

## PLANNING COMMISSION

August 13, 2022

8:00 AM

Chairman Jim Masek opened the meeting at 8:00 a.m. in the meeting room of the City Office Building, 490 E Street, David City, Nebraska, and notified the public of the "Open Meetings Act" posted on the west wall of the meeting room. Chairman Jim Masek also notified the public that if you wish to speak to the Commission to please state your name and address for the record.

Present: Planning Commission members Jim Vandenberg, Keith Marvin, Jim Masek, Pam Kabourek and Greg Aschoff. Also present were Alternate Brian Small, Deputy City Clerk Lori Matchett, Building Inspector Gary Meister, City Attorney David Levy, Mark & Willow Holoubek, Steve Maguire, Jacob Garbison of Mattson Ricketts, and Christopher Janson of MSA. Sarah Runkel of MSA attended via Zoom.

Planning Commission member Pam Kabourek made a motion to approve the minutes of the July 23, 2022, meeting as presented. Jim Vandenberg seconded the motion. The motion carried. Greg Aschoff: Yea, Pam Kabourek: Yea, Keith Marvin: Yea, Jim Masek: Yea, Jim Vandenberg: Yea. Yea: 5, Nay: 0.

Planning Commission member Keith Marvin made a motion to move agenda item number four the discussion of the comprehensive plan after agenda item number seven for the consideration of the wellhead permit application for a redrill of a failed irrigation well submitted by Mark Holoubek. Jim Masek seconded the motion. The motion carried. Greg Aschoff: Yea, Pam Kabourek: Yea, Keith Marvin: Yea, Jim Masek: Yea, Jim Vandenberg: Yea. Yea: 5, Nay: 0.

Willow Holoubek introduced herself. She stood before the Planning Commission to request that they be allowed to drill a potable well on their four-hundred-acre contiguous farm for their house use believing that they have met all the requirements that they need for the well.

Planning Commission member Keith Marvin referred to Section 7-203 item A of the Municipal Code Book which states the following:

*Section 7-203: Mandatory Hookup; Private Wells Prohibited.*

*A. The city through its Water Department shall furnish water to persons within its corporate limits whose premises abut a street or alley in which a commercial main now is or may hereafter be laid. All persons whose property is within 300 feet of a main shall be required, upon notice by the mayor and City Council, to hook up with the city water system.*

Keith's concern is that their property is within 300 feet from a water main that currently service homes along B Street all the way to M Road.

Willow Holoubek informed the commission that the property line is north of B Road and has been there long before any street or water main was put in on that road.

City Attorney David Levy stated "Section 7-203 A. is clear, and I don't know if that really gives the Planning Commission discretion it says all persons whose property is within 300 feet of a water main shall be required upon notice to hook up on the city water system. Unless the

property line is more than 300 feet from a water main, I don't think the commission has discretion to allow anything but a hook up to the city water system."

Willow Holoubek said, "And that's what you have read off of that. We are a four-hundred-acre contiguous farm. I have cattle on one side of the creek that I need to water, we also spray all of our fields ourselves because we're small. So, having city water to do agricultural things on a farm that was here before the city was. I understand laws come in after that. But to water my cows and spray all my fields with water on that main I believe we should be able to drill a well."

Chairman Jim Masek said, "I have a question for you, Willow. Back in 2013 we granted you to drill a new well and in 2014 you disconnected with water service to serve your supposed house. You do have a well that was supposed to be to water your cattle according to our minutes from August 2013. So...."

Willow Holoubek said, "That is correct, that is on the north side of the creek. All of northwest drainage project and a lot of the city water goes down through my property. I take all of your runoff, which is not always wonderful. But it splits my pastures, so one of my pastures is on the south side of the creek. The well and all of the cow water is on the north side of the creek. Now I can bore under the creek, but I would rather not bore. I don't know how to get that water to the south side of the creek."

Planning Commission member Keith Marvin asked, "This is for the potable well?"

Willow Holoubek answered, "A potable well."

Planning Commission member Keith Marvin continued, "Which means it's for your house."

