

## CITY COUNCIL PROCEEDINGS

August 11, 2010

The City Council of the City of David City, Nebraska, met in open public session in the meeting room of the City Office, 557 N 4<sup>th</sup> Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on August 5<sup>th</sup>, 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 Dana Trowbridge, Council President Gary Kroesing, Council members Bill Yindrick, Mike Rogers, Gary Smith, and Nick Hein, City Administrator Jon Holmes, City Attorney Jim Egr, and City Clerk-Treasurer Joan Kovar. Council member Bill Scribner was absent.

Also present were: Attorney Mark Sipple, Court Reporter Christine Salerno, Bill Buntgen, Ron Mimick, Pat Sweney Joe Witter, Alan Zavodny, and several members of the public.

The meeting opened with the Pledge of Allegiance.

Mayor Trowbridge informed the public of the "Open Meetings Act" posted on the east wall of the meeting room and Resolution No. 2-2008 establishing rules and procedures for public participation at city council meetings.

The minutes of the July 14<sup>th</sup>, 2010 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 Hein, Yindrick, Rogers, Smith, and Kroesing. Voting NAY: None. Council member Scribner was absent. The motion carried.

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

Mayor Trowbridge asked if anyone had questions or concerns regarding the Committee and Officer Reports along with the Governmental and Utility Subcommittee meetings. Council member Kroesing asked about US Cellular wanting to place antennas on the old water tower. City Clerk Kovar stated that the lease has been executed and they have submitted their zoning permit to erect a storage building beneath the water tower.

Council member Yindrick made a motion to accept the Committee and Officer Reports as presented. Council member Kroesing seconded the motion. Voting AYE: Council members Rogers, Hein, Smith, Kroesing, and Yindrick. Voting NAY: None. Council member Scribner was absent. The motion carried.

Council member Smith made a motion to advance to Agenda Item #10 – Bill Buntgen appeal hearing. Council member Kroesing seconded the motion. Voting AYE: Council members Rogers, Hein, Yindrick, Kroesing, and Smith. Voting NAY: None. Council member Scribner was absent. The motion carried. Mayor Trowbridge then turned the meeting over to City Attorney Jim Egr as the hearing officer for the termination hearing.

City Attorney Egr stated, "This is in the matter of the appeal of termination filed by Bill Buntgen. The appeal was filed July 23, 2010. I would like the record to reflect that I am James M. Egr City Attorney acting as hearing officer in this matter. Present are City Council members Smith, Yindrick, Hein, Kroesing, and Rogers as previously listed in the roll call vote. Absent is Council person Scribner. Present also is Mayor Trowbridge, City Administrator Holmes, Joan Kovar City Clerk, and also Christine Salerno who is a registered professional reporter who was hired by Mr. Buntgen to take the record of this particular hearing. Present also is Mr. Bill Buntgen who requested the appeal before the council on his termination. Representing Mr. Buntgen is Mark Sipple, Attorney, from Columbus, Nebraska. Also present are five people who will speak on behalf of Mr. Buntgen, besides Mr. Buntgen's comments; they are Patricia Sweney, Ron Mimick, Rex Rehmer, Jim Witter, and Alan Zavodny. This is an open session of the council. You have two types of sessions. You have an open session where the public can listen to what is being discussed at the meeting and you have a closed session which does not allow the public to hear what is being discussed. The procedure that will be followed is this: First of all, people have to understand that this is an appeal; even though it is in the open session it is not a Public Hearing. By Public Hearing I mean you would have a Public Hearing for a budget, you would have a public hearing on annexations, you would have a public hearing on street assessments, and so forth. This strictly involves an appeal before the City Council of David City. Procedurally the way we will handle this matter is that City Administrator Mr. Holmes will give a summary of the areas of concern that brought about the termination of Mr. Buntgen; the Mayor if he so desires will make comments about the same. After that Mr. Sipple, or by using Mr. Buntgen, I don't know which way you want to go that is up to you, will be able to make his comments and what ever order you want to go Mr. Sipple with your five people they can make their comments. There will be no questions by the Council of the people making comments. There will be no questions or cross examination by any of the people speaking on behalf of Mr. Buntgen or by Mr. Sipple as part of this hearing. Then after that, there will be a time allotted for rebuttal by the Mayor and by Mr. Holmes if they so desire, then the Council if they want to make statements or not, can, and then I would ask for a motion, according to City ordinance the Council can reverse the termination, they can modify the termination, or they can uphold the termination. There will be, on the Mayors part and Mr. Holmes part, a five minute limitation but no more than seven, because I know sometimes you can go a couple of minutes over, lawyers are notorious for that. The same will apply to the five people speaking on behalf of Mr. Buntgen. There will be seven minutes for Mr. Buntgen or up to ten minutes between Mr. Buntgen and Mr. Sipple. There will be no public comments. This is not a Public Hearing this is an appeal. I would ask the public to please refrain from clapping, or cheering, or boos, or jeering on this particular matter and give this particular matter, an appeal on somebody's job termination, the respect that it does deserve. In case you are wondering how in the world I came up with these guidelines and so forth, I checked with two other city attorneys; one in a first class city, and first class cities make use of the Civil Service Commission which is in Lincoln. I checked with another second class city attorney who has been through these and that same city attorney sits on the Nebraska Civil Service Commission. I also checked with a judge who happens to have been a past county attorney who has dealt with these kinds of hearings as well as a city attorney who has dealt with these kinds of hearings. I also conferred ahead of time by fax and by telephone conferences with Mr. Sipple as to the time limits, how we'd proceed; he

received a rough outline of how we would proceed. And if you disagree, Mark, tell me but I think we understood that. I would ask that the comments made by those speaking on behalf of Mr. Buntgen or by the City be strictly limited to what's in the best interest of the City, what's in the best interest of the City Park, and on job performance. I would further ask that any comments that would be considered speculation; that we would stay away from that. We can make this an orderly hearing where everyone can hear what is going on. First thing, Mr. Buntgen is allowed to have this in a closed session so there is nothing on the public record from that standpoint, and then I would ask Mr. Sipple or Mr. Buntgen if you want an open session or a closed session. (Mr. Sipple stated, "We prefer open, thank you.") I would ask Joan Kovar and Christine Salerno to properly reflect that I did ask Mr. Buntgen if he does want an open session or closed session and he has requested, which is his right, an open session. I would ask Mr. Sipple, has there been any change in the five people: Mr. Zavodny, Mr. Rehmer, Ms. Sweney, Jim Witter, or Mr. Mimick as to those speaking? (Mr. Sipple stated, "There is not.") With that in mind we will proceed with the appeal I would ask Jon Holmes, City Administrator....."

