

## CITY COUNCIL PROCEEDINGS

March 10, 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 March 4<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 Gary Smith, Nick Hein, Bill Yindrick, Bill Scribner, and Mike Rogers, City Attorney Jim Egr, and City Clerk-Treasurer Joan Kovar.

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.

Mayor Trowbridge asked if everyone had time to go through the council minutes and check for any errors, additions, or corrections. Council member Yindrick made a correction on the February 22<sup>nd</sup> minutes stating that he was present for the meeting. Council member Kroesing made a motion to approve the minutes of the February 10<sup>th</sup> and the corrected minutes of the February 22<sup>nd</sup>, 2010 meetings of the Mayor and City Council. Council member Hein seconded the motion. Voting AYE: Council members Smith, Scribner, Yindrick, Hein, and Kroesing. Voting NAY: None. Council member Rogers was absent. The motion carried.

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

Mayor Trowbridge called for Committee and Officer Reports.

Council member Yindrick asked if there were significant expenditures in the Recycling department. City Clerk Kovar stated that she would need to research this.

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

Council member Rogers arrived at 7:06 p.m.

Power Plant Supervisor John Kabourek was not present but had submitted a letter announcing his retirement at the Utility Subcommittee meeting. Mayor Trowbridge stated, "John

has been a good leader, done a good job; and you guys keep things going when the call comes. We thank him for nineteen years at the power plant and we wish him well in his retirement. If any of you happen to bump into John please make mention of that, that we have appreciated his commitments through the years to the power plant". Council member Kroesing made a motion to accept the letter of retirement from Power Plant Supervisor John Kabourek. Council member Rogers seconded the motion. Voting AYE: Council members Scribner, Smith, Yindrick, Hein, Rogers, and Kroesing. Voting NAY: None. The motion carried.

Mayor Trowbridge stated, "With that, we need to replace John. He has been training and Eric Betzen has been learning for 13 years. I had a nice visit with Joe Johnson (previous city administrator) a couple of days ago and he wholeheartedly believed that you do an excellent job of running that plant and are fully capable to do so, so I certainly am comfortable with that appointment". Council member Kroesing made a motion to appoint Eric Betzen as the Power Plant Supervisor. Council member Scribner seconded the motion. Voting AYE: Council members Rogers, Hein, Yindrick, Smith, Scribner, and Kroesing. Voting NAY: None. The motion carried.

Council member Kroesing accepted the resignation of Glayda Scofield as secretary of the David City Police Department. Council member Rogers seconded the motion. Voting AYE: Council members Yindrick, Scribner, Smith, Hein, Rogers, and Kroesing. Voting NAY: None. The motion carried.

Council member Scribner thanked John and Glayda for their years of service.

Mayor Trowbridge stated, "Item number ten is consideration of authorizing the expenditure of public funds for "informational purposes only" concerning a 1½% city sales tax and it is probably one of the few ways the public will get accurate information as to what the ballot is on the 1½% sales tax.

City Attorney Egr stated, "This body has the right under the accountability act to take a position and say that they are in favor of the 1½% sales tax. They cannot spend public funds on any brochures to say "vote yes" or "vote no", but they can expend public funds for informational purposes upon public request and that's what's happened, the public has requested information. This body has the right under the accountability statutes on ballot issues to take a position, but they cannot on any brochures given out to address issues, put on there "please vote yes" or "please vote no".

As the sales tax committee did not have any bids or estimated costs for brochures, etc., City Attorney Egr suggested stating "not to exceed \$1,500" in the motion.

Council member Smith made a motion to authorize the expenditure of Public Funds not to exceed Fifteen Hundred Dollars (\$1,500.00), for "informational purposes only" concerning a 1½% city sales tax. Council member Rogers seconded the motion. Voting AYE: Council members Hein, Kroesing, Scribner, Yindrick, Rogers, and Smith. Voting NAY: None. The motion carried.

