

CITY COUNCIL PROCEEDINGS

September 22, 2021

The City Council of the City of David City, Nebraska, met in open public session at 7:00 p.m. in the lower level of the David City Auditorium at 699 Kansas Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on September 16, 2021, 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 on the City's website. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting. The meeting was held at the City Auditorium due to the COVID-19 pandemic so as to incorporate social distancing strategies. [It is recommended that individuals be kept at least 6 feet apart.]

Present for the meeting were: Mayor Alan Zavodny, Council members Pat Meysenburg, Tom Kobus, Bruce Meysenburg, Jessica Miller, Kevin Woita, City Attorney Joanna Uden, City Administrator Clayton Keller and City Clerk Tami Comte. Council member John Vandenberg was absent.

Also present for the meeting were: Planning Commission member Keith Marvin, Title Agent Greg Aschoff, Land Surveyor Brian Foral, Sheriff Tom Dion, Gary Meister, John Hermsen, and Banner-Press reporter Molly Hunter.

The meeting opened with the Pledge of Allegiance.

Mayor Alan Zavodny informed the public of the "Open Meetings Act" posted on the north wall of the meeting room and asked those present to please silence their cell phones. He also reminded the public that if they speak tonight in front of the Council that they must state their name and address for the record.

Council member Tom Kobus made a motion to approve the minutes of the September 8, 2021 meetings of the Mayor and City Council. Council Member Pat Meysenburg seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea
Yea: 5, Nay: 0, Absent: 1

City Administrator Clayton Keller introduced Keith Marvin of Marvin Planning Consultants and invited him to the front to make a presentation.

Keith Marvin said, "Good evening. I'm flipping my hat around tonight. I'm the Southeast District chairman. Nebraska Planning and Zoning Association is broken up into six different districts and we have the ability as a district to give out an appointed officials award, an elected officials award, and a professional award. This year, our district decided that we were going to honor Alan Zavodny as an elected official for his leadership for the last eleven years regarding Northwest Drainage, Downtown Redevelopment, the Housing issues that we've been working on, and other things and also being supportive of the Planning Commission."

City Administrator Clayton Keller presented the plaque to Mayor Alan Zavodny.

Mayor Alan Zavodny said, "I did not have any idea that this was coming. Thank you. I'm humbled and absolutely shocked."

Mayor Zavodny opened the Public Hearing at 7:03 p.m. to consider amending Article 5.06 RA Residential Agriculture District, by amending 5.06.03 Conditional Uses by adding 12. Accessory buildings with metal building material except for those with a pole building construction/foundation, and amending Article 5.07 R-1 Single-Family Residential by amending 5.07.03 Conditional Uses by adding 7. Accessory buildings with metal building material except for those with a pole building construction/foundation and amending Article 5.08 R-2 Two-Family Residential by amending 5.08.03 Conditional Uses by adding 9. Accessory buildings with metal building material except for those with a pole building construction/foundation and amending Article 5.09 R-3 Multi-Family Residential by amending 5.09.03 Conditional Uses by adding 12. Accessory buildings with metal building material except for those with a pole building construction/foundation and amending Article 5.10 R-4 Multi-Family Residential by amending 5.10.03 Conditional Uses by adding 17. Accessory buildings with metal building material except for those with a pole building construction/foundation.

City Administrator Clayton Keller said, "The City received a building permit asking for permission to install a pre-fabricated metal shed earlier this year. Initially we denied it because metal sheds are not allowed in any kind of residential zone, and that's where this would have been placed. The individual decided to take it to the Planning Commission to see if he could get the rules changed so that he can have a metal shed in which to place his items that are currently stored in his backyard. So, that's where we are at right now. The Planning Commission did recommend approval if it were a conditional use permit and if the Council would agree to changing the Zoning Code to allow metal structures that have certain characteristics, and those characteristics are in the edited Ordinance that you have."

Planning Commission member Keith Marvin said, "The other thing to note is that this is modifying every residential district. The key to this whole thing this time around when we were looking at it is that they would have to get a conditional use permit in order to do this, which means that they have to come to the Planning Commission and present their case and show that they meet the criteria which are partly in here, and we're also working right now to establish those criteria within our zoning book. It would not allow a Quonset. It would not allow pole shed construction. The siding would have to fit into the area. With Mr. Hermsen, he has gone to actually having horizontal siding on this metal building as opposed to the standard ribbed vertical siding. Those are the types of things that I think the Planning Commission is going to be looking at to make sure that they are going to fit into the area prior to granting any permit."

Mayor Alan Zavodny said, "Can I ask – the only other one around town is when Sypal's did theirs, how is theirs different? How was theirs able to be done? It looks nice and they did a good job."

Planning Commission member Keith Marvin said, "I guess I don't remember all of the details that were hammered out with Sypal's. I think that there is a wood structure on the inside of this one. Mr. Hermsen's will be a metal structure but it will be on a continuous footing as opposed to a pole structure."

Council member Jessica Miller said, "If I read correctly, he is planning to frame it, eventually, on the inside of it? If I read correctly from the minutes that you had from your meeting, they want to be able to insulate the inside of it?"

Planning Commission member Keith Marvin said, "If I remember right, that is one of the things that he's thinking about doing, yes."

Mayor Alan Zavodny said, "Is there anything else that you'd like to add?"

Planning Commission member Keith Marvin said, "I think that covers most of it."

Mayor Alan Zavodny said, "I'd like to invite Mr. Hermsen to come up and speak. When you come to the microphone if you would state your name and where you live."

John Hermsen introduced himself and said, "We have had an empty lot behind our house since 1980 or so. I bought the property when my mom passed away. Originally, the size of that lot was big enough that a person could have built another house on it without a problem. It would have met the criteria for what the regulations were for a house. Dad had purchased it for multiple reasons. Partially because we had grown up out on a farm, had lived there all of our lives and he didn't like being crowded and also a little bit to control who might move in next door. Once the city standards were changed for what you could build on, the lot just always remained vacant. My dad never had a plan to build on it. I have a tendency to have a lot more hobbies and I like to be outside. I'm not as retired as my dad was and so I need to store stuff. Originally, we stored stuff out at the acreage that we grew up on, which I also bought from my siblings. The trouble was, it was constant theft and vandalism out there so we started storing more stuff in town. Theresa is my fiancé and we have, for years, we felt sorta guilty because some of our neighbors, like Dinkelman's to our east, are meticulous with their yard, and we've got Novacek's to our north and they are, and we've got Pelan's to our west and they are, and we hated having stuff outside. So, we finally decided that we should build a building. When I was originally given a copy of the building codes it didn't mention anything specifically about metal buildings other than roofs and then it said something about non-reflective or galvanized rooves weren't allowed. I wasn't originally aware that there was going to be an issue with building a metal structure. As a matter of fact, we've seen several of them around town. Sypal's was mentioned and I knew of one that was just a block north of us and just various ones around. I contacted the building inspector that you had at the time and I mentioned to him what I wanted to do. I didn't get specific on the metal because I didn't know that was an issue. I mentioned to him what I wanted to do and I was led to believe by him that there wasn't going to be any issue and that it was just a formality to fill out the form and it's, more or less, going to get granted. I expressed to him the urgency that I had because, as everybody's probably aware, prices of wood and steel, all construction materials have sky rocketed since I started this process last November. So, I wanted to get locked in on a price with somebody, because in some cases some of the things that I looked at purchasing had gone up more than double in price. If this is going to be affordable, I really need to do it. So, even though I didn't have the permit in hand, I took what the building person had said as being just a formality and placed the order from a company in the Arkansas area. I have always wanted to have a nice-looking property, not just for ourselves, but for our neighbors. We like our neighbors and we don't want to upset anybody. The first person that I talked to was Jones to the south of us because it was going to be adjacent to his property. He had no problem with it, he thought it was great. I hadn't mentioned to him, either, that it was going to be a metal building because, like I said, I

didn't know that was going to be an issue. Everybody seemed to be in favor and I did my best to try to plan so that it would blend in. I tried to order a 40' x 25' and I couldn't. I had to order a 40' x 26'. I tried to position it in such a way that it would look almost like another house in the area. As I stated, I didn't want horizontal siding but I thought that it would look more blended into the rest of the area. We need to side our own house so we figured that we would side it to match the building that we're having put up. Originally, we didn't want any openings facing the east and part of that is because we're worried about vandalism and theft. We thought it would be best if we didn't have any openings that were out of our direct line of sight. However, to try to make it blend into the rest of the community and not look like a shed, we ordered it with a couple of windows to the east side facing the road so that it would blend in. When this process all started, I was led to believe, early on, that it wasn't going to be a problem. I'd have a permit and could get going. Maybe if it had said stated in the building permit rules or regulations that there were absolutely no metal buildings, it would have raised a flag with me right away, but it just wasn't there. The only thing in there was the roofs and that was only if they were shiny material. I was caught off guard and I would have mentioned it to the original building inspector, if I had known that it was pertinent. I just had no idea because it was never written in, not specifically. I can't remember how it's written, but it didn't state it. So, I've been trying to do everything that I can. Our original plan was pretty much compliant to begin with and with the approval of our neighbors. I heard that Jones was a little bit concerned when he heard that it was going to be a metal building. I wasn't trying to keep that from him, I just never knew that it was something that I needed to mention."