Willow Holoubek responded, "Yes."

Planning Commission member Keith Marvin said, "Why are we watering cattle with house water? I guess."

Willow Holoubek answered, "Because we don't use the potable as irrigation. We use it for the house and the farmstead. And if you will remember back then I committed adamantly, and we did for a while because there is a difference between the day that we drilled the well for potable and the day we went on it for the house. During that time, our farm is very old, and we have water pipes running through it going places that are dead ends. There are lots of buildings out there; he had a dairy out there if anyone remembers. One month our city water bill was over \$500.00 bill because we had a leak spring up where we didn't realize it, then a couple of months later we got a \$1,500.00 water bill because we sprung a leak that was farther out, and we didn't go looking for it. And we didn't realize that it was leaking at that time until we got the bill. That was the first issue that came before we changed the water in our house. The second issue was that we are at the end of that line that doesn't get flushed very often and I will tell you that I didn't have any white clothes that weren't ruined. We went through washing machines, I would fill my bathtub to take a bath and it looked like I was getting into iced tea, my stools were constantly rusty, and we didn't have any good white clothes. We couldn't wash clothes in our house without using city water."

Alternate member Brian Small arrived at 8:09 a.m.

Discussion continued.

Jacob Garbison of Mattson Ricketts introduced himself. Jacob Garbison referred to Section 7-234 of the Municipal Code for the Wellhead Protection area. His clients (the Holoubek's) are outside of the city limits. They are asking for a permit for a potable water well, Section 7-234 of the wellhead protection area section D gives a list of structure or activities that are regulated by the David City Municipal Code. Section E defines those structures or activities as a wellhead structure or activity. The subsections following state that unless approved by the planning commission that you cannot place a wellhead structure or activity as defined. That repeats in subsection H & J. In section D a water well, potable is not listed as a structure or activity. Jacob Garbison stressed that the Holoubek's property is not in the city limits.

Discussion continued about if a potable water well was a permitted or not permitted wellhead structure or activity. Jacob Garbison believes that if a potable water well is not listed in section 7-234 in subsection D then it is a permitted because there is nothing listed in the code book saying that a potable water well is not allowed. City Attorney David Levy believes that in the case of a zoning matter that if a use is not listed that it is prohibited, that is the default. The difference of a potable well and a non-potable well is a potable well is for human consumption, a non-potable well is for watering livestock, crops, grass, etc.

City Attorney David Levy said, "Back to the law that we may or may not be operating under here, if this is a well head structure, the applicant has to prove to the Planning Commission that the activity, in this case the potable water well, does not constitute a hazard or threat to the quality of the municipal water supply or ground water before you can issue a permit. I don't think you have any evidence before you one way or the other. The applicant's attorney is saying this is not a wellhead protection structure, yet they filed an application under that, so we have a lot of contradictions going on here, but if we try and find a way through and try and work with the applicant. At a minimum, if this is a wellhead structure then they have the burden of demonstrating that it is not a hazard or a threat to the quality of the municipal water supply or ground water. And you don't have any evidence before you on that point."

A motion was made by Keith Marvin to take no action due to lack of jurisdiction under Section 7-234 of the Wellhead Protection Area for a potable water well. Jim Masek seconded the motion. The motion carried. Greg Aschoff: Yea, Pam Kabourek: Yea, Keith Marvin: Yea, Jim Masek: Yea, Jim Vandenberg: Yea. Yea: 5, Nay: 0.

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CITY OF DAVID CITY, NEBRASKA