The purchase option to purchase the Southern XV property located at 315 So. 4<sup>th</sup> Street terminates March 31, 2010. Mayor Trowbridge stated, "This is the very end of a long process probably dating back eight months to a year from when it first started. Three months ago the

council approved signing an option with Mr. Galyen from Atkinson, Westland Enterprises, and at the end of this month the option ends. During that time we have done some legal searches as to the cleanliness of the ownership trail of that particular piece of property, we've had Olsson Associates do a Phase 1 Environmental Study of that property which came back very nicely positive. We know what we need to do and that is to remove the tanks at some point in time we are not bound to them early or right now, but prior to selling that property we would have to remove the tanks. So that is what's before us now; the option to purchase that property. We furnished him with an appraised value of \$50,000 for that property from Russ Moravec who is a licensed appraiser.

Jan Sypal stated that she agrees the property at 315 So. 4<sup>th</sup> Street is an eyesore and something needs to be done with it. Jan stated, "My only concern to you as a council and the city is that a lot of people, when you had focused on that piece of property; possibly putting the police station there, in the public's eyes I think that was a great idea. To purchase the property and clean it up, a lot of people have a concern, the general trend has been in the City is you go through the health department in a situation like this and if it needs to be cleaned up like several properties in town had to be cleaned up, then so be it, and it was done by the city and then assessed as a lien against the property. In this situation it has been an exemption that it hasn't been done that way. My only concern is how are you going to go forward with this with other property owners?"

Mayor Trowbridge stated, "You have missed some meetings since we initially discussed the Universal Property Standards (International Property Maintenance Code). We learned through time that the Board of Health proceeding is a tedious, tenuous process and doesn't work very well. This came between the two processes."

Jan Sypal stated, "So, from now on if you have other properties that need to be condemned or cleaned up is the City going to be purchasing these from the property owner, cleaning up and reselling the property?"

Mayor Trowbridge stated, "If the party that owns it is directed to do a clean up and they fail to do so, the City will see that that task is accomplished and will then charge that to the property and probably after thirty days of non-payment will go after them in court. It is quite likely that we will own the property at the end; it is not a goal to own the property but that's maybe the way that we end up getting paid."

Jan Sypal stated, "I can see a lot of situations in the community if they have a piece of property that's in disrepair and they don't care to do anything with that piece of property, they will just walk away from it rather than having to clean it up. A lot of times the expense of cleaning up property is more than what the lot is worth. My only concern is, if I was a council member at this time, my only concern would be are we really opening a can of worms? I don't think the city is out there to be buying and selling property."

Council member Smith made a motion to purchase the Southern XV property located at 315 So. 4<sup>th</sup> Street, for the sum of Twenty-Five Thousand Dollars (\$25,000.00). [As a \$2,500.00 purchase option was paid previously, the amount due is \$22,500.00]. Council member Rogers seconded the motion. Council member Yindrick stated, "I think a key thing to remember is the City has the option to purchase a property that no individual's going to have that option to purchase at 25 grand. We as a city have that option to then own a property that immediately

appraises for more than we've paid already, so we immediately have equity in the property just by having ownership that we can clean up and choose to do with as we please. It becomes an immediate asset to the City." Voting AYE: Council members Yindrick, Hein, Kroesing, Rogers, and Smith. Voting NAY: Scribner. The motion carried.

Council member Yindrick made a motion to authorize Council President Gary Kroesing to execute the Citizen Participation Plan concerning CDBG Project Information. Council member Scribner seconded the motion. Voting AYE: Council members Smith, Kroesing, Hein, Rogers, Scribner, and Yindrick. Voting NAY: None. The motion carried.

## **Citizen Participation Plan**

### **City of David City, Nebraska**

#### **A. Participation by Citizens**

All citizens, including low and moderate income citizens, shall be requested and encouraged to participate in the assessment of community issues, problems and needs, the identification of potential solutions, and priority to such issues, problems, and needs, as follows:

1. All citizens shall be periodically be requested to complete a community needs survey to identify community and neighborhood issues, problems and needs.
2. All citizens shall be notified by publication and posting of all meetings to discuss the identified needs, potential solutions, and solution priorities.
3. All citizens, particularly low and moderate-income citizens, shall be afforded the opportunity to serve on the various community improvement task forces established by the City Council.