Mayor Alan Zavodny said, "Are you thinking about a non-reflective metal roof?"

John Hermsen said, "Yes, definitely. I wouldn't want one anyway. A big part of the reason why there was a certain discussion about possibly framing the interior down the road is that I'm cutting things down to the bone now to be able to afford to this. I would like the building to eventually be insulated so that during the winter months, and whatnot, it won't be so frigid in there. I want it sealed as well as possible so I don't have to worry about rodents. I don't want a building that's a problem for me or for anybody. If I should be working on something that is noisy, I want to insulate so the neighbors don't hear the noise. I'm not trying to put up a problem. It should blend in with all the other structures around us."

Section 4.14 Accessory Buildings And Uses

*Accessory buildings located within the corporate limits of the City of David City, and are located within the R-1, R-2, R-3 or RM Districts, that are not attached to a primary structure must comply with the following regulations:

- A) The design and construction of an accessory building shall be consistent with that customarily used in residential construction, similar in color and style to the primary structure on the same lot.
 - i. Exception: Accessory buildings 120 square feet or less shall be exempt from the design standards above, however, they must be anchored to meeting the wind ratings.
- 1) It shall be constructed of new, grade stamped materials, unless approved in advance by the Building Inspector.
- 2) Accessory structures with open sides must be professionally rated or engineered to resist a 110 MPH wind and shall have footings designed in accordance with the assigned weight and wind loading.

- 3) The sidewalls of the building shall not exceed 10 feet from the lower of the exterior grade or the interior floor and the overall height shall not exceed 17 feet.
 - 4) It shall have a maximum width of 40 feet on its widest side.
 - 5) It shall not occupy more than 40% of the remaining, buildable area on the lot.
 - 6) It must be separated from other flammable structures by at least ten feet.
 - 7) It shall be set back a minimum of 20 feet from any street side property line or flush with the primary structure.
 - 8) If the square footage is greater than 500 square feet; 3 feet by 6 inch continuous footings are required.
 - 9) If the square footage is between 400 and 500 square feet, a monolithic slab footing may be used.
 - 10) Accessory buildings less than 400 square feet may be anchored to a slab of poured concrete no less than 4 inches in thickness.
 - 11) Detached accessory buildings or structures shall be located no closer to any other accessory or principal building than ten feet.
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- B) No accessory building shall be constructed prior to construction of the principal building.
 - C) No accessory building shall be constructed on a separate lot from the principal structure.
 - D) No accessory building shall be constructed or placed on an easement.
 - E) Standard wood building material shall maintain at least 6 inches of clearance to the exterior grade. Wood which contacts the concrete or masonry directly shall be Pressure Treated.
 - F) Rear and side yard setbacks shall be 6 feet from property lines.
 - G) The rear setback shall increase to 10 feet if a garage door is placed on the rear alley side.
 - H) Storage of any boat, camper, trailer or other vehicle shall not be permitted in any required yard; except that a boat, boat trailer, or camp trailer may be placed in a rear or side yard on an approved rock or concrete driveway.
 - I) If a primary structure is removed or demolished from a parcel, the detached accessory building must be removed or demolished within six months of such removal or demolition; unless new construction is begun on a new primary structure within the immediately following six-month period.

Mayor Alan Zavodny said, "Are there any questions?"

Council member Jessica Miller said, "I have some questions for Keith."

Mayor Alan Zavodny said, "Are there any questions for John? No? Keith, are you willing to come back up to the microphone to answer questions?"

Council member Jessica Miller said, "I have a few concerns. I know that other people have been denied and I don't know totally the circumstances, but I know they have been denied from putting a metal building on their property. Another concern that I have is what exactly are the plan and the clarifications that the Planning Commission is making? I know that some of them are stated in there but then also reading your minutes, you guys have to revisit it to make more clarifications and more plans. Also, looking at this, too – I'll just give you all my questions at once – and then my other question was the limitation of size. I know there is a size limitation. So, it cannot exceed the size of the house? I would assume that we don't want it looking like a farm property and have this huge Quonset-looking building there, when the house is really small. That would be my concern with being residential and being in town. I would think that you'd want it the normal size of a garage or a two-car garage. I also assume with the roofing material that the metal roofing material would be non-reflective and it wouldn't be galvanized and like some of the other stuff that you see on the market."

Planning Commission member Keith Marvin said, "When we deal with this, the first thing that I'm always concerned about is ones that we've said 'no' to. I think this one, this time around, is just different enough from the one that I think you may be talking about on "O" Street. There was one on "O" Street that sparked this discussion before. Some of the things that we're talking about doing, and we're clarifying a couple of other things that are coming through at the same time, the sidewall height and stuff like that. So, we're talking about allowing a sidewall, because we've got a request for one, that is seventeen feet but we're going for a maximum height of the building being twenty-five feet. That would apply to all of these types of things. Within the metal building side, one of the things that we will not allow is – and it explicitly states in there – I put this together this afternoon and I sent it to Tami and Lori for our meeting on Tuesday morning – what we're looking at is no pole buildings and it would define what a pole building is, and no Quonsets. We are defining what a Quonset is. We talked about that the character of the metal has to be reflective of the area and the principal structure. Those are all judgement calls that you have to deal with because it's going to be metal and does it fit. At least we've got a bigger review process than we used to. We're making them go through a conditional use permit. As far as limitations on size, we are not changing any of the details when it comes to size of accessory buildings. They are limited right now to, I believe, forty feet on the widest side and then they can't be more than forty percent of the buildable area of the lot. All of that stuff still plays in and will play into what they do. In his case, he has to come in and actually join the two lots to make it work and make it one lot. I don't think, even with raising the side walls, I don't think that we're going to see a Rich Stuchl again. That's what started all of this off in 1991-1992. I think that is a taller wall. The seventeen feet high walls that we're looking at is, well Rex is wanting it, but it's the one at 7th and Iowa, Struebing's. From what we were told that has a three-foot-high concrete wall and the studs are fourteen feet four inches from plate to plate. So, that's a seventeen-foot-high wall, which doesn't meet our codes now, but it was allowed. These are the types of things that we're looking at and trying to clean up, while at the same time trying to make some provisions to make this work in the best possible way. Does that answer your questions?"

Council member Jessica Miller said, "Kind of. I'm more concerned about the people who have been denied. I'm hoping that all of these clarifications will come out and I'm hoping they relook at what they want to do and be able to get a permit to do what they want to do. I'm honestly concerned about backlash from people that have been told no."

Planning Commission member Keith Marvin said, "I know of one situation that they were told no flat-out, and Sypal's actually did something to work around the situation. That's always a concern that I have, as well. But times change, Mayors change, Councils change, other things change as well."

Council member Jessica Miller said, "I think that as long as you have it spelled out and after listening to Mr. Hermsen, too, say that things weren't stated in there and having clarification and everything spelled out in black and white will help."

Planning Commission member Keith Marvin said, "Like I said, that's always a concern of mine, too, when we do something like this. This is not a new topic. Alan has probably seen this topic two or three times since he came on eleven years ago."