**WELLHEAD STRUCTURE OR ACTIVITY  
PERMIT APPLICATION**

PAID

AUG -1 2022

CITY OF DAVID CITY  
DAVID CITY UTILITIES

**IMPORTANT NOTICE:** Applicants and property owners are solely responsible for the information submitted on the application. Information which is incorrect or inaccurate may be cause for rejection of the application. Officials of the City of David City are not authorized to practice engineering, surveying or architecture. Review of applications by the City of David City is not to be construed as a substitute for architectural, engineering, surveying or contractors services. Applicants are encouraged to consult with a professional architect, engineer, surveyor or contractor when in doubt. Applicants are solely responsible for all applicable state building, electrical and plumbing codes. Applicants are solely responsible to comply with all zoning codes of the General Plan and all ordinances of the City of David City and are cautioned to consult with an attorney when in doubt. No construction shall be started without an approved Wellhead Permit. Applicants are encouraged to obtain certification from a Nebraska licensed surveyor to document compliance with zoning regulations. The City of David City may seek recommendations of the Natural Resources District, the Nebraska Department of Environmental Quality or any other party or agency in evaluating the impact of the proposed structure or activity on the municipal water supply or ground water.

The City of David City shall not be liable for any and all liability that may arise as a result of the proposed construction.

Date of Application 7-28-22 Zone \_\_\_\_\_

Type of Construction or Activity  
(describe the activity or operation, etc.): DRILL POTABLE WELL

Estimated Cost \$15,000 Intended Use \_\_\_\_\_

Property Owner: Name MARK Holoubek Location of Work: Owner WILLIAM Holoubek

Address 3531 M Rd Address David City, NE 68632

Phone 402 367-2367 Zone \_\_\_\_\_

Legal Description of Work Site: 24-15N-2E

Description of Work- Describe the project or activity and why approval would not adversely impact municipal water supply and groundwater (use a separate sheet if necessary):

DRILL POTABLE WELL

General Contractor:

Name PREISTER WELL

Address Humphrey, NE Phone: 402-923-0303

Electrician:

Name H. E. M. ELECTRICIAN

Address BELWOOD, NE Phone: 402 920-0712

Plumber:

Name N/A (PREISTER)

Address \_\_\_\_\_ Phone: \_\_\_\_\_

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**This section to be completed by the city**

Permit Fee \$ 25.00 Date Paid 8-1-2022 Rec'd by JW

Date Plans Submitted \_\_\_\_\_ Date Survey Submitted \_\_\_\_\_

**ACTION:**

SUBMITTED TO PLANNING COMMISSION Date 8-5-2022 for 8-13-22 meeting

DENIED Reason \_\_\_\_\_ Date \_\_\_\_\_

APPROVED Date \_\_\_\_\_

PLANNING COMMISSION FINDINGS A motion was made by Keith Marvin to take no action due to lack of jurisdiction under Section 7-234 of the Wellhead Protection area for a potable well. Jim Masek seconded the motion. The motion passed.

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PERMIT ISSUED Date \_\_\_\_\_ Number \_\_\_\_\_

Next item on the agenda is a Wellhead Permit Application submitted by Willow & Mark Holoubek for a septic tank and leach field.

Planning Commission member Keith Marvin asked, "I guess just a couple of questions that I have on this. The house that is being constructed right now, is there going to be a second home on that property? Is the current house going to remain?"

Willow Holoubek responded, "Yes."

Planning Commission member Keith Marvin said, "Okay, it's going to have a separate septic and lateral field?"

Willow Holoubek responded, "Yes."

Mark Holoubek said, "It's twelve hundred foot away."

Planning Commission member Keith Marvin asked, "Has anybody contacted NDEE regarding the two different septic and lateral fields on the same property."

Willow Holoubek answered, "Yes, in that there is a licensed contractor that will permit the structure with the state."

Planning Commission member Jim Vandenberg asked, "Did they elude the fact of doing a percolation test before you can get a permit?"

Willow Holoubek responded, "It's up to them, I don't know yet."

Planning Commission member Jim Vandenberg said, "Because I know there is a percolation test that was required before you can put in a septic system."

Willow Holoubek said, "We are going to meet all regulations. State regulations and NDEE regulations with a certified person that is certified with the state to install it. Yes."

Discussion continued. Planning Commission member Keith Marvin would like to see something in writing from NDEE that their review is not required or that it meets all of their requirements.

Planning Commission member Jim Vandenberg made a motion to approve the Wellhead permit application submitted by Willow and Mark Holoubek for a septic tank and leach field under the condition on compliance of state law and submitting the reports to the City. Keith Marvin seconded the motion. The motion carried. Greg Aschoff: Yea, Pam Kabourek: Yea, Keith Marvin: Yea, Jim Masek: Yea, Jim Vandenberg: Yea. Yea: 5, Nay: 0.