Attorney Sipple stated, "Mr. Egr before we start with that I have a couple of comments to make if I might regarding your comments primarily. My name is Mark Sipple; my professional address is 2503 13<sup>th</sup> Street, Columbus. Mr. Egr's correct about sending me an outline and procedure and we did talk about it, but I want the record to reflect that our view, Mr. Buntgen's view, is that this is a hearing and basic due process in any hearing would require people to take an oath if they are going to make testimony, or make statements, and we be given the right to cross examination and Mr. Egr be given the right of cross examination of anybody who makes statements. I know that's not the way we are going to proceed, I respect Mr. Egr's opinion about that but I want the record to reflect that we object to that. We think that this is a due process hearing and we are not being afforded due process without people taking an oath and without cross examination, so I want the record to reflect that. Second, you all have in front of you a letter and I have a copy of it, from Council member Scribner who's not here. Because this is an open hearing and there are people in the room, and in the interest of being open, I would ask that the City Clerk at some point read that letter, or allow me to read it, but because I think I have limited words tonight I would ask that the City Clerk at some point read that letter and maybe we could have a ruling on that."

City Attorney Egr stated, "What I would suggest we do is after the presentations are made on both sides, that when we get to the point if the Council says they are going to make a motion to reverse, modify, or uphold, then at that time I think it would be proper, for then the Council can discuss in open session their particular thoughts if they so desire and that would be the point in time to read Mr. Scribner's statement that he has."

Attorney Sipple stated, "Thank you. And then at some point I would just like a show of hands or something from the people who are present, including those in the hallway, that are here supporting Mr. Buntgen but who aren't going to comment to the Council but they are here in support of him. I don't need a headcount or a hand count or anything like that but I would just like the Council to be aware of those present in the room and in the hallway that support him and I don't care at what stage that occurs but I would like that to happen."

City Attorney Egr stated, "Would that be satisfactory if we would do that at the time that Mr. Buntgen presents his side? (Attorney Sipple stated that would be fine.) And if I happen to forget and have a senior moment please remind me, but I will make a notation here, and with that we will proceed with Mr. Jon Holmes', City Administrator, outline."

City Administrator Holmes stated, "After the last council session I took a directive from the Mayor to proceed with the termination of Bill and at that time, the next morning, on the following Thursday after the council meeting I went and met with Bill at his office and spoke with him there and let him know of the decision to terminate his employment at that time. In the next few following days I met with Bill and made sure that he was aware of the appeals process; he asked about it. I made sure that I asked him if he had had a copy of the employee handbook and he said he did. I was going to supply him one if he so chose if he needed one. Over the course of the next week or so Bill was in for different things and I made sure that the city clerk and I, if there was anything that he needed, any information that he needed that we made sure that he knew where to find that as far as municipal code and ordinances and stuff like that over the course of the next week or so; and that's the only comment that I have.

Mayor Trowbridge stated, "I have been in corporate and private business over forty years employing between 7 and 29 people between most of those years and I can tell you very candidly that the City of David City is a very benevolent employer, has been and continues to be. None of you have access to the personnel files of the City and therefore there are many issues that you remain unaware of that have an impact on this employment situation. I would ask that as we move, or as time moves forward, we clearly understand Nebraska employment law and how it employs to all of us and we could find it quite interesting.

City Attorney Egr stated, "I would point out just in case some people have some question about why other people would not be able to speak I would point out, and the Mayor referenced the open meetings act, Section 84-1412 Paragraph 2 provides that public bodies shall make and enforce reasonable rules and regulations regarding conducts of persons attending, speaking, or etc. at these particular meetings. The city did pass such a resolution and I would point that out. Secondly, in that same paragraph it says A) body may not be required to allow citizens to speak at each meeting but it may not forbid public participation at all meetings. What that basically means is that the Council can't say well you can never speak at a meeting but they do not have to allow the public to speak at every meeting. That's contained in 84-1412 in the Nebraska Statutes. Also there was a question at the beginning that was raised about moving the meeting. That same statutory Section 84-1412 paragraph (5) says: No public body shall be deemed in violation of this section if it holds its meeting in its traditional meeting place which is located in this state. And the traditionally meeting place for the City Council of David City is this room in the City Offices sometimes known as the Council Chambers. I wanted to make that clear and maybe answer those types of questions that people may have about how this procedure is going and why it is going the way it is. Mr. Sipple?"

Attorney Sipple stated, "I have no opening statement we're ready to call the first person. We would call Patricia Sweeney."

Patricia Sweney stated, "I have known Bill for a long time. I have had a catering business for 30 years I have worked with Bill the last 10 when he has been in charge of the auditorium. He's always been there for everything we've needed. He always has everything ready, it is clean, and the floors are kept up; everything is clean and ready to go when we get there; probably 80% of the halls I go to around the state are not; they have to be cleaned up. I have to spend 45 minutes or an hour cleaning up before I ever start. When I come here I know they're going to be clean I know I can walk in and start cooking right then and there. Bill has everything ready every time we need it. He is willing to help us out with anything we need. Everything is set up and ready to go. We have had people come in for family reunions, parties, whatever; people have come back for the alumni banquet, they come into the kitchen and visit

with us. They say the park is beautiful, they have never seen such a beautiful park, camping area, the Schweser House, everything is kept up, everything is in its place, everything is clean. The camping area, my relatives have camped there. We had a family reunion there this summer at the Schweser House. It was clean, it was ready to go. Bill has everything ready all the time. The grounds are kept up, the walking trails are kept up, everything is picked up. There is never trash laying around. Anybody that ever said the park is crappy is full of it. It is not that way. I want to thank Bill for everything he has done for me the past ten years. He is always there and has always had everything ready to go that we needed. So thank you Bill.”