Mayor Alan Zavodny said, "I'm happy that we didn't spend a half hour talking about green space. I consider this a win. I think that it's important to state, too, that anybody who has

been denied previously has the opportunity to look at what the rules are currently and figure out a way to accommodate building something within the rules. Just because 'no' might have been the answer previously, I think there is a mechanism to try to get something done. Maybe there needs to be compromise on both sides, certainly what the City's interest is and what the person wants to put up. The other discussion that we have when this stuff comes up is people's rights because it is their property. You're balancing people's rights versus the community as a whole. That's why these things turn into a little bit of butting of heads. Hopefully we can work together and hopefully most everything will find a resolution, too."

Council member Jessica Miller said, "If I read correctly in there, the foundation is going to be concrete?"

Planning Commission member Keith Marvin said, "Yes."

Council member Jessica Miller said, "The clarifications that the Planning Commission's coming up with is that there has to be a foundation that is solid concrete?"

Planning Commission member Keith Marvin said, "If it is over 400 or 500 square feet, and I'm proposing this language change, it has to have three-foot, six inches of continuous footings, and I'm proposing a forty-two-inch-deep continuous footing."

Mayor Alan Zavodny said, "Isn't thirty-six-inches considered the frost line?"

Planning Commission member Keith Marvin said, "Forty-two-inches is right below the frost line."

Mayor Alan Zavodny said, "Other questions of Keith? Is there anyone else wishing to speak on this? We are in a public hearing. Anyone else wishing to speak on this topic?"

Hearing no further public comment, Mayor Zavodny declared the public hearing closed at 7:26 p.m.

Council member Pat Meysenburg introduced Ordinance No. 1370 and Mayor Zavodny read Ordinance No. 1370 by title. Council member Bruce Meysenburg made a motion to suspend the statutory rule that requires an Ordinance to be read on three separate days. Council Member Kevin Woita seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea
Yea: 5, Nay: 0, Absent: 1

Council member Bruce Meysenburg made a motion to pass and adopt Ordinance No. 1370 on third and final reading. Council Member Pat Meysenburg seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea
Yea: 5, Nay: 0, Absent: 1

ORDINANCE NO. 1370

AN ORDINANCE TO AMEND ZONING ORDINANCE NO. 1060 BY AMENDING ARTICLE 5.06 RA RESIDENTIAL AGRICULTURE BY AMENDING 5.06.03 CONDITIONAL USES BY ADDING 12. ACCESSORY BUILDINGS WITH METAL BUILDING MATERIAL EXCEPT FOR THOSE WITH A POLE BUILDING CONSTRUCTION/FOUNDATION AND AMENDING ARTICLE 5.07 R-1 SINGLE-FAMILY RESIDENTIAL BY AMENDING 5.07.03 CONDITIONAL USES BY ADDING 7. ACCESSORY BUILDINGS WITH METAL BUILDING MATERIAL EXCEPT FOR THOSE WITH A POLE BUILDING CONSTRUCTION/FOUNDATION AND AMENDING ARTICLE 5.08 R-2 TWO-FAMILY RESIDENTIAL BY AMENDING 5.08.03 CONDITIONAL USES BY ADDING 9. ACCESSORY BUILDINGS WITH METAL BUILDING MATERIAL EXCEPT FOR THOSE WITH A POLE BUILDING CONSTRUCTION/FOUNDATION AND AMENDING ARTICLE 5.09 R-3 MULTI-FAMILY RESIDENTIAL BY AMENDING 5.09.03 CONDITIONAL USES BY ADDING 12. ACCESSORY BUILDINGS WITH METAL BUILDING MATERIAL EXCEPT FOR THOSE WITH A POLE BUILDING CONSTRUCTION/FOUNDATION AND AMENDING ARTICLE 5.10 R-4 HIGH DENSITY RESIDENTIAL BY AMENDING 5.10.03 CONDITIONAL USES BY ADDING 17. ACCESSORY BUILDINGS WITH METAL BUILDING MATERIAL EXCEPT FOR THOSE WITH A POLE BUILDING CONSTRUCTION/FOUNDATION; TO PROVIDE FOR THE REPEAL OF ANY ORDINANCE OR RESOLUTION IN CONFLICT THEREWITH; TO PROVIDE FOR AN EFFECTIVE DATE THEREOF; AND TO AUTHORIZE PUBLICATION IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, BUTLER COUNTY, NEBRASKA, THAT THE FOLLOWING SECTIONS OF ZONING ORDINANCE NO. 1060 BE AMENDED AS FOLLOWS:

ARTICLE 5.06 RA RESIDENTIAL AGRICULTURE

Section 5.06.03 Conditional Uses

12. Accessory buildings with metal building material except for those with a pole building construction/foundation.
 - a. Shall have a continuous footing
 - b. Shall have a concrete floor
 - c. The siding shall represent the siding on the house
 - d. The building shall be a non-reflective color
 - e. Shall follow Section 4.14.

ARTICLE 5.07 R-1 SINGLE-FAMILY RESIDENTIAL

Section 5.07.03 Conditional Uses

7. Accessory buildings with metal building material except for those with a pole building construction/foundation.
 - a. Shall have a continuous footing
 - b. Shall have a concrete floor
 - c. The siding shall represent the siding on the house
 - d. The building shall be a non-reflective color
 - e. Shall follow Section 4.14.

ARTICLE 5.08 R-2 TWO-FAMILY RESIDENTIAL

Section 5.08.03 Conditional Uses

9. Accessory buildings with metal building material except for those with a pole building construction/foundation.
 - a. Shall have a continuous footing
 - b. Shall have a concrete floor
 - c. The siding shall represent the siding on the house
 - d. The building shall be a non-reflective color
 - e. Shall follow Section 4.14.

ARTICLE 5.09 R-3 MULTI-FAMILY RESIDENTIAL

Section 5.09.03 Conditional Uses

12. Accessory buildings with metal building material except for those with a pole building construction/foundation.
 - a. Shall have a continuous footing
 - b. Shall have a concrete floor
 - c. The siding shall represent the siding on the house
 - d. The building shall be a non-reflective color
 - e. Shall follow Section 4.14.

ARTICLE 5.10 R-4 HIGH DENSITY RESIDENTIAL

Section 5.10.03 Conditional Uses

7. Accessory buildings with metal building material except for those with a pole building construction/foundation.
 - a. Shall have a continuous footing
 - b. Shall have a concrete floor
 - c. The siding shall represent the siding on the house
 - d. The building shall be a non-reflective color
 - e. Shall follow Section 4.14.

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

PASSED AND APPROVED THIS 22nd day of September, 2021.

Mayor Alan Zavodny

City Clerk Tami Comte

Council member Bruce Meysenburg made a motion to approve the Olsson Scope of Services for the "O" Street Paving project. Council Member Tom Kobus seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea

Yea: 5, Nay: 0, Absent: 1

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SCOPE OF SERVICES

PROJECT DESCRIPTION AND LOCATION

Project will be located: Along O Street in David City, Nebraska

Project Description: Road Improvements

Project Background:

We understand that this project comprises the reconstruction of O Street from the alleyway approximately 175 feet east of Highway 15 to the private drive approximately 325 feet east of Road N. We also understand O Street will be widened and that the roadway profile may be cut up to 2 feet to improve drainage.

Upon reviewing soil logs in the area, we estimate that the subsoil profile will likely consist of fill materials underlain by native clays. Based on our evaluation of the expected conditions, the proposed boring depths will provide sufficient delineation of the subsurface strata to prepare our recommendations.

SCOPE OF SERVICES

Olsson will provide the following services (Scope of Services) to Client for the Project:

Phase 100 – Geotechnical Exploration

Task 101 – Drilling Services

1. Coordination and General Notes

- a. Olsson will contact Diggers Hotline of Nebraska to locate underground utilities. To ensure the safety of the crew on site, Owner must inform Olsson of the location of all private utilities and private utility service connections. The cost of locating private utility lines and private service connections through private locating services and/or hydroexcavation is the Owner's responsibility. Olsson is not responsible or liable for damage to any private utilities or private service connections. If requested, Olsson can coordinate private locating or hydroexcavation services for an additional fee.
- b. All boring locations must be readily accessible. Any fees resulting from the use of mud-matting or clearing operations to achieve access to boring locations is Owner's responsibility and not included in this scope of work. Olsson will not perform field work until access to boring locations is satisfactory to Olsson.
- c. Drilling equipment may cause disturbance to natural surroundings including but not limited to soil indentations, concrete cracking, and damage to underground sprinkler systems. Olsson will not be liable or responsible for any site disturbance that may occur as a result of bringing equipment on site. The Owner accepts full responsibility for site disturbance.
- d. Traffic control, site clearing, city and/or state right-of-way occupation permitting, street use permitting, etc. may be necessary to complete the field exploration. These services are to be provided by others and are excluded from this scope of work.

