a motion to go into executive session to discuss personnel matters and legal issues. Council member Svoboda seconded the motion. Voting AYE: Council members Kroesing, Vandenberg, Svoboda, Smith, Scribner, and Rogers. Voting NAY: None. The motion carried.

Mayor Zavodny stated, "Now at 9:50 p.m. we are going into executive session to discuss personnel matters and legal issues." Mayor Zavodny, all of the Council members, City Attorney Egr, Interim City Administrator Kovar and Interim City Clerk Comte went into executive session at 9:50 p.m.

City Attorney Jim Egr stated that a motion and second was not needed to come out of executive session. Therefore, Mayor Zavodny declared the City Council out of executive session at 11:05 p.m.

There being no further business to come before the Council, Council member Kroesing made a motion to adjourn. Council member Rogers seconded the motion. Voting AYE: Council members Kroesing, Vandenberg, Rogers, Scribner, and Smith. Voting NAY: Council member Svoboda. The motion carried and Mayor Zavodny declared the meeting adjourned at 11:06 p.m.

Mayor Alan Zavodny

Interim City Clerk Tami L. Comte



CERTIFICATION OF MINUTES
May 11, 2011

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 May 11, 2011; 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

My Bid For The 1998

Ford Expedition is \$2350.00

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