Ron Mimick, Athletic Director, football coach, track coach at Aquinas stated: “I have worked with Bill for ten years in those capacities. We’ve had a good working relationship. If I’ve requested something Bill calls me back quickly, he deals with it quickly, he does a nice job. If something comes up he lets me know. We’ve worked back and forth. He put a line on the sideline last year as we requested; never asked a question. Good working relationship. He is easy to work with, professional, he has a smile on his face, he’s done a good job.”

Rex Rehmer stated, “I would offer as a character reference for Bill some of my experiences with him and those being dealing with him personally and renting the hall and the professional job that he did in helping to take care of that down to the very minute things as to making sure that we didn’t put the wrong tape on the walls so as to destroy the finishes and the floors. So, he is very conscious of his surroundings and the property that he is in charge of. I also took the time to talk to some people in the community and make sure that just my views weren’t the only ones that I was thinking about and I got all positives everywhere I talked. Everybody was happy with the park, thought everything looked nice. So I knew that I wasn’t the only one feeling those things. And lastly in talking to a park committee member or board member, whatever you want to call them, this person indicated that they were extremely happy with the job that Bill was doing in the park, and also made mention of the job that he had done at the swimming pool in correcting some problems there. So, in adding this all up in the end I guess the only thing that I would ask is that we make sure that we look at ourselves and make sure that we make the right decision, whatever that may be, and I’m not going to second guess you. Like my dad once told me, make sure you the put the shoe on the other foot. That you are standing in his shoes and that you make the right decision then. What you want done, then you do it then. That’s all I’ve got to say.”

Jim Witter stated, “I’m here to speak on behalf of Bill. I’ve known Bill; we’ve been a part of the community for about the last fifteen years and I met him shortly thereafter so we’ve known him and his family on a personal basis. Over the years when we’ve become involved with the auditorium, parks and recreation department, I’ve gotten to know him on a professional basis. He has always done a stellar job. He has always been prompt, appropriate as far as questions, or phone calls. We’ve rented the auditorium several times from him. He has gone above and beyond the call of duty to be there, to schedule events. I am on a Whitetails Unlimited Board and usually after the banquet we are counting up money and deciding/talking about things for next year and Bill is waiting around eager to take our reservation for the following year. He’s just been the easiest person to work with. I have rented the hall personally for family members and other kids to play basketball during winter hours, in fact I think I have called him up at maybe not so favorable hours thinking this would be an opportune time and I’m sure under his breath he is thinking why is this guy calling me at this time, but he has always been very courteous and kind and very willing to rent out the auditorium to us. And of course I have heard nothing but good comments from people that do come from outside the community and see our auditorium, the cleanliness and how things are in order and that sort of thing. Over the last

couple of years the city council voted to have a parks and rec committee to look at the 1% sales tax and what could be done with the parks and rec. The 1% sales tax sunsets and possibly get another sales tax in place. I was also on the committee to get the 1½% sales tax approved. Bill didn't have as much a direct part in that but we used a lot of his information that he gathered prior to that in order to come up with some of the ideas and the wants and needs of the Parks and rec in order to move forward with that. During this committee time he was always very prompt and organized as far as getting us materials from other communities or from other resources. A lot of times we asked him what other people were doing, or parks and rec committees were doing, and he was always very good at coming to us with that information. It wasn't an easy task. This was outside his normal job duties as far as running the track and the parks department. He is always very willing to go the extra step, the extra mile, in order to make things better. He certainly has a deep love for his job, for his community, and I think he does an excellent job. I have been involved with football, track, and that sort of thing and he always does his best job. The football field gets torn up and he is always trying to do something to get it ready for the next game. We own a small medical clinic in town, by seeing patients I think I have a pretty good idea, judge of character, commitment to jobs and that sort of thing, and I certainly hold Bill's judgment and character at a pretty high esteem or high honor; also as an employer I would have no problems of hiring him, as a nurse if he had some medical experience, maybe you do Bill, I don't know. From an employer standard, from a personnel standard, from a professional standpoint, I have nothing but good things to say about Bill."

Alan Zavodny stated, "Thank you for the opportunity to be a part of this process. I've known Bill for over 30 years and he is well liked in this community and is a hard worker. This is a process. We are here because Bill would like his job back because he loves his job. I can't talk about windows so I won't, but I do know that he does fix equipment and saves us money and is good at up-keeping things and we don't have to pay outside contractors, so we save money there. I travel a great deal and I always hear wonderful comments about our entire parks system, about how beautiful it is. My understanding of this process is that, Mayor and Council, your power in this is absolute. This is clearly your decision to make and we certainly respect that. This is about Bill but it is also about us as a community. The openness of this process is important and City employees need to know that we have their back. I have talked to Bill and he will do everything he can to work with you if you decide to reverse or modify your decision. Basically he is throwing himself at the mercy of the court so to speak. I have been on that side of the table, no one here envies you. We understand that there may be items that we are not privy to; we also know that this is a "right to work" state. I've told Bill not to get his hopes up. He obviously hopes that you will reverse or modify your decision. Mr. Mayor, we respect you and your office and the offices of the council members. Furthermore, we respect your right to decide on this matter and thank you for your thoughtful consideration of Bill's appeal."

Police Chief McPhillips counted 64 people who acknowledged that they were present at the meeting on behalf and in support of Bill Buntgen.

City Administrator Holmes stated, "I appreciate the communities support. I appreciate the love that they have for Bill and the support and the dedication that you have not only for Bill but also for the City of David City. I would ask that regardless of the outcome that if it does not go in Bills favor, I would certainly hope that the dedication, support, and the willingness to work with a new parks and recreation director would be extended to whoever is selected if again this does not work in Bill's favor. I appreciate that there is a very, very, active community here, I am very cognizant of that. And it has, as many of you know, the position of the park superintendent has been advertised and we have received a number of outstanding individuals that have

applied for that. I have not made any move on that pending the resolution of this issue but again that would be my sincerest hope is that as the community moves forward whatever the outcome is, is that if a new parks and recreation director is hired that you would give him the full support and cooperation that you have Bill over these years and I appreciate that.”