2. Field Exploration

a. We propose to use a truck-mounted drill rig to complete the following soil test borings for the geotechnical exploration:

- Seven (7) soil test borings to a depth of 10 feet each; and
- One (1) bulk sample.

The soil borings will be advanced to the depths proposed, or to refusal, whichever is shallower. This proposal is based on a total drilling footage of 70 linear feet.

- b. Soils will be sampled in general accordance with ASTM D1586 and ASTM D1587.
- c. We will obtain groundwater levels in the test borings at the time of drilling and upon completion of the drilling operations.
- d. After obtaining groundwater level readings, we will backfill the borings with soil cuttings and patch pavements.

Task 102 – Geotechnical Services

1. Laboratory Services

As soil conditions dictate, laboratory testing may include visual soil classification (ASTM D2488), unconfined compression tests (ASTM D2166), thin-walled tube density tests (ASTM D7263), moisture content tests (ASTM D2216), Atterberg limit tests (ASTM D4318), Standard Proctor tests (ASTM D698).

2. Engineering Analysis and Report Preparation

Olsson will perform engineering analyses and provide conclusions and recommendations regarding the following:

- a. Lift thickness, moisture control, and compaction criteria for backfill and structural fill. OSHA standards for soil excavation criteria will be included or referenced.
- b. Anticipated groundwater concerns, along with recommendations for addressing these concerns during construction, if required.
- c. Shrink/swell characteristics of the on-site soils and the potential for reuse of on-site soils as structural fill.
- d. Preparation of pavement subgrade soils.

We will present our conclusions and recommendations in a written report that will include a map of boring locations, soil boring logs, and a summary of laboratory tests.

FEE ESTIMATE AND CLOSURE

Task 101 - The fee for Drilling Services listed above will be invoiced on a lump sum basis of \$2,400.00.

Task 102 - The fee for the Geotechnical Report and Laboratory Services listed above will be invoiced on a lump sum basis of \$4,800.00.

TOTAL COST OF DRILLING AND GEOTECHNICAL REPORT SERVICES: \$7,400.00

Olsson is committed to providing quality service to its clients, commensurate with their wants, needs and desired level of risk. If a portion of this proposal does not meet your needs, or if those needs have changed, Olsson stands ready to consider appropriate modifications, subject to the standards of care to which we adhere as professionals. If you have any questions or concerns, please call Dallas Schroeder at 308.398.2996 (office). We look forward to hearing from you and working with you on this project.

G:\Lincoln\Admin\LETPROP\GTEC\Proposals\2021\Roads & Paving\O Street Improvements - David City, NE\O Street Geotech Scope of Service and Fee 7.27.21.docx

SCOPE OF SERVICES

This exhibit is hereby attached to and made a part of the Letter Agreement for Professional Services dated July 19, 2019 between the City of David City, Nebraska ("Client") and Olsson Inc. ("Olsson") providing for professional services. Olsson's Scope of Services for the Agreement is indicated below.

Project Location: David City, Nebraska

Project Description: This project will include design of new Portland cement concrete street paving for O Street in David City, Nebraska, from the alley between Fourth and Fifth streets one eastward approximately 3000 feet to 12th Street. The project design will involve client coordination and will include new concrete pavement, storm sewer improvements, sidealks, grading, and other features normally associated with new pavement improvements.

Olsson shall provide the following services to Client (Scope of Services) for the Project:

- | | |
|----------------------------------|---|
| 1.0 DESIGN PHASE SERVICES | \$61,687.50 (adjusted for inflation, wage increases, etc.)
458,750.00 LUMP SUM FEE
07/26/2021 |
|----------------------------------|---|
1. Site topographic survey of the existing site to include "O" Street within right-of-way lines and property pins (where existing) within survey boundary area. Control points shall be set along the corridor for use in construction staking. Survey shall be supplied in AutoCAD Civil 3D 2018 format.
 2. Prepare site layout and dimensional plan.
 3. Prepare Stormwater Pollution Prevention Plan (SWPPP), erosion control plan and permit. Contractor/Builder shall be responsible for maintenance, monitoring, and reporting requirements of the SWPPP during construction.
 4. Prepare paving plan and profile construction documents to pave O Street as described above. Construction documents to include paving plans, geometrics, cross sections, details, grading, sidewalk construction, proposed storm sewer drainage improvements and specifications.
 5. Includes two site visits with the Client during the design at the 30 percent and 90 percent levels.
 6. It is not anticipated that additional easements or rights-of-way will be needed for the project and are not included in this agreement. Proposed paving to be designed within the existing rights-of-way.
 7. Deliverables include construction drawings with specifications, electronic AutoCAD Civil 3D files.
 8. Prepare a traffic control plan for temporary detours/construction signage.
 9. Prepare a construction cost opinion for the project work.

The following is not included as part of this agreement, but can be added as additional services under separate agreement or amendment:

- Landscape plans or sprinkler/irrigation designs.
- Legal and/or boundary surveys.
- Bid phase services (e.g., advertisement, plan distribution, attending bid letting, bid tabulation, bid award, council meeting, etc.)
- Construction phase services (e.g., submittal review, administration, meetings, staking, observation, testing, etc.).
- Geotechnical soil borings and soils report.
- Street lighting design or layout.
- SWPPP maintenance, monitoring and reporting.
- Drainage studies of the project area.
- Creation of paving districts or setting assessments.
- Creation or acquisition of additional rights-of-way or easements.
- Assistance with any grants, Tax Increment Financing, and/ or funding documentation.

Mayor Zavodny stated that the next agenda item was consideration/discussion concerning an asbestos inspection for 490 "E" Street.

Mayor Zavodny said, "You have three courses of action that have been spelled out of what you can do. So, what is your preference?"

Council member Kevin Woita said, "It's my opinion that everything seems to be all poured concrete, so it's just my opinion that the possibility of asbestos would be low."

Mayor Alan Zavodny said, "Even with minor disruption of the area, we're probably at very low risk."

Council member Kevin Woita said, "That's my opinion. At first thinking, I thought the boxes were encased in the exterior of the wall, so that's why I was thinking that there might be asbestos."

Council member Bruce Meysenburg said, "So, they can actually be unscrewed from the wall?"

Council member Kevin Woita said, "Yeah. I think they will come out fairly easy, actually."

Mayor Alan Zavodny said, "As long as we're not disturbing anything then that changes how I feel about this."

Council member Pat Meysenburg made a motion to forego an asbestos inspection for 490 "E" Street. Council Member Tom Kobus seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea
Yea: 5, Nay: 0, Absent: 1

Council member Pat Meysenburg made a motion to accept the bid of David Schauer dba Metal Busters for one dollar to remove the safe deposit boxes from the new City Office at 490 "E" Street. Council Member Tom Kobus seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea
Yea: 5, Nay: 0, Absent: 1

Council member Pat Meysenburg made a motion to pass and adopt Resolution No. 19-2021 selling the safe deposit boxes to David Schauer dba Metal Busters for \$1. Council Member Tom Kobus seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea
Yea: 5, Nay: 0, Absent: 1

RESOLUTION NO. 19-2021

WHEREAS, the City of David City, Butler County, Nebraska, is the owner of the following described personal property, to wit:

Safe Deposit boxes from the former U.S. Bank building (new City Office) located at 490 "E" Street, David City, NE

and,

WHEREAS, the City of David City, Nebraska, does not have a present need to retain ownership of said above described personal property, and,

WHEREAS, the City of David City, Nebraska, deems it in the best interests of the citizens of the City of David City, Nebraska, that said personal property be disposed of, as set forth herein,

WHEREAS, the City of David City, Nebraska, has determined that the fair market value of the above described personal property is less than \$5,000.00,

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF DAVID CITY, NEBRASKA, AS FOLLOWS:

1. That the above described personal property be sold for \$1.00 and free removal of safe deposit boxes to David Schauer dba Metal Busters, as advertised in a Notice of Donation of Personal Property posted in three public places in the City of David City, Nebraska, immediately after the passage of said Resolution and not later than seven (7) days prior to the sale of said item, as shall be evidenced by a Notice of Posting of the City of David City Clerk, and,

2. That pursuant to Neb. Rev. Stat. §17-503.01, confirmation of the sale of said personal property by an ordinance is not required.

