

*Kearney, Nebraska*  
*March 10, 2009*  
*7:00 p.m.*

A meeting of the City Council of Kearney, Nebraska, was convened in open and public session at 7:00 p.m. on March 10, 2009, in the Council Chambers at City Hall. Present were: Randy Buschkoetter, Vice-President of the Council; Michaelle Trembly, City Clerk; Council Members Don Kearney, Bruce Lear, and Bob Lammers. Absent: Mayor Stanley A. Clouse. Michael Morgan, City Manager; Michael Tye, City Attorney; Wendell Wessels, Director of Finance and Administration; Kirk Stocker, Director of Utilities; Rod Wiederspan, Director of Public Works; and Dan Lynch, Chief of Police were also present. Some of the citizens present in the audience included: Lance Lang, Suzanne Brodine, Mike Young, Bruce Lefler, Don Frost, Donette Miller, Kent Cordes, Candy Kunz, Rick Follmer, Mitch Humphrey, Sara Giboney from Kearney Hub, Steve Altmaier from KGFW Radio.

Notice of the meeting was given in advance thereof by publication in the Kearney Hub, the designated method for giving notice, a copy of the proof of publication being attached to these minutes. Advance notice of the meeting was also given to the City Council and a copy of their acknowledgment or receipt of such notice is attached to these minutes. Availability of the Agenda was communicated in the advance notice and in the notice to the Mayor and City Council. All proceedings hereafter shown were taken while the meeting was open to the attendance of the public.

## **I. ROUTINE BUSINESS**

### **INVOCATION**

Major Dale Hixenbaugh from The Salvation Army provided the Invocation.

### **PLEDGE OF ALLEGIANCE**

Five Boy Scouts from Troop 158 led the Council members and audience in the Pledge of Allegiance.

### **ANNOUNCEMENT**

Vice-President Buschkoetter announced that in accordance with Section 84-1412 of the Nebraska Revised Statutes, a current copy of the Open Meetings Act is available for review and is posted towards the back of the Council Chambers.

### **ORAL COMMUNICATIONS**

There was no Oral Communications.

## **II. UNFINISHED BUSINESS**

There was no Unfinished Business.

### **III. PUBLIC HEARINGS**

#### **LAND USE MAP AMENDMENT – WEST OF 4TH AVENUE AT 62ND STREET**

Public Hearings 1 and 2 were discussed together but voted on separately.

Vice-President Buschkoetter opened the public hearing on the Application submitted by Brian and Annette Levander (Applicant) and L & P Investments, L.L.C. (Owner) for an amendment to the Land Use Map of the City of Kearney Comprehensive Development Plan from “Mixed Use 2” to “Mixed Use 3” for a tract of land being Lot 1 of Block 2, North Acre Sixth, an addition to the City of Kearney, Buffalo County, Nebraska (west of 4th Avenue at 62nd Street) and to consider approval of Resolution No. 2009-24. Planning Commission recommended the Land Use Map designation of “Mixed Use 2” be upheld and the rezoning request for this property be denied.

The applicant is requesting rezoning of a lot located west of the intersection of 4th Avenue and 62nd Street from C-2/PD, Community Commercial/Planned Overlay District to C-3, General Commercial District with no planned overlay. The current land use designation on the Future Land Use Map of the City of Kearney Comprehensive Development Plan is “Mixed Use 2”. The rezoning request will require the Land Use Map to be amended to “Mixed Use 3” due to the increase in commercial intensity from C-2 uses to C-3 uses.

Staff does not support changing the land use or rezoning of this property. The proposed use is for an automobile body repair shop. The applicant owns such a business in Grand Island and would like to start up in Kearney. This use type requires a conditional use permit in C-2 or rezoning to C-3 where the use would be permitted by right. The applicant does not want to be located in a planned zone and is therefore requesting the rezoning to C-3. Staff believes that the planned zoning overlay is important for this parcel given the surrounding zoning and future development scenarios. There is no adjacent C-3 zoning. There is adjacent planned zoning on two sides. The land to the west is zoned R-1 and is being developed as a private gated residential community by DT Development known as Spruce Hollow. Staff does not believe that straight C-3 zoning is appropriate next to the R-1 development. The zoning to the east and north of the lot in question is C-2/PD, and to the south the zoning is C-1. C-3 zoning is simply too intensive for this location regardless of the proposed use, and especially without development plans.

The Nickman property to the northeast is zoned M-1 and is for sale as is Peerless Irrigation. The Nickman property or a portion of it would be a good site for this auto body repair facility. Other good examples are Sixth Street Industrial Park, Airport Industrial Park, Central Avenue south of 11th Street, and 11th Street east of Avenue M. The applicant said that major considerations for site selection are visibility and accessibility. The site at 4th Avenue and 62nd Street is not visible and not particularly accessible to the arterial street network. At this time 4th Avenue is a dead-end street further limiting accessibility. Staff is unsure what the appeal of this site is for the proposed use. Staff has advised the applicant of the concerns addressed in this memo but he decided to move forward with this request anyway. The Planning Commission expressed similar concerns and although they would love to welcome a new business to town, this lot is

not the proper location for a body shop.

There was no representation on behalf of the applicant/owner.

City Clerk stated that Mr. Levander called and said he would not be attending the meeting.