Mayor Trowbridge stated, “A portion of the community has certainly shown a nice warm response for Bill Buntgen this evening. He has made a lot of friends. Whether Bill Buntgen is a good guy or not a good guy has never been an issue with us; never been an issue in any of the conversations that have been had around the council table or in the council chambers. As I said earlier, there are issues that you remain unaware of and have to by the rules of etiquette in handling personnel information. If we were talking about you I think you would respect that also. So anyway, I thank the community for their warm response to Bill and that will conclude my comments.”

Attorney Sipple stated, “I might need more than ten minutes. This meeting, this hearing is bothersome to me because 64 people came out here tonight in support of my client, five good people from the community spoke their peace, and Mr. Mayor I want to say, and I say this respectfully to you, they didn’t say he was a good guy, they might have said that, but they also said he was really a good park superintendent; that’s what they said and you heard the words and I won’t read them back but they didn’t just say he was a good guy they said the parks are beautiful, that he’s always there. Ms. Sweney said she goes to auditoriums as a caterer here, there, and everywhere and this is the auditorium that she doesn’t have to worry about. So they didn’t just come in here and say well Bill Buntgen’s a good guy, they said he’s a good park superintendent. Sixty-four people are here supporting him and what they didn’t hear, and I respect the Council, and the Mayor, and the City Administrator, but what they didn’t hear is why he was let go, and that’s bothersome to me. I think that if 64 people come out on a hot July night, a hot August night where it’s 95 degrees out, they came here to support him, that they’d probably like to know why he was let go and I think that’s fair and we’re not afraid of it. In fact I’ll discuss it. We think that these people, Mr. Buntgen knows, he understands it I think, I understand, I don’t think it’s fair or proper and possibly not legal, but we understand, but these 64 folks don’t understand, and I think they need to understand; I think they need to hear it from the council. I think they need to hear it from the Mayor, I think they need to hear it from the City Administrator, so I’m going to go through it unless you have an objection. (Bill said “no”) In the late year of 2008 there was what I call a flap over comp time that used to be overtime and Mr. Buntgen was using overtime himself and some of his employees were using overtime and Mr. Mayor didn’t like it and that’s fine, that’s the Mayors job. And so he was given a directive to quit using overtime and use comp time, and he complied with that directive and he wasn’t disciplined for it and that was back in 08 and a council meeting of 09 I think memorialized that and told him use comp time don’t use overtime, and he did that, he complied with that. He did that, he wasn’t disciplined, he didn’t do anything wrong. He was given a directive by his superiors, he followed the directive, and that’s that. It’s a non issue. In March of 09 he allegedly threatened an employee. Now, that sounds pretty bad, but the underlying facts of that aren’t so bad. He told one or more employees of his, people that worked under his supervision, that they might want to start looking for a job because they may lose their position with David City. Now, you can take that as a threat, and maybe one or more of those employees took that as a threat, but is that the kind of threat that we think about when we think about a threat? He didn’t threaten to beat anybody up, or burn their house down or do anything like that; he said you might want to start looking for a job because you may lose your position with David City. Now, I have that in the minutes or in some document that I have with me that that’s what the record would reflect. You better start looking for a job because you may lose your position with David City and he was

expressing budgetary concerns at that time. Now when he says you may lose your position with the City of David City, you can decide if that's a threat. These 64 people here might want to think if it's a threat or if he's just expressing an opinion that the budget is something, it is a factor we all have to deal with it -everybody in city government, and you may lose your position because of these budgetary concerns. Is that a threat? He was disciplined for that and he wrote a letter of apology which was his discipline. Write a letter of apology to the employees, and he did that. Alright, now these dates are fairly important. That was March 7<sup>th</sup> of 2009. In November, 2009, there was a flier. He had a flier posted in his auditorium and it had to do with the sales tax and people in city government took issue with that. And that's fine. His first amendment aside, whether he had the right to post that flier or not, it wasn't very, you wouldn't think it was inflammatory in any way, but again, people in city government didn't like it and they disciplined him for that. I think the discipline was four days suspension without pay, and he accepted that. Now, I think there's an argument that that posting of that flier was within his first amendment right, but that water's under the bridge and we won't even talk about it. Most important of all of those things is, all of those things happened before December of 2009 and in December of 2009 he was reappointed by this body, by this Mayor to be the parks superintendent. So, they looked at all those things, they said well, there you are, you're reappointed again, you can have the job for 2010. So, how serious was the council and the Mayor about those things at that time. They reappointed him in December of ~~2010~~ (2009 corrected later in the minutes) and now comes what I guess, is as I look at the minutes of the July 14<sup>th</sup> meeting, the swimming pool incident and I don't know what happened at the swimming pool and we don't know. There was a committee report or some kind of incident report that along with the other reports that were put into the records at the July 14<sup>th</sup> meeting that one wasn't and so I don't know what the incident was at the swimming pool but it has not one thing to do with Mr. Buntgen. Under the ordinance scheme in the City of David City, he has no supervisory responsibility for the swimming pool. He's not responsible for anything but the maintenance of that pool. Who is responsible is the City Council, by ordinance, by ordinance of this body, by ordinance of this community; the city council is in charge of the management of the swimming pool. I don't know what happened there, it was a private party, it was earlier this summer, it was in June, Mr. Buntgen was there as a guest of his wife who works at the pool. Now, whatever happened, it wasn't on his watch, it should form no basis for any discipline whatsoever, none. Your ordinances, Section 1-212 says that the City Park and Auditorium Superintendent shall be responsible for the management, care and use of the municipal auditorium and of the facilities in the park grounds except for the area used for the golf course and except for the swimming pool. Now that's your ordinance. That's what it says. And Ordinance No. 3-501 says: The Municipality owns and manages the Municipal Swimming Pool/Aquatic Center, and these are the words from the ordinance: the City Council shall manage the Swimming Pool. The Council shall have the power and authority to hire and supervise the Swimming Pool Manager and such employees as they may deem necessary and shall pass such rules and regulations for the operation of the Swimming Pool as may be proper for its efficient operation. Remember these words: the City Council shall manage the swimming pool. So, whatever happened at the swimming pool in June of this year had nothing to do with Mr. Buntgen. He had no authority, he had no ability, he had no anything to control anything that happened at the swimming pool. I've been told, that that was the straw that broke the camels back, and it's just wrong. It is just wrong to consider anything to do with the swimming pool. I don't know, and again I don't know what the incident was, and maybe someone will enlighten us, but it didn't have anything to do with Bill Buntgen. Ms. Sweney said that he's always been there. I've already talked about Ms. Sweney's remarks briefly, she said the park was beautiful, everything was ready all the time, and she compared his operation and his management of this auditorium to other auditoriums that she caters to and this one stands head and shoulders above the others. That is due to Mr.