PASSED AND APPROVED this 22nd day of September, 2021.

CITY OF DAVID CITY, NEBRASKA

Mayor Alan Zavodny

ATTEST:

City Clerk Tami Comte

Council member Pat Meysenburg made a motion to appoint Gary Meister as the Building Inspector and Zoning Administrator. Council Member Tom Kobus seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea
Yea: 5, Nay: 0, Absent: 1

City Attorney Joanna Uden administered the oath of office to Building Inspector Gary Meister.

Council member Bruce Meysenburg made a motion to approve the Second Amendment to the Interlocal Agreement for Water Supply Service from David City, Nebraska to Bruno, Nebraska. Council Member Tom Kobus seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea
Yea: 5, Nay: 0, Absent: 1

SECOND AMENDMENT
to the
INTERLOCAL AGREEMENT FOR
WATER SUPPLY SERVICE FROM DAVID CITY, NEBRASKA
To BRUNO, NEBRASKA

THIS AMENDED AGREEMENT ("Amended Agreement") is made and entered into by and among the VILLAGE OF BRUNO, Nebraska, a Municipal Corporation, hereinafter referenced as "BRUNO"; the CITY OF DAVID CITY, NEBRASKA, a Nebraska Municipal Corporation, hereinafter referenced as "David City"; and the LOWER PLATTE NORTH NATURAL RESOURCES DISTRICT, a Nebraska Natural Resource District and political subdivision of the State of Nebraska, hereinafter referenced as "LPNNRD". Collectively the aforementioned are hereinafter referenced as "Parties."

WHEREAS, BRUNO, DAVID CITY, AND LPNNRD entered into an Interlocal Agreement For Water Supply Service From David City, Nebraska to Bruno, Nebraska executed by Bruno on March 8, 2004, executed by David City on August 18, 2003, and executed by LPNNRD on August 14, 2003 and the First Addendum to Interlocal Agreement For Water Supply Service From David City, Nebraska to Bruno, Nebraska executed by Bruno on August 20, 2004, executed by David City on June 9, 2004, and executed by LPNNRD on June 14, 2004, and the First Amendment to the Interlocal Agreement for Water Supply Service dated May 13, 2005, with said Interlocal Agreement, First Addendum and First Amendment hereinafter referenced together as "Agreements", with all its terminology references being incorporated herein; and,

WHEREAS, the Parties agree and stipulate that they are not currently aware of any outstanding violations, controversies, or disputes relating to the Agreements;

WHEREAS, the Parties intended for the Agreements to continue beyond the expiration date of March 4, 2021 but have not yet memorialized that agreement into writing;

WHEREAS, the Parties intend to enter into a 15 year option renewal under the same term and conditions as agreed to in the Agreements.

NOW, THEREFORE, IN CONSIDERATION OF THE TERMS AND CONDITIONS STATED HEREIN which the parties hereto agree to be valuable consideration, the Parties hereto agree to the following amendments, changes, and addendums to the Agreements, to wit:

1. The Parties do mutually agree to exercise the first fifteen (15) year option to renew this Agreement which shall result in the expiration of the term being March 4, 2036, unless the second option to renew is exercised by all parties hereto within nine (9) months of expiration of the term.
2. All terms and conditions within the Agreements not otherwise amended by this addendum shall remain in full force and effect.

3. This addendum shall be binding upon the heirs, successors, assigns, and personal representatives of the parties hereto.
4. This addendum shall become effective upon execution by all parties hereto.

IN WITNESS WHEREOF, the parties have set their hand by their respective chairpersons upon the date shown by each and this Second Amendment shall become fully binding upon all participants on the last date of the last party to execute this agreement.

BRUNO:

DAVID CITY:

LPNNRD:

By: _____
Chairman of the Board

By: Da Zavodny
Mayor of the City

By: Frank Pollard
Chairperson of the Board

By: _____
Village Clerk

By: Anni Comte
City Clerk

By: _____
General Manager



Mayor Zavodny stated that the next item on the agenda was consideration of the request by David City PTO to close 5th Street from "C" Street to the Railroad tracks on Sunday, October 31, 2021 for a trunk or treat event.

City Administrator Clayton Keller said, "Typically, the City staff approve this, however, last year the pandemic had hit and we brought it to the Council to get their thoughts and the Council decided to approve it. The PTO came to us again this year and asked for approval, and with the pandemic we thought it would be a good idea to bring it back to the Council this year."

Julie Schulz introduced herself and stated she was representing the David City PTO. Julie Schulz said, "We've combined forces. It used to be two schools, one community with the St. Mary's PTO group as well and last year we combined with the library as well to kind of make it a community event. With working with the various groups we've kind of established that it's a

safer event than the “Trick or Treat Around the Square” because the streets are completely closed and it’s a lot safer for the children coming through and then we’re not affecting the businesses by doing it on an afternoon. So, basically what we’re asking the City Council for is just to close the street on 5th Street from “C” Street to the railroad tracks like we did last year.”

Mayor Alan Zavodny said, “The smart thing they did was to send you because we’ve never said ‘no’ to you before, but I do have a couple of questions first. Sheriff, we’ve had no concerns with this? I’m glad it’s a Sunday afternoon, it should be fairly dead. I’m sure you’ll be there to take care of all of the safety issues.”

Sheriff Tom Dion said, “Yes, we will. I’ll be there with my trunk open too.”

Mayor Alan Zavodny said, “I have to ask you one question. We are in the red with the covid risk dial. Have you consulted with Four Corners Health department regarding any precautions that you’re going to need to take to make sure that it’s a safe event?”

Julie Schulz said, “I have not reached out to them yet this year. We’ve implemented the same guidelines that we had last year. The only thing that we changed was that we said that masks are recommended, because we didn’t think that we could say that they were required. Otherwise, we plan on using the same guideline that we had last year.”

Mayor Alan Zavodny said, “Try to keep some distance?”

Julie Schulz said, “Yes, and we’re going to have hand sanitizer and masks available at all of the locations. We’re going to have the kids start at every corner to keep the kids spread out rather than having a long line to start.”

Mayor Alan Zavodny said, “The threat to you as a Council is if you want to be the Council that says ‘no’ to kids on Halloween, I don’t know how any of you will get reelected.”

Council member Tom Kobus made a motion to approve the request from the David City PTO to close 5th Street from "C" Street to the railroad tracks on Sunday, October 31, 2021 for a trunk or treat event. Council Member Pat Meysenburg seconded the motion. The motion carried. Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea
Yea: 5, Nay: 0, Absent: 1

Mayor Zavodny stated that the next agenda item was consideration/discussion concerning 11th Street, the vacated Martin’s Subdivision and the effects on Mile’s 3rd Addition.

Brian Foral introduced himself and said, “I’m not a professional engineer but I am a professional land surveyor. I’m also the Butler County Surveyor, but this is not a county issue. This is a city issue. Through my course of work with my employment at JEO, I discovered that there are some gray areas with what has happened in that area of 11th Street. A quick history or my take on what happened as David City grew from west to east: 11th Street was a section line. The platting stopped and there was a gap between platting the section line. They called it a street. It was assumed to be an eighty-foot street. It was never tied to that section line. Then David City developed further east and they platted East David City starting at the section line and made a thirty-three-foot right-of-way. This was around 1905. It appears in my mind that

they realized that there was a gap between the two, so they platted Mile's 7th Addition so you actually have an east 11th Street and a west 11th Street with some tiny islands in the middle. It appears that went on for quite some time. Then in the early 70's, the City of David City, in my mind had Martin's Addition platted which was supposed to alleviate that, or so they thought. The land was never developed. It was held by the City. Then in the early 80's, they vacated Martin's Addition and they were going to retain the streets and the public grounds. A month later they vacated 11th Street but there was no defining which 11th Street and it was tapered and they were trying to make straight lines. The former County Surveyor Dick Ronkar wrote a lengthy report kind of explaining his thoughts and scenarios on what happened. I did a private survey through JEO for someone on "E" Street and the gap is not as wide there so I could make some of my own determinations as a surveyor and I signed off on it. Now, I've got another project further south and the gap is much wider. Then I came and started talking with Tami and Joanna, and I also talked to Greg a little bit about some possible solutions, and now we're here."