#### **B. Access to Meetings, Information and Records**

Notice of public meetings conducted by the City Council and Planning Commission shall be published and posted not later than 10 days prior to such meetings.

Agendas of all such meetings shall be available at the City Clerk's Office for public inspection.

All meetings where CDBG projects or applications are to be discussed shall be published and posted at least 6 days prior to such meetings and all information and records concerning such CDBG projects or applications shall be available for public inspection at the Office of the City Clerk.

All meetings will be held at the City Office which is accessible to the handicapped.

#### **C. Specific CDBG Project Information**

All citizens shall be provided with information regarding specific CDBG projects through public meetings and publication of notices which provide all pertinent information regarding any CDBG project including, but not limited to, the following:

1. The amount of CDBG funds expected to be made available to the City for the current fiscal year, including CDBG funds and anticipated program income;
2. The specific range of activities that may be undertaken with CDBG funds;
3. The estimated amount of CDBG funds to be used for activities that will meet the national objective of benefit to low and moderate income persons, and;

4. A description of any proposed CDBG funded activities which are likely to result in displacement of persons along with the City's anti-displacement and relocation plans.

**D. Provisions for Technical Assistance to Citizens**

The City Clerk shall maintain current information of available resources for community improvement efforts and CDBG programs available and provide such information upon request by any citizen or group representing any citizen or group of citizens and the City Clerk shall provide assistance in developing proposals to address issues, problems and needs identified by such citizen or citizens.

**E. Public Hearing on CDBG Activities**

The City shall cause a minimum of two (2) public hearings to be conducted with regard to any CDBG application. One such hearing shall be conducted at the initiation of any such application and a second public hearing shall be held near the completion of any CDBG funded activity to obtain citizen input, comments or opinions with regard to such application(s) and with regard to program or project performance.

The City Clerk shall act as the contact person for all questions, comments or concerns expressed by any citizen with regard to any CDBG program or project and shall forward any such questions, comments or concerns to the City Council at the next regular meeting of the City Council immediately following expression of such questions, comments, or concerns. The City Clerk shall also be responsible for transmitting the City Council's response to any such question, comment or concerns to the citizen or citizens expressing the same.

**F. Needs of Non-English Speaking Citizens**

Although it is not anticipated that non-English speaking persons will participate in the citizen participation process, the City Clerk shall make arrangements for oral or written translation of information regarding any CDBG program, application or project upon request by such non-English speaking persons or representative of such persons.

**G. Compliance/Grievance Procedures**

The City Clerk shall post a notice at the City Office which provides name, telephone number, address and office hours of the City Clerk for citizens who wish to file a complaint or grievance regarding any CDBG program, project or application.

Individuals wishing to submit a complaint or file a grievance concerning activities of or application for CDBG funds may submit a written complaint or grievance to the City Clerk.

The City Clerk shall present such complaint or grievance to the City Council at the next regular meeting of the City Council, where it shall be reviewed by the Council members. The individual submitting such complaint or grievance shall be notified of such meeting and shall be given the opportunity to make further comments at such meeting. The City Council shall issue a written response to any complaint or grievance within five (5) working days following the meeting at which a response is formulated. Such response shall be mailed to the individual citizen(s) submitting the complaint or grievance by the City Clerk to the last known address of said citizen(s).

In the event the name of the complaint or grievance is determined to be a matter requiring immediate action, a special meeting of the City Council shall be called to review the matter within ten (10) working days of receipt of such complaint or grievance.

**H. Adoption**

This Citizen Participation Plan is hereby adopted by action of the City Council of the City of David City, Nebraska.

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Gary Kroesing, Council President

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Attest: Joan Kovar, City Clerk

Council member Kroesing made a motion to authorize Mayor Trowbridge to execute the Northeast Nebraska Economic Development District Service/Consultant Agreement for General Administration concerning the CDBG application 07-PP-007 downtown planning grant. Council member Yindrick seconded the motion. Voting AYE: Council members Scribner, Smith, Hein, Rogers, Yindrick, and Kroesing. Voting NAY: None. The motion carried.