Buntgen and nobody else; Mr. Buntgen and his staff. Mr. Mimick said that he is professional and easy to work with. Now, Mr. Mimick is pretty well familiar with the parks and this community. That's his job. He knows the football and the athletic teams and he's always in and around that facility probably most every day of the year. He's professional and easy to work with. This is who you're firing, he's the guy who's professional and easy to work with, and who's always been there and who provides beautiful parks for the City of David City. Rehmer said all positives; all positives with respect to Bill Buntgen. The only negatives we've heard tonight are what I've said with his permission; all positives. Happy with the park, extremely happy with Bill, the job he does with both the park and the pool. I don't think the statute confers upon Mr. Buntgen, maintenance responsibilities for the pool, but the City has conferred upon him those responsibilities, he accepts them and he does them, and he does them well. Not management of the pool, but responsibility for maintaining them which he does, I think outside the statutory directive. Mr. Witter said that he's known him I think fifteen years, does a stellar job, does work above and beyond the call of duty, is easy to work with, he's courteous, does an excellent job, and he does a good job for the community. Pretty strong words, really pretty compelling words and Mr. Mayor, again with all due respect, they're not words that just say he's a nice guy, they're words that say he does a stellar job, he's easy to work with and that he does a good job with these things for the community. And, Mr. Zavodny said he is well liked, that fits in Mr. Mayor with your comments, but he also said that he's a hard worker and he loves his job. Now listen to all those things, think about the 64 people that are out here on this hot August night and think about, this is the guy your firing, and maybe your firing for a swimming pool incident that wasn't his responsibility and maybe your firing him for things that he was already disciplined for and then re-hired and that doesn't make sense; it just doesn't make sense. Now, I'm a big boy, I've been around a long time, we do represent the city of Columbus, I've been through these hearings, I know how councils think, and I know, I know as well as I'm standing here losing my voice and sweating that this is an uphill battle, I understand that, we all understand that, but I also know that you gentleman all live in the community, and that you respect the 64 people that showed up here tonight and that you respect the words that they said from the five that testified or who gave remarks that he does a good job; he does a good job. Now, if I've said something that you disagree with, you'll have at it, you will have that opportunity, Mr. Egr will give you the opportunity to disagree with me, and then I would like to respond to that, if I might, if that occurs. But from what I know, and the facts I have, and the information I've been given, these are the things that have concerned the council: a comp time flap, a posting of a flier flap, comments from city workers who worked under Mr. Buntgen, and the swimming pool incident which I know very little about. So you balance those things, if you do a balancing test you balance those things against what you've heard tonight, what you've heard from these five good folks and the 64 people that are here supporting Mr. Buntgen. He is a good guy, I think everybody in the room would say that, that's not why we're asking that you reverse his firing; we ask that you reverse his firing because he's been a darn good employee for this community and people who I know, that you know and respect, have told you that, and I know that you respect the 64 people that came out here tonight. So, it seems to me that the best thing to do is put it out in the open. If there are reasons that I haven't touched on, that you're letting this man go, this man who's done a good job for a number of years for this community; We asked for the open meeting, we're big people and we'll take it, just let us know, and we'll deal with it. If all you're saying is "well, this is a "terminate at will" state and we're just letting him go; we're just letting him go, that's the way it is." Tell us that and the record will reflect it and we'll know and these 64 people will know. But I think we all, that are here supporting Mr. Buntgen, have a right to know why this man is being let go in the face of what I hear and see tonight. Now, again, I know it's uphill, I know how these things work, I really appreciate being here, and I thank you for the opportunity, I'm sorry about my voice, but that's the way that goes. So, we respectfully request that you

consider these things. Do a balancing test; weigh what you've heard tonight against what you apparently know that these people don't know and determine if this is a guy you really want to let go; if this is a guy you really want to fire based on what you've heard tonight. And that's why we're here, to give you that opportunity to hear the other side of it and to hear these things that he's done for the community and the good work that he's done for the community and would like to continue to do for the community. So, thank you Jim for letting me go probably a little longer."

Attorney Egr stated, "In all fairness, what I will do is I will allow the Mayor and or Jon Holmes to respond on that. You opened the door, they were not wanting to put it all up, and you said it's all up, it's ok. But one thing I do want to clarify for the public though, and I see at least two people who were on the sales tax committee, and I'm saying this as the hearing officer but also City Attorney, there are State Statutes, it's not a constitutional issue I'm sorry Mark, there are State Statutes that limits the City of what they can do on City time and on city property for a ballot election dealing with the sales tax. And I know you're going to get those people, you will get five attorneys who say "no, that Statutes unconstitutional he should be able to do that." But, the big difference is, it's on his time, on public property, without the permission of the council and on the sales tax that could have been a disastrous issue from the City's standpoint. If somebody would have complained about using City property and city's employees time and/or materials on that, that could have jeopardized that, and I just wanted to clarify that point."

Attorney Sipple apparently wanted to make some comments and City Attorney Egr said it was past the time. City Attorney Egr stated that he would let the Mayor respond and then let Attorney Sipple respond.

Mayor Trowbridge stated, "Well thank you Mr. Sipple, you've done a wonderful job with the limited information that was forwarded to you. You mentioned an employee "threatening" was the term that you used, I prefer to use "abuse". We had a single young man who has not had a lot, this may have been his first full time job down there, and we had a gentleman that worked on a part-time basis that was semi-retired that had significant health issues through his family with him and with his wife, and neither one of those people needed the abuse that was heaped upon them by our employee the park superintendent to the point that they called me and said "would you please come and talk to us, Bill is terrifying us and we don't know what to do." You just don't go ruin peoples lives on a lark, I'm sorry. Those are things you probably didn't know. Mark, the 64 number intrigues you immensely; do you have any clue what percentage of the voting public that is in David City, Nebraska? Three percent (3%)."