City Attorney Joanna Uden said, "Do you want to talk about what your recommendation might be?"

Mayor Alan Zavodny said, "Can I ask you a question? How big of a gap are we talking about? Roughly?"

Brian Foral said, "Roughly it went from zero to around forty feet at the south end, I believe."

Council member Kevin Woita said, "The north end being the railroad tracks?"

Brian Foral said, "Yes."

Council member Kevin Woita said, "So, basically, from the existing 11th Street at 11th and "A" Street, forty feet to the west is no man's land?"

Brian Foral said, "Well, so if we're going to say that the section line was the division line, going to the east it's thirty-three-foot wide, to the west we had eighty plus on the south end. It was right around eighty on the north end. Martin's Addition came in and platted a line fifty-seven-foot west of the section line and there's still survey markers there. My proposal was to just use that fifty-seven-foot offset, the pins are there, so we'll have a ninety-foot street right-of-way, which talking with the utilities department was enough. The question being, what do you want to do with everything going west of that line? It's going to be eighty-foot plus some change. You have the figures in front of you."

Mayor Alan Zavodny said, "So, really, part of our problem is that it goes on each side of the street. It would be nice if it was all on one side, but it's not."

Brian Foral said, "Well, the way the vacation Ordinance was written, it doesn't spell out how it was measuring the half. We actually had an East 11th Street and a West 11th Street. So, which 11th and which half do you vacate? There have been other surveys done in the 90's and it also went to the other fifty-seven-foot that I described on the south end."

Mayor Alan Zavodny said, "Ok. I understand that we need to solve a problem, but I also want to know, are we creating any?"

Brian Foral said, "In my mind, no, there's probably going to be some work on your guys' end and how to go about it, I don't know. That's where Joanna comes in."

Mayor Alan Zavodny said, "How many property owners are affected by this?"

City Attorney Joanna Uden said, "There are about fourteen properties."

Mayor Alan Zavodny said, "Do you have a solution?"

Greg Aschoff introduced himself and said, "I had a discussion with Brian regarding this, and a discussion with Joanna, as well. We sort of came to the conclusion that maybe platting is the answer, because they've tried to fix it by Ordinance twice and we didn't get there. So, we think maybe replatting these lots along the west side of 11th Street between "A" Street and "F" Street (Railroad tracks) and then having the City, because when the City vacated Martin's Addition, retained the streets. So, the City kind of has ownership in what was 11th Street, in those lots. So, if we replat those lots, essentially. Then the City quit claims any interest they may have in the new lots, that should clear everything up. Nobody gains anything and nobody loses anything. They are all going to have the same property that they think they have now. It's to clarify the legal description and get any interest that the City may have in their residential lot to the rightful owners."

Mayor Alan Zavodny said, "Ok. What you just described to me sounded like we can't get sued, so I'm happy about that. That actually seems to me to be a reasonable way to do that. I think trying to do an Ordinance is a disaster."

Council member Kevin Woita said, "What about the east side of the street?"

Greg Aschoff said, "The east side was all platted from the section line, so that's all good."

Mayor Alan Zavodny said, "So, by replatting it we are redefining the boundaries and it should all be good to go. Is there any downside to this?"

City Clerk Tami Comte said, "Will that have to go to the Planning Commission?"

Planning Commission member Keith Marvin said, "Yes."

Brian Foral said, "We know that we have the gray area that we want to replat, but if we're going to attach those to the joinders are we going to do an administrative plat or do we have to...the lot that the City is going to create won't be buildable..."

Planning Commission member Keith Marvin said, "Well, you could do an administrative plat but our Ordinance only allows for two to three lots as administrative. We could probably do a quick plat process so that the preliminary and the final all go as one time which would save you a step and hearing notices."

Brian Foral said, "That's my question. The subdivision regulations in the planning book require engineering studies and all that...I'm sure we don't need that, do we?"

Planning Commission member Keith Marvin said, "Council retains the right to waive any of those."

Mayor Alan Zavodny said, "I don't mind this course of action."

City Attorney Joanna Uden said, "I just want you to know that it may be costly. We are going to need to do quit claims deeds and people are going to have to sign off on the plat."

Mayor Alan Zavodny said, "Any idea of what this is going to cost?"

Brian Foral said, "There could definitely be different layers of cost, depending on how involved we get with the ad joinders. What I would like to see as a surveyor, because I like straight lines, is we would actually, in essence, survey everybody's property and just extend lines so it's parallel. The way the measurements look, in my mind, we wouldn't necessarily have to do that. We could set our own and have the sixteen individual owners and they might have a slight deflection in their line but I'm not going to...it's not like it's ten feet, it's probably not even noticeable by the eye."

Mayor Alan Zavodny said, "What happens if someone says 'no'. This sounds like it solves a whole lot of problems, but what if someone says 'I'm not signing off on that'. There might be one that I could think of."

Council member Tom Kobus said, "People probably think that they own it now."

Brian Foral said, "The GIS site at the County is just informational, it's not gospel by any means, but they probably think they are paying taxes on it already. They show a nice straight line that is roughly that sixty-foot."

Mayor Alan Zavodny said, "Well, they will be now."

Greg Aschoff said, "You're just kind of codifying what is there."

Brian Foral said, "So, a rough idea on my end to do the survey to do that paperwork would be roughly \$4,000 - \$4,500, somewhere in there, depending on how complicated things get."

Mayor Alan Zavodny said, "I'm going to do something totally out of character for me. In my opinion, for \$4,500, this is a City expense. We're fixing a problem that started in 1905."

Brian Foral said, "That's on my end. I don't know if there is more cost."

Mayor Alan Zavodny said, "Okay. What is it going to cost for you to fix this?"

Greg Aschoff said, "I would recommend a competent title company to do reports of title on them. So, for a couple of reasons, number one, we need to get all of the owners to sign the plat and you also need to know that any lien holder on all of those properties needs to sign that plat, too, or we're going back and fixing all of this stuff again."

Mayor Alan Zavodny said, "You'll do all of that for us, right?"

Greg Ashoff said, "We may be able to work out some sort of something. We're looking at around \$1,750. \$125 per property."

City Clerk Comte said, "Joanna will have expenses also."

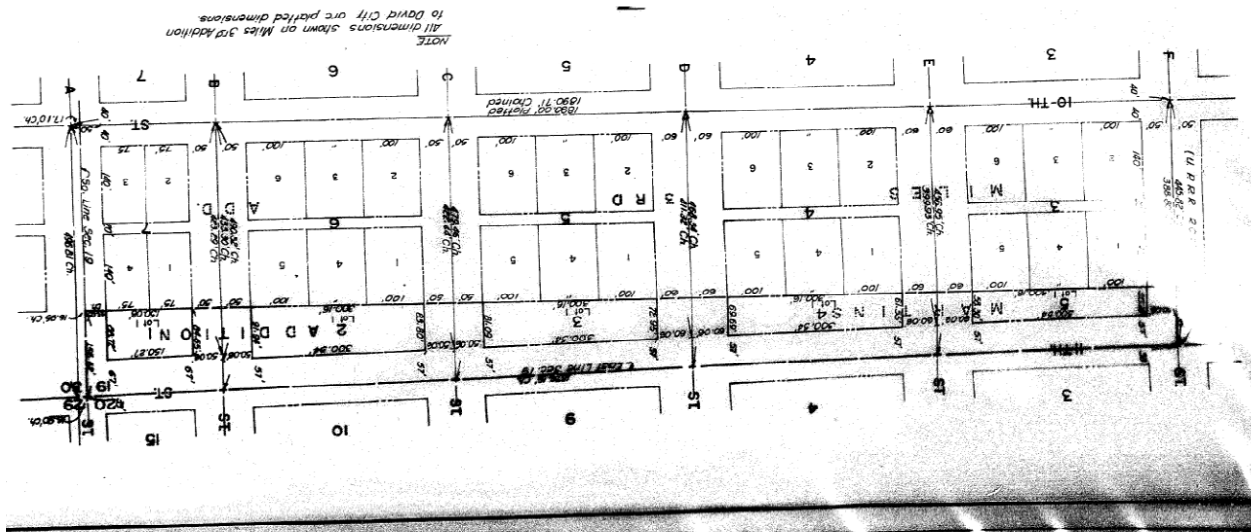
Mayor Alan Zavodny said, "How much are you going to charge?"