Council member Hein made a motion to authorize Mayor Trowbridge to execute the Northeast Nebraska Economic Development District Service/Consultant Agreement for General Administration concerning the CDBG application 08-PW-012 concerning the "D" Street Reconstruction. Council member Scribner seconded the motion. Voting AYE: Council members Kroesing, Rogers, Yindrick, Smith, Scribner, and Hein. Voting NAY: None. The motion carried.

Council member Hein made a motion to go into executive session to discuss lawsuits and hiring extra legal counsel and those two items only. Council member Yindrick seconded the motion. Voting AYE: Council members Scribner, Smith, Kroesing, Rogers, Yindrick, and Hein. Voting NAY: None. The motion carried.

Mayor Trowbridge stated: "At 7:32 the council will be going into executive session to discuss lawsuits and hiring extra legal counsel and those items only."

Mayor Trowbridge, Council members Kroesing, Yindrick, Smith, Scribner, Hein, and Rogers, City Attorney Jim Egr, and City Clerk Kovar went into executive session at 7:32 p.m.

City Attorney Jim Egr stated that a motion and second was not needed to come out of executive session. Therefore, Mayor Trowbridge declared the City Council out of executive session at 7:54 p.m.

Council member Scribner made a motion to hire the law firm of Spencer Fane Britt & Browne LLP for the Vincent Brehm lawsuit. Council member Roger seconded the motion. Voting AYE: Council members Yindrick, Smith, Kroesing, Hein, Rogers, and Scribner. Voting NAY: None. The motion carried.

Mayor Trowbridge stated, "This past week I have had discussions with acting Chief Sylvester and I've had discussions with Sheriff Hecker relative to what is going on in David City as far as coverage go. Since Mark (Hecker) was told through the election that he would not be taking over the police actions of David City he has not hired additional staff and therefore he is working with the staff that is sized to do Butler County and he is helping with David City and that is putting a pinch upon their resources. Jim doesn't have enough resources at this point in time to cover the needs of David City and that brought up the question; I think the question came from both of you the same day as to why don't we consider looking at one or possibly two additional officers at this point in time, continuing the search for a chief in the meantime, so that's what brings this about."

Discussion followed in which Council member Kroesing stated that he was in for hiring one more and see how it works. Council member Scribner stated we could hire one more at least until we get a chief who could help with the hiring process. In November, Council member Kroesing, Mayor Smith, Police Chief Sunday, and City Administrator Joe Johnson had interviewed an applicant and it was questioned if he was currently certified. Council member Yindrick stated, "Ideally I'd like to see a chief in place to have an input on the hiring process, but, we need people on the street at least someone to control the extra shift, the extra time. I think the chief deserves that opportunity to interview and hire; be involved."

A committee consisting of Mayor Trowbridge, Council members Kroesing and Hein, and Acting Police Chief Sylvester was formed for the hiring of a police officer.

Acting Police Chief Sylvester stated, "Would you at least leave it open to possibly hire two? Is that something you could do rather than locking it down to one? When I talked to Mark he said a deadline has to be done. He wants something done to hire officers if you can't get a chief right away." Discussion followed. Council member Hein stated, "I think we tough it out and we hire one at this point." Council member Yindrick stated, "Stay aggressive on finding a chief".

Council member Hein made a motion to proceed with hiring one police officer at this point in time. Council member Scribner seconded the motion. Voting AYE: Council members Yindrick, Smith, Kroesing, Rogers, Scribner, and Hein. Voting NAY: None. The motion carried.

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 Yindrick, Scribner, Smith, Hein, Rogers, and Kroesing. Voting NAY: None. The motion carried and Mayor Trowbridge declared the meeting adjourned at 8:15 p.m.

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Mayor Dana Trowbridge

ATTEST:

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City Clerk Joan E. Kovar



CERTIFICATION OF MINUTES  
March 10, 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 March 10, 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