Attorney Sipple stated, "I don't know that I would say it intrigues me immensely, 64 people here on a hot August night, that impresses me, I don't know that it intrigues me."

Mayor Trowbridge stated, "You told us that Bill was reappointed last in December 2010, which December 2010 is yet to hit the calendar, did you mean 2009? (Mr. Sipple stated: "I did thank you.") You seem to forget there was a meeting in 2009 relative to Mr. Buntgen's continued employment with the City of David City. City Administrator Joe Johnson recommended to the Mayor and Council the termination of Mr. Buntgen. The Council gave in and offered him a second chance and Bill was very, very, humble on his second chance that he would do everything right moving forward and he would not cause the community, and the city, and the management, any more grief which lasted until December when Mr. Johnson moved occupations to South Sioux City, Nebraska, and then we started back, sliding the way that we had gone before. You speak of our city ordinances that do no designate the park and auditorium superintendent to be the swimming pool manager. This is my fourth year as mayor,

it was this way when I came here, I don't know which mayor or which council decided that the street superintendent prior to Bill would take care and look over the swimming pool, so to speak, which is what Bill has been doing. That has been a long time happening; well it's been for the ten years, hasn't it Bill? Has anybody been hired during those ten years outside of city employees to do the things at the pool that you and Jim McDonald did? (City Attorney Egr said "no questions".) The two of you have always done it, that I will say, for the ten years the pool has been here. Then we get to, I don't know if you might call it insubordination Mark or what you might call it, when a lady that lives near the park calls the mayor and starts in a loud voice making comments about how our lovely park is going to hell. Those are the terms that were used. That is true, because I am the ear that heard it. I don't know what you do when people call you a liar to your face, but I guess I really don't care, I will consider the source. Anyway, "the park is going completely to hell" and I said, what in the world are you talking about? "Well I just got done talking to Bill Buntgen"; this is during the working day; "and Bill tells me that you have told him he can't spray because you're not going to pay for the spray"; Absolute total fabrication. If that isn't subterfuge, I can't believe it. Then I get the call from the Relay for Life people, one of the managements of that organization and they said "We're really mad at you. We're disappointed in David City." I said, what seems to be the problem. "Well, we always used the picnic tables in the Relay for Life area, and this year Bill told us we can't use the picnic tables because the Mayor said I can't bring them over here." I can point you to the people that I speak of. So you know, I am tired of the lying, I am tired of the deception, I am tired of making David City look bad at every chance we get. I asked, two months before B.R.A.N. (Bicycle Riders Across Nebraska) came to David City for Bill to be in charge of restroom facilities, Port-a-Potties, for 875 people. They spent the night with us; we had probably better than 1,000. A week before B.R.A.N. I called and said: How are you coming? He said "I have them lined up". Good, how many you got? "Four". I said, Bill, do you think four will serve 875 people or is this another attempt to make David City look bad to others? Its decisions that continually were made through this. He was given a second chance eight months ago. Then we get to the swimming pool issue, or the park lake issue, do either one of you guys want to talk to that? Just let it go? There were certain things that needed to be done to our park lake over the last ten years since it's been renovated that none of them have been done."

Park Supervisor Bill Buntgen stated, "Let me talk about the B.R.A.N. riders. I had six on order, I asked Mr. Niemann how many per hundred. The auditorium rest rooms were open, the swimming pool rest rooms were open, and the park restroom was open. I got his advice, he rents the port-a-potties and he said six would be plenty, and I had six ordered. Everything else, all the other restrooms in the park were open for them too."

Attorney Mark Sipple stated, "Well the swimming pool incident remains a secret and I guess that's fine, it is what it is. It is what I understand and it's what I expect. We produce five people that you all know from the community. Everyone on the council, I think, probably knows all five of these people. They stood up in front of you and they're here and they took time out of their life to come here and talk to you tonight and they're here and they look at you and they told you what they see about the park, what they see about the auditorium, and they're here. They're right here. They talk to you. They're in person. You know them, probably like them, and probably respect them, and they're here. Now the Mayor talks about, anecdotally, incidences and people who have talked to him, and I understand that, I don't disbelieve the mayor. Those people aren't here. They didn't stand in front of the council and say what they know. That wouldn't happen in a court anywhere in this country, from the lowest traffic court to the highest federal court in the land, that wouldn't happen. But you want to fire this guy on that. You want to fire this guy and take away his job based on these anecdotes that you hear and

some kind of secret deal about the swimming pool incident which he has no responsibility for in any event. No matter what happened at the swimming pool, no matter what kind of secret it is, he's not responsible for it, the statutes say that. The city council is responsible for the management of the swimming pool. He is responsible for the maintenance and nothing more and I hear that just comes about by custom and not by statute, but he is clearly not responsible for the management of that pool. So, that's it, that's what you had. You had five people here and 64 people supporting Mr. Buntgen, and five willing to get up and talk, and we kind of limited that we probably could have had fifteen people talk or maybe all 64 but Jim and I talked about that and we agreed that five would do it and I think they were good representatives and we didn't hear from anybody else. We didn't hear from any employee, whose life has been ruined, or anybody who thought the parks looked bad, they didn't come in and talk to you. But five people did, and I know you believe these five people. I don't think you think, irregardless of whether they took an oath or not, that they would mislead you or lie to you or tell you something that's not true, and you heard from them. Now this is a pretty good employee and you heard that and I don't think he should be fired and we respectfully request that you reverse the decision that you earlier made. Thank you."

City Attorney Egr stated, "Ok that concludes the part where people would speak on behalf of or to present the situation. I would now ask the council, you're at the stage right now where someone would move and someone would second to either reverse the decision to terminate Mr. Buntgen, to modify the decision to terminate Mr. Buntgen, or to uphold the decision to terminate Mr. Buntgen. And at that particular point in time after there's a move and a second if you as a council want to discuss that, fine, if not, then you can go to the vote."

Council member Rogers made a motion to uphold the termination of Bill Buntgen as the Park/Auditorium Supervisor. Council member Hein seconded the motion. Attorney Egr asked three times if any of the Council members wanted any discussion among themselves on this matter. There was no response. City Attorney Egr stated that the motion, on the floor for the council, is to uphold the decision to terminate.