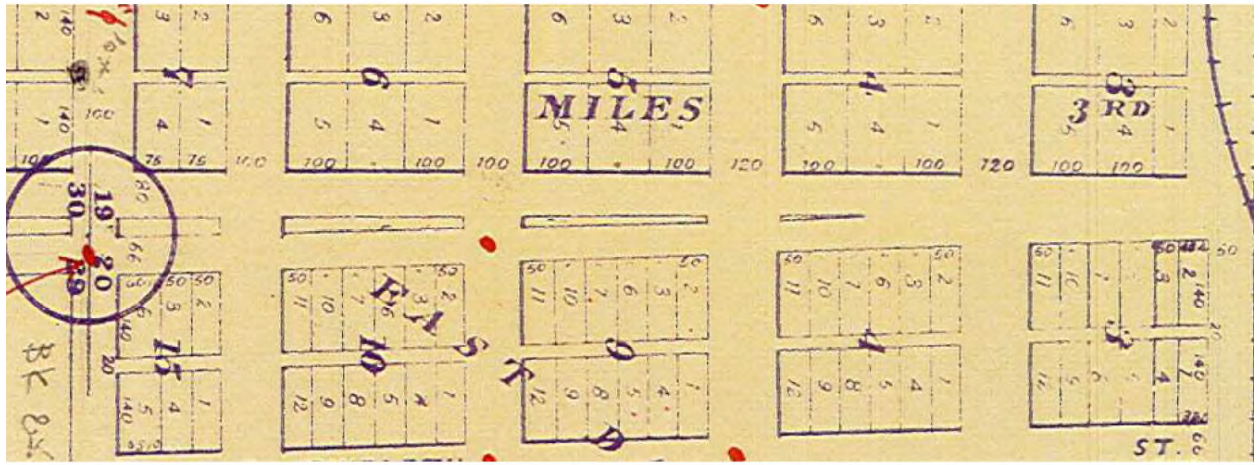
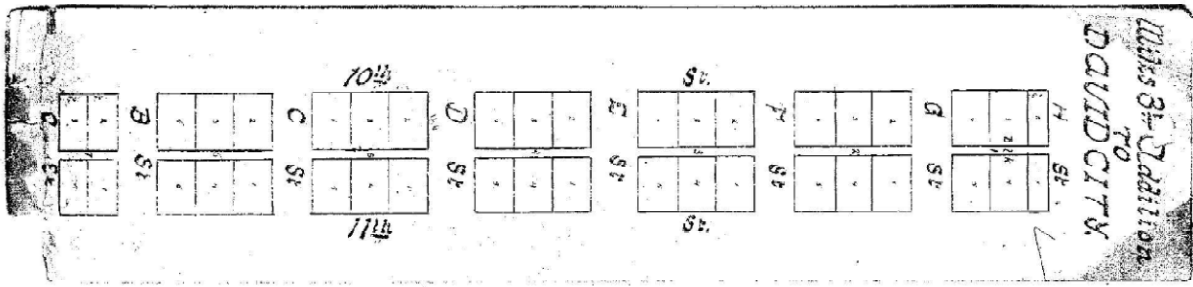
City Attorney Joanna Uden said, "I would just like to add this does prevent liability on the City's behalf in the event that if we are ever in a title dispute. Those can get very costly. I'll be honest with you - I don't know how to handle those so you would probably be looking at hiring outside counsel if it comes up. It might not ever come up, but I'm not a big risk taker."

Mayor Alan Zavodny said, "So, you are saying that our between six and seven thousand dollars expense is cheap? This sounds like a reasonable solution to a problem that we didn't even know we had."

Council member Tom Kobus made a motion to approve Land Surveyor Brian Foral, Title Agent Greg Aschoff and City Attorney Joanna Uden to replat 11th Street and the vacated Martin's Subdivision in Miles 3rd Addition and to prepare quit claim deeds for the properties. Council Member Bruce Meysenburg seconded the motion. The motion carried.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea
Yea: 5, Nay: 0, Absent: 1





COUNTY SURVEYOR'S REPORT
MILES 3RD AND MILES 7TH ADDITIONS TO DAVID CITY, BUTLER COUNTY, NEBRASKA

The purpose of this report is to identify and explain the relationship and discrepancies between Miles 7th Addition, "West 11th Street", "East 11th Street", and the location of the SE corner of Section 19-15-3 (also being the SW corner of Section 20-15-3).

Miles 7th Addition was platted by Bouse, approved on Dec. 14, 1904. As stated and depicted in the plat, it is a representation of that area lying between East David City, and Miles 3rd Addition, with "West 11th Street" lying to the west and "East 11th Street" lying to the east. The section corner location is shown, but no monument is identified. The Blocks were conveyed to David City in 1906.

"West 11th Street" is an 80' wide street right-of-way lying east of and adjacent to, Miles 3rd Addition.

"East 11th Street" is 66' wide, centered on the east line of Section 19, lying west of and adjacent to, East David City. This street is likely in the same location as an old section line County Road.

The south line of Block 1, Miles 7th Addition is recorded as being 17' wide. A subsequent plat of Martin's Subd. (vacated), surveyed by Bodensteiner (6-3-1974; Clerk's Slide No. 32) also depicts the area lying between Miles 3rd Addition and East David City. The Martin's Subd. plat shows the distance between Miles 3rd Addition and East David City to be about 26' longer than shown on the Miles 7th Addition plat (at the south line of said Block 1). This discrepancy is likely due to:

- 1) Bouse making some type of measurement error in his platting of Miles 7th Addition
or
- 2) Bouse using a section corner location which was about 26' west of the present section corner location. I note that in a previous survey by myself of the south line of Section 20-15-3 (3-27-1985; Microfilm Ek. 85 p.1542), I measured the $W\frac{1}{2}$ mile to be 25.47' shorter than the $E\frac{1}{2}$ mile.

This 26' excess could be viewed as a separate tract of land but, in my opinion, it is actually a part of Miles 7th Addition, as the Addition was intended to depict the area lying between "West 11th Street" and "East 11th Street". Thus, the south line of Block 1 is 17' recorded, but about 43' actual length.

Martin's Subd. is a replatting of Miles 7th Addition, "West 11th Street", and the West Half of "East 11th Street". The plat was vacated by David City Ordinance No. 611. Section 3 of said Ordinance states "All streets, alleys and public grounds within such vacated Addition are hereby reserved by the City of David City, Nebraska". The westerly portion of "East 11th Street" is shown as 57'-67' wide in the plat (formerly 33' wide in Miles 7th Addition plat). The wording in Section 3 appears to dictate that this 57'-67' right-of-way would remain so, but that would include and overlap the Blocks in Miles 7th Addition, which is the very reason that the Martin's Subd. plat was vacated - see Section 4 of said Ordinance. The location of the west right-of-way line of "East 11th Street" is critical to subsequent deed descriptions in this area. In my opinion, the vacation of Martin's Subd. results in "East 11th Street" reverting back to its original width of 66', being 33' wide on each side of the section line.


SR 19 P42

David City Ordinance No. 613 vacates the West Half of "West 11th Street". This Ordinance does not purport to assign this vacated land to any particular adjoining owner. I could not find any record of vacation of the East Half of "West 11th Street".

A Referee's Deed, executed Dec. 13, 1990 and recorded in Microfilm Bk. 90 page 1345, conveys Lot 5, Block 6, Miles 3rd Addition and land lying between said Lot 5 and "11th Street as it is presently used and occupied as a public street, which tract can best be described as the South 100 feet of Block 2, of the vacated Martin's addition". The second part of this quoted statement, referring to Block 2 of Martin's Subd., seems to indicate that the first part of the quoted statement refers to 11th Street as having a 57' width, lying west of the section line, as shown in the vacated Martin's Subd. plat. I note that this deed description includes the East Half of "West 11th Street" which has not been vacated, and also includes a portion of Block 2, Miles 7th Addition, which was previously conveyed to David City.

A survey by Stevenson (9-16-1992; Survey Bk. 12 p.24) depicts the area lying between Block 6, Miles 3rd Addition, and "East 11th Street". Stevenson's survey, and Lot 5 Description contained therein, appear to delineate and expand upon, the description contained in the aforementioned Referee's Deed. Stevenson shows Block 2, Miles 7th Addition having its recorded widths of 12' at the south end and 6' at the north end. Stevenson does not show the width of "East 11th Street", but since his distances shown for Block 2 of vacated Martin's Subd. correspond to that plat, the westerly portion of "East 11th Street" should constitute a 57' wide right-of-way.