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CITY OF DAVID CITY  
DAVID CITY UTILITIES

CITY OF DAVID CITY, NEBRASKA



### WELLHEAD STRUCTURE OR ACTIVITY PERMIT APPLICATION

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The City of David City shall not be liable for any and all liability that may arise as a result of the proposed construction.

Date of Application 7-28-22 Zone \_\_\_\_\_

Type of Construction or Activity  
(describe the activity or operation, etc.): septic tank & leach field

Estimated Cost \$8000.00 Intended Use home site (permitted)

<u>Property Owner:</u>		<u>Location of Work:</u>	
Name <u>Willow &amp; Mark Holubek</u>	Owner <u>Willow &amp; Mark Holubek</u>		
Address <u>3531 M Rd</u>	Address <u>3531 M Rd</u>		
Phone <u>402-936-4959</u>	Zone _____		

Legal Description of Work Site: 2415-2E

Description of Work- Describe the project or activity and why approval would not adversely impact municipal water supply and groundwater (use a separate sheet if necessary):

Constructed on 400 acre contiguous farm. Farm home

General Contractor:

Name J.R. Contracting (Jerome Meister)  
Address 500 38 Rd, David City NE 68633 Phone: 402-367-8853

Electrician:

Name H&M Electric  
Address Columbus NE Phone: \_\_\_\_\_

Plumber:

Name J.R. Contracting (septic to be installed by license contractor)  
Address \_\_\_\_\_ Phone: \_\_\_\_\_

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**This section to be completed by the city**

Permit Fee \$25.00 Date Paid 8/1/22 Rec'd by JM  
Date Plans Submitted \_\_\_\_\_ Date Survey Submitted \_\_\_\_\_

**ACTION:**

- SUBMITTED TO PLANNING COMMISSION Date 8/5/2022 for 8/13/2022 meeting
- DENIED Reason \_\_\_\_\_ Date \_\_\_\_\_
- APPROVED Date 8/13/2022 with provisions

PLANNING COMMISSION FINDINGS Approved the permit application under the condition of compliance of state law and submitting the reports to the City.

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\_\_\_\_\_  
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PERMIT ISSUED Date \_\_\_\_\_ Number \_\_\_\_\_



Next item on the agenda was the Wellhead Application permit submitted by Mark Holoubek for a failed irrigation well.

Willow Holoubek said, "This is an existing irrigation well that we have on the north side of the tracks, on the north side of our farm property that has been in existence for a long time. It is vital to our income and our livelihood on the farm because we irrigate crops with it. In a year like this year, if it took us over thirty days to get a permit to fix that well, to redrill that well we would lose the crop. We are just being proactive with this. The well has not completely failed just yet. Our well driller said it could any day and so we wanted to be proactive and put this in front of you while you were looking at everything else."

Planning Commission member Jim Vandenberg recognized that the well is a registered well. There is a law set in place that if an irrigation well goes down during the planting/watering season that the well owner does not have to come before the Planning Commission and wait thirty days for the permit, there is an option in the law that allows the well owner to redrill the failed well. Jim Vandenberg suggested that if something like that were to happen to the Holoubek's in the future they may want to look at the State Law. If the failed well is redrilled the old well will need to be decommissioned."

Planning Commission member Jim Vandenberg made a motion to approve the replacement irrigation well provided the other well is decommissioned with proof that the well was decommissioned. Jim Masek seconded the motion. The motion carried. Greg Aschoff: Yea, Pam Kabourek: Yea, Keith Marvin: Yea, Jim Masek: Yea, Jim Vandenberg: Yea. Yea: 5, Nay: 0.