City Attorney Egr read the following statement from Council member Scribner since he was absent:

Statement of Bill Buntgen's appeal

I was not in 100 percent agreement that night about the firing of Bill Buntgen. I strongly feel that the reasons for the dismissal of Bill Buntgen were not justified for removal. I regret that my employment takes me out of state for this council meeting, and I respect the outcome from around the table. I do ask that the council look at the reasons for Bill Buntgen's removal. The main incident at the pool, I felt that night and still today, was not Bill Buntgen's management. He was employed to maintain the pool not to be a lifeguard or Pool Manager. The events that took place at the pool should be the responsibility of the pool manager and the life guards.

William J. Scribner  
2<sup>nd</sup> Ward City Council  
David City, Nebraska

City Attorney Egr asked that Councilman Scribner's letter be a part of the minutes. City Attorney Egr asked if the Council was ready to vote and not hearing any comments instructed City Clerk Kovar to take the roll call vote. The roll call vote was as follows:

Council member Yindrick stated, "It's a very difficult situation, it's a very difficult vote for me. As a representative of the city, of the people of the community, I feel like I owe a certain responsibility and respect to that as well as owing a respect to the professional side of this position as a member of the council as part of the governing body. As the Mayor mentioned unfortunately there is information that is not privy to the public, but I also have to hold in; I respect the privacy of that and so we can't discuss that, but, my vote tonight is based on the information presented; both presented here and what I have gathered outside of these chambers. I would ask that beyond this vote we as a city council examine very strongly the expectations we set forth for our employees, specifically our supervisors, perhaps consider modification of that and hold our employees and our supervisors to a higher standard. I don't believe that to be a progressive community..... we shouldn't accept status quo we should expect more from our employees and as an employer we certainly make sure those expectations are met. So I would ask the council to consider that in the future that we give more attention to the expectations we have of our employees and hold them accountable. Based on the information tonight, I vote "No" to uphold the decision to terminate. Council member Smith stated, "The only comment I have, I'm not really sold on all the reasons why we are firing Bill. I always thought he did a good job. I've been down there several times to see him, during the daytime when nobody else was around; I met with Bill at the pool a couple of times, so my vote is "No". Council member Kroesing stated, "Yes". Council member Hein stated, "This is not a decision that was made on the spur of the moment or made lightly. I've heard all you people speak. I've listened. I also occupy this seat. I've lost a lot of sleep over this issue and believe me it's not been fun. Since last October my alarm goes off at 2:45 in the morning. When I wake up at midnight or one o'clock and this issue is on my mind I take it damn seriously. My vote is "Yes"." Council member Rogers stated, "Yes". The results of the roll call vote was AYE: Council members Kroesing, Hein, and Rogers. Voting NAY: Council members Yindrick and Hein. Council member Scribner was absent. City Clerk Kovar stated that the vote was: 3 yes, 2 no, and 1 absent.

City Attorney Egr stated, "The termination is upheld; that ends this hearing. Thank you all very much for your cooperation in holding down and cooperating in the dignity of this hearing; I will turn the matter over to the Mayor."

Mayor Trowbridge declared a five minute break at 8:15 p.m. The meeting resumed at 8:20 p.m.

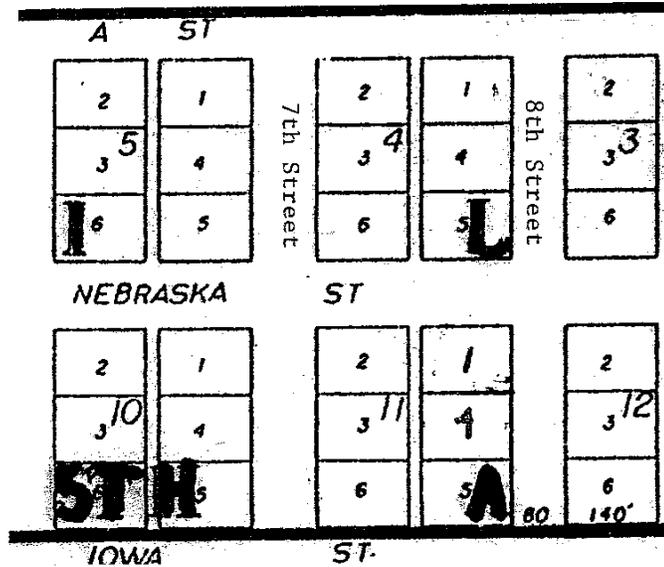
Council member Kroesing introduced Resolution No. 9 - 2010 and moved for its passage and adoption. Council member Yindrick seconded the motion. Voting AYE: Council members Rogers, Hein, Smith, Yindrick, and Kroesing. Voting NAY: None. Council member Scribner was absent. The motion carried. Resolution No. 9 - 2010 was passed and adopted as follows:

**RESOLUTION NO. 9 - 2010**

WHEREAS, Mark & Beverly Rerucha are the owners of the following properties located on 8<sup>th</sup> Street between Nebraska and Iowa Streets:

- 1) Lot 4 & S 25' of Lot 1, Block 11, Miles 5<sup>th</sup> Addition (125' x 140') and
- 2) the North 25' of Lot 5, Block 11, Miles 5<sup>th</sup> Addition ( 25' x 140'), and

WHEREAS, Mark & Beverly Rerucha have filed a request to combine their two properties listed above to form one lot 150' x 140'.



WHEREAS, there were no objections expressed concerning combining Lot 4 & S 25' of Lot 1, Block 11, Miles 5<sup>th</sup> Addition (125' x 140') and the North 25' of Lot 5, Block 11, Miles 5<sup>th</sup> Addition to David City (25' x 140'), to form one lot being 150' x 140'.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the request of Mark and Beverly Rerucha to form one lot 150' x 140', is hereby approved.

Dated this 11<sup>th</sup> day of August, 2010.

\_\_\_\_\_  
 Mayor Dana Trowbridge

\_\_\_\_\_  
 City Clerk Joan E. Kovar

Council member Yindrick made a motion to approve the application for a bingo permit by the Knights of Columbus at 517 4<sup>th</sup> Street, David City, Nebraska. Council member Rogers seconded the motion. Voting AYE: Council members Smith, Kroesing, Hein, Rogers, and Yindrick. Voting NAY: None. Council member Scribner was absent. The motion carried.