In my opinion, this area remains in a state of conflict and confusion.


Richard L. Ronkar
Butler County Surveyor
April 25, 2011

ORDINANCE NO. 611

AN ORDINANCE OF THE CITY OF DAVID CITY, NEBRASKA VACATING THE PLAT AND ADDITION TO THE CITY OF DAVID CITY, NEBRASKA KNOWN AS MARTIN'S SUBDIVISION AND SOMETIMES REFERRED TO AS MARTIN'S ADDITION AND REPEALING ALL ORDINANCES IN CONFLICT THEREWITH.

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

SECTION 1: That the Plat and Addition to the City of David City, Nebraska known as Martin's Subdivision and sometimes referred to as Martin's Addition is hereby vacated.

SECTION 2: That said vacation is considered to be for the best interests of the City of David City, Nebraska and that such action is taken upon the Petition of all owners of lots or lands within such addition.

SECTION 3: All streets, alleys and public grounds within such vacated Addition are hereby reserved by the City of David City, Nebraska.

SECTION 4: That Martin's Subdivision sometimes known as Martin's Addition was erroneously laid out partially on 11th Street and partially on Miles 7th Addition to the City of David City, Nebraska, and the purpose of this Ordinance is to correct said error.

SECTION 5: That a copy of this Ordinance shall be certified to the Office of the Register of Deeds (Butler County Clerk) wherein such office is directed to note such vacation by writing in plain and legible letters upon such plat and addition the word "vacated" and also to make reference to the volume and page in which said Ordinance of Vacation is recorded.

SECTION 6: Any ordinance 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 7: This Ordinance shall take effect and be in full force from and after its passage, approval and publication or posting as required by law.

PASSED AND APPROVED This 23rd day of May, 1984.

Attest: [Signature]
City Clerk

[Signature]
Mayor



STATE OF NEBRASKA } SS
BUTLER COUNTY }
ENTERED IN NUMERICAL INDEX AND
FILED FOR RECORD IN THE CLERK'S
OFFICE OF SAID COUNTY, THIS 25
DAY OF May, 1984, AT 7
O'CLOCK AND 40 MINUTES P. M.
AND RECORDED ON FILM # 84-615
IMAGE #
[Signature]
COUNTY CLERK
BY [Signature]
DEPUTY

84-615

ORDINANCE NO. 613

AN ORDINANCE VACATING THE WEST HALF OF THAT PART OF 11TH STREET, BETWEEN BLOCKS FOUR, FIVE AND SIX OF MILES THIRD ADDITION AND BLOCKS FOUR, NINE AND TEN OF EAST DAVID CITY ADDITION, ALL IN THE CITY OF DAVID CITY, BUTLER COUNTY, NEBRASKA: PROVIDING FOR THE FILING OF CLAIMS AND ASCERTAINMENT OF ALL DAMAGES SUSTAINED BY THE CITIZENS OF SAID CITY OR BY THE OWNERS OF PROPERTY THEREIN: PROVIDING FOR THE EFFECTIVE DATE THEREOF.

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

WHEREAS, the Mayor and City Council have found and determined that it is in the best interests of the City and is expedient for the public good to vacate part of the street described in the title hereof.

SECTION 1: That there be and hereby is vacated the West Half of that part of 11th Street between Blocks 4, 5 and 6 of Miles 3rd Addition and Blocks 4, 9 and 10 of East David City Addition, all in the City of David City, Butler County, Nebraska.

SECTION 2: That the vacation of said part of 11th Street is declared to be expedient for the public good.

SECTION 3: Any citizen of the City and any owner of property therein may file a claim with the City Clerk of said City on or before the 11th day of July, 1984, for any and all damages by him sustained by the vacations aforesaid; provided, that only such claims will be considered and only such damages will be ascertained, if any, as are lawfully recoverable in such cases.

SECTION 4: And the City Council of said City shall convene on the 11th day of July, 1984 at the hour of 7:30 P.M., for the purpose of considering each such claim, ascertain all damages sustained, if any, in consequence of such aforesaid vacations and provide payment or compensation, if any, as finally determined to be payable.

SECTION 5: This ordinance shall be in full force and effect from and after its passage, approval and publication according to law.

PASSED AND APPROVED this 27th day of June, 1984.

Mayor *[Signature]*

ATTEST: *[Signature]*
City Clerk



STATE OF NEBRASKA
BUTLER COUNTY
Entered in numerical index and filed for record in the clerk's office of said county this 25 day of September 1984 at 9 o'clock of PM minutes 38 and recorded in PLMBOOK # 90-1051
[Signature]
County Clerk
By *[Signature]*
Deputy

BOOK 90 PAGE 1051

Mayor Zavodny stated that the next agenda item was discussion to address ducks within city limits and discrepancies between Municipal Code Section 3-302 and Section 3-303.

City Administrator Clayton Keller said, "There's a house in town that has ducks in a fenced-in area in the backyard. I notified the Sheriff's department because they handle the animal violations, and they asked them to get rid of the ducks. I got a phone call from the owner of the ducks, and first she asked why we had this rule and I said 'I don't know, it was put in place before I got here.' She asked if the rule could be changed and I told her that I would have to talk to the Council. So, she called up a Councilman and talked to them. He called me and said that we should take a look at changing this. So, I was reading the rules and realized that Section 3-302 mentions geese as not being allowed, but Section 3-303 it says that geese are allowed if they are fenced in, in the backyard. So, I thought if we change this code, we might as well fix whether or not geese are allowed, as well."

Council member Pat Meysenburg said, "They are 4-H ducks. They are not the only ones that have ducks in town, believe me. I can tell you that there are about four houses that have them."

Council member Bruce Meysenburg said, "We talked about this when I first got on the Council."

Council member Jessica Miller said, "Well, I'm not happy about the goats in my backyard, but that was before my time."

Council member Tom Kobus said, "How many ducks are there, Clayton?"

City Administrator Clayton Keller said, "I didn't stand there and try to count."

Council member Pat Meysenburg said, "We allow six chickens. There's a rooster running around, too."

Mayor Alan Zavodny said, "As silly as these discussions always seem to be, there are some real practical things that do occur with this. First of all, you can't sit here and yell at the Sheriff's Office for not running traffic the way that you think it should be run when you have them chasing ducks and chickens around. We have loose ones around Hartman's. I heard that today."

City Administrator Clayton Keller said, "We know where the rooster is at and we contacted the individuals and they were going to get rid of it."

Council member Pat Meysenburg said, "I really think that we have bigger problems than to worry about ducks."

Mayor Alan Zavodny said, "Nuisance properties for sure. Sticking to ducks."

Council member Jessica Miller said, "Can we put a limitation on them the same as chickens? That you can only have six?"

Mayor Alan Zavodny said, "I would say that is a reasonable thing to do. I thought the same thing."

Council member Jessica Miller said, "Straight across the board, if it's six for chickens, then it's six for ducks, too."

Mayor Alan Zavodny said, "Have all of you chimed in that want to? You've given clear direction of what you want that Ordinance to look like?"

Council member Kevin Woita said, "I would limit the ducks the same as the chickens."

City Clerk Comte said, "Do you want to say fowl instead? Does that include geese?"

Council member Kevin Woita said, "I think we keep it to chickens and ducks."

Council member Tom Kobus said, "Can you just change this to say six chickens and six ducks?"

City Administrator Clayton Keller said, "So, for Section 3-303, we'll take geese out of that one line that says that they are allowed."

Mayor Alan Zavodny said, "Bring us an Ordinance that requires this to never come to the City Council again."

There being no further business to come before the Council, Council member Jessica Miller made a motion to adjourn. Council Member Kevin Woita seconded the motion.

Tom Kobus: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Jessica Miller: Yea, John Vandenberg: Absent, Kevin Woita: Yea

Yea: 5, Nay: 0, Absent: 1 The motion carried and Mayor Zavodny declared the meeting adjourned at 8:16 p.m.

CERTIFICATION OF MINUTES

September 22, 2021

I, Tami Comte, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of September 22, 2021; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

Tami Comte, City Clerk