<b>2021 WATER USE REPORT - IRRIGATION WELLS</b>	
RETURN BY DECEMBER 1ST TO: UPPER BIG BLUE NRD	
319 EAST 25TH ST YORK NE 68467	PHONE: 402-362-6601 Email: <a href="mailto:wateruse@upperbigblue.org">wateruse@upperbigblue.org</a>
OPERATOR 3057	MARK R & WILLOW A HOLOUBEK 3531 M RD, DAVID CITY NE 68632 Phone: Email: Cell: (402) 367-2367

Well Number: **G-008373 - LOCATED IN NWSE OF SECTION 24-15N-02E IN BUTLER COUNTY**

PAID

AUG -1 2022

CITY OF DAVID CITY  
DAVID CITY UTILITIES

CITY OF DAVID CITY, NEBRASKA



### WELLHEAD STRUCTURE OR ACTIVITY PERMIT APPLICATION

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The City of David City shall not be liable for any and all liability that may arise as a result of the proposed construction.

Date of Application 7-28-22 Zone \_\_\_\_\_

Type of Construction or Activity  
(describe the activity or operation, etc.): RE DRILL FAILED IRRIGATION WELL

Estimated Cost \$75,000 Intended Use \_\_\_\_\_

<u>Property Owner:</u>	<u>Location of Work:</u>
Name <u>MARK Holoubek</u>	Owner <u>WILLOW Holoubek</u>
Address <u>3531 m Rd</u>	Address <u>David City NE 68632</u>
Phone <u>402 367-2367</u>	Zone _____

Legal Description of Work Site: 24-15N-2E

Description of Work- Describe the project or activity and why approval would not adversely impact municipal water supply and groundwater (use a separate sheet if necessary):

RE DRILL IRRIGATION WELL G-008373  
UPPER BIG BLUE NRD PERMIT NUMBER

General Contractor:

Name SARGENT Irrigation  
Address BENGA, NE Phone: 402.759.3902

Electrician:

Name N/A  
Address \_\_\_\_\_ Phone: \_\_\_\_\_

Plumber:

Name N/A  
Address \_\_\_\_\_ Phone: \_\_\_\_\_

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**This section to be completed by the city**

Permit Fee \$25.00 Date Paid 8-1-2022 Rec'd by gmc  
Date Plans Submitted \_\_\_\_\_ Date Survey Submitted \_\_\_\_\_

**ACTION:**

- SUBMITTED TO PLANNING COMMISSION Date 8-5-2022 for 8-13-2022 meeting
- DENIED Reason \_\_\_\_\_ Date \_\_\_\_\_
- APPROVED Date 8/13/2022 with provisions

PLANNING COMMISSION FINDINGS Approved the permit application with  
the provision that the Holoubek's would provide proof of documentation  
that the previous well has been decommissioned.

PERMIT ISSUED Date \_\_\_\_\_ Number \_\_\_\_\_

Planning Commission member Keith Marvin made a motion to have a five-minute recess at 9:15 a.m.

Chairman Jim Masek called the meeting back to order at 9:20 a.m.

Chairman Jim Masek introduced the next item on the agenda which was the discussion of the comprehensive plan review presented by Christopher Janson of MSA Professional Services. Chairman Jim Masek informed the public that they would not be taking any public comments at this time on the comprehensive plan.

Christopher Janson of MSA Professional Services introduced himself and then presented to the Planning Commission the future land use map. He asked for any changes that need to be made on the future land use map. The Planning Commission members did make a few suggestions on additional locations that need to be added to the future land use map. Christopher Janson will adjust the 2042 city limits to include the locations that they recommended to be added.

The Planning Commission discussed the timeline of finalizing the comprehensive plan and holding an open house for the public to review the Comprehensive Plan could be held on September 6<sup>th</sup> or 7<sup>th</sup>. The public open house will be at the City Office at 490 E Street from 6 p.m. to 8 p.m. with a presentation at 6:15 p.m. and 7:15 p.m., The presentation would be 5-10 minutes long. They will provide presentation boards of the Comprehensive Plan.

Planning Commission member Keith Marvin made a motion to adjourn. There being no further business to come before the Planning Commission, Chairman Jim Masek declared the meeting adjourned at 9:45 a.m.

Minutes by Lori Matchett, Deputy City Clerk