City Administrator Holmes explained that Amendment No. 1 to the Interlocal Agreement between the Upper Big Blue NRD, Lower Platte North NRD, and the City of David City was an extension on the dates so that they can continue with the Northwest Drainage Plan, everything else remains the same.

Council member Kroesing made a motion to approve Amendment No. 1 to the Interlocal Agreement between the Upper Big Blue NRD, Lower Platte North NRD, and the City of David City. Council member Rogers seconded the motion. Voting AYE: Council members Yindrick, Smith, Hein, Rogers, and Kroesing. Voting NAY: None. Council member Scribner was absent. The motion carried.

**INTERLOCAL AGREEMENT**  
**AMENDMENT NO. 1**

THIS AMENDMENT NO. 1 of the November 12, 2008 INTERLOCAL AGREEMENT, between the Upper Big Blue Natural Resources District (UBBNRD), Lower Platte North Natural Resources District (LPNNRD), and David City, Nebraska (CITY), Political Subdivisions of the State of Nebraska, hereafter referred to as PARTICIPANTS, organized and existing by virtue of Neb. Rev. Statutes, is entered into between the PARTICIPANTS for the purpose of amending certain terms and conditions of the INTERLOCAL AGREEMENT;

WITNESSETH:

- I. WHEREAS, construction engineering for the Project, known as the David City Northwest Drainage Improvement Project, will require additional costs for the Resident Project Representative (RPR), Quality Control Testing, Project Engineer, review of Contractor progress payments, and establishment of survey reference points; and
- II. WHEREAS the cost of construction engineering is estimated to be \$48,000; and
- III. WHEREAS, the UBBNRD agrees to provide the construction engineering tasks listed above;

**NOW THEREFORE:**

The PARTICIPANTS agree to amend the Interlocal Agreement as follows:

- I. Article II, Section 2.01 shall be deleted and replaced with the following:
  - A. Section 2.01 This Agreement shall initially become effective and binding upon its execution by all of the undersigned Participants and shall continue, unless terminated earlier as provided herein, until December 30, 2012.
- II. Article III, Section 3.03 shall be deleted and replaced with the following:
  - A. Section 3.03 The UBBNRD will be responsible for twenty five percent of engineering costs, not to exceed \$24,750.
- III. Article IV, Section 4.01 shall be deleted and replaced with the following:
  - A. Section 4.01 The LPNNRD will reimburse the UBBNRD for twenty five percent of engineering costs, not to exceed \$24,750, and shall pay such costs within 30 days of the receipt of the itemized statement referred to in Section 3.02 above.
- IV. Article V, Section 5.03 shall be deleted and replaced with the following:
  - A. Section 5.03 The CITY will reimburse the UBBNRD for fifty percent of engineering costs, not to exceed \$49,500, and shall pay such costs within 30 days of the receipt of the itemized of the itemized statement referred to in Section 3.02 above. The CITY further agrees that if construction of the PROJECT is not completed within three years from the completion of construction drawings, the CITY shall reimburse both the UBBNRD and LPNNRD for their respective shares of actual engineering cost.

**EXECUTION**

In accordance with Article VII of the Interlocal Agreement, this Amendment No. 1 to the Interlocal Agreement will become effective and incorporated into the Interlocal Agreement when executed by all PARTICIPANTS. Each executed copy of this Amendment shall be considered as an original, with the understanding that all PARTICIPANTS shall be bound to the same extent and purpose as if all such PARTICIPANTS had simultaneously joined in the execution of a single master copy.

IN WITNESS WHEREOF, all PARTICIPANTS voting aye have caused this Amendment No. 1 to the Interlocal Agreement to be executed by their duly authorized officer, as of the date and year shown below.

UPPER BIG BLUE NATURAL RESOURCES DISTRICT  
Augustus M. Brown Jr., Chairperson                      Dated 6-17-2010

LOWER PLATTE NORTH RESOURCES DISTRICT  
(currently not signed by anyone)

CITY OF DAVID CITY  
Mayor Dana Trowbridge                                      Dated 8-11-2010

Council member Yindrick introduced Ordinance No. 1128 setting the police chief's salary at \$46,500 per year. Council member Kroesing made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Yindrick seconded the motion. Voting AYE: Council members Smith, Hein, Rogers, Yindrick, and Kroesing. Voting NAY: None. Council member Scribner was absent. The motion carried.

Council member Kroesing made a motion to pass Ordinance No. 1128 on the third and final reading. Council member Yindrick seconded the motion. Voting AYE: Council members Smith, Hein, Rogers, Yindrick, and Kroesing. Voting NAY: None. Council member Scribner was absent. The motion carried and Ordinance No. 1128 was passed and approved as follows

**ORDINANCE NO. 1128**

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA TO SET THE PAY FOR THE POLICE CHIEF; REPEAL ALL ORDINANCES OR PORTIONS OF ANY ORDINANCE IN CONFLICT THEREWITH; PROVIDE AN EFFECTIVE DATE; AND PROVIDE FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

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

SECTION 1. The Mayor and City Council of David City, Nebraska, do hereby establish and fix the salary for Police Chief Anthony D. McPhillips at **\$46,500.00 per year**.

SECTION 2. The Mayor and City Council of David City, Nebraska, do hereby authorize Police Chief Anthony D. McPhillips to start with 40 hours accrued vacation time.

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

SECTION 4. This ordinance shall be published in pamphlet form and shall be in full force and effect beginning on August 1, 2010.

PASSED AND APPROVED this 11<sup>th</sup> day of August, 2010.

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Mayor Dana Trowbridge

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City Clerk Joan E. Kovar

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 Smith, Yindrick, Hein, Rogers, and Kroesing. Voting NAY: None. Council member Scribner was absent. The motion carried and Mayor Trowbridge declared the meeting adjourned at 8:26 p.m.

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Mayor Dana Trowbridge

ATTEST:

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City Clerk Joan E. Kovar



CERTIFICATION OF MINUTES  
August 11, 2010

I, Joan E. Kovar, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of August 11, 2010; 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.

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Joan E. Kovar, City Clerk