City Planner Lance Lang stated it was his opinion that Mr. Levander was going to pursue another location since the Planning Commission recommended denial.

Kent Cordes, representative for DT Development, stated his client was opposed to this application. He was present at the Planning Commission and wanted to reiterate objection on behalf of his client.

Donette Miller stated she is the resident north of the property that was requested to be rezoned and was also opposed to the application as stated at Planning Commission.

Moved by Kearney seconded by Lammers to close the hearing and approve the Application submitted by Brian and Annette Levander (Applicant) and L & P Investments, L.L.C. (Owner) for an amendment to the Land Use Map of the City of Kearney Comprehensive Development Plan from "Mixed Use 2" to "Mixed Use 3" for a tract of land being Lot 1 of Block 2, North Acre Sixth, an addition to the City of Kearney, Buffalo County, Nebraska (west of 4th Avenue at 62nd Street) and deny Resolution No. 2009-24. Roll call resulted as follows: Aye: Buschkoetter, Lear, Lammers, Kearney. Nay: None. Clouse absent. Motion carried.

### **REZONING – WEST OF 4TH AVENUE AT 62ND STREET**

Public Hearings 1 and 2 were discussed together but voted on separately.

Vice-President Buschkoetter opened the public hearing on the Application submitted by Brian and Annette Levander (Applicant) and L & P Investments, L.L.C. (Owner) to rezone from "District C-2/PD, Community Commercial/Planned Development Overlay District" to "District C-3, General Commercial District" property described as Lot 1 of Block 2, North Acre Sixth, an addition to the City of Kearney, Buffalo County, Nebraska (west of 4th Avenue at 62nd Street).

Moved by Lammers seconded by Lear to close the hearing and deny the Application submitted by Brian and Annette Levander (Applicant) and L & P Investments, L.L.C. (Owner) to rezone from "District C-2/PD, Community Commercial/Planned Development Overlay District" to "District C-3, General Commercial District" property described as Lot 1 of Block 2, North Acre Sixth, an addition to the City of Kearney, Buffalo County, Nebraska (west of 4th Avenue at 62nd Street). Roll call resulted as follows: Aye: Buschkoetter, Lammers, Kearney, Lear. Nay: None. Clouse absent. Motion carried.

### **AMENDMENT TO CHAPTER 14 OF THE CITY CODE – CONSTRUCTION BATCH PLANT**

Vice-President Buschkoetter opened the public hearing on the proposed amendment to

Table 14-1 "Use Matrix; Miscellaneous Uses" of Chapter 14 "Zoning District Regulations" of the Kearney City Code to permit "construction batch plant" as a conditional use in zoning districts "AG", "C-2" and "C-3". Planning Commission recommended approval.

City Planner Lance Lang presented this matter to the Council. A recent request to locate a temporary construction batch plant within the City of Kearney zoning jurisdiction has prompted Staff to consider a Code amendment that would expand the number of suitable locations for such a use. The Code amendment proposes the approval of construction batch plants as a conditional use in three zoning designations that it is currently prohibited; zones AG, Agricultural District, C-2, Community Commercial District, and C-3, General Commercial District. This use type is currently allowable by right in M-2, General Industrial District, and as a conditional use in M-1, Limited Industrial District.

In the past, it has been typical for paving companies to set up and operate temporary sites for seasonal road repair projects in Buffalo County and sometimes in the City jurisdiction. The batch plants are set up for specific paving improvement projects for the City, County or State Department of Roads. There will be a need for future batch plants as the Cherry Avenue Interchange and East Kearney Bypass project commences construction and other road improvement projects come about. These batch plants are temporary in nature, but may vary in terms of operating characteristics and time period based on the size and scope of the particular road project. For example, an asphalt overlay job may last for five months whereas the Cherry Avenue project may take five years or more to complete. Each request for a CUP will be evaluated on its own merit. A typical batch plant may include sand and gravel extraction, stockpiling of sand, gravel, aggregate, and Portland cement, concrete crushing, production of concrete or asphalt and a lot of truck traffic. The term "construction batch plant" is defined as follows in Chapter 13, "Use Types:"

*A temporary demountable facility used for the manufacturing of cement, concrete, asphalt, or other paving materials intended for specific construction projects.*

No changes are proposed for this definition. If approved, the letter "C" will be added to the Use Matrix Table 14-1 in the appropriate columns under AG, C-2 and C-3 to make construction batch plants a conditional use in these zoning districts. Some members of the Planning Commission questioned whether zones C-2 and C-3 should be included in this request. Other members were comfortable with including these zones as each application is considered based on its own merit and conditions can be attached to regulate concerns that might arise.

Two of the Planning Commissioners voted against the amendment because they were uncomfortable with the C-2 and C-3 being in there. City Planner stated since most of the commercial properties are on 2nd Avenue and Highway 30 which they believed were inappropriate locations for a batch plant. City staff agreed with that but through the Conditional Use process they could simply be denied. The other four Commissioners who approved the amendment, felt comfortable with the Conditional Use process as being able to regulate itself and provide for that avenue of denial or approval.

Vice-President Buschkoetter stated that this application is basically very similar to a gravel pit process in terms of getting the materials (gravel, sand) necessary to do road construction work. City Planner stated this provides for a temporary setting where the materials are trucked into the site, mixed up and trucked out. It could also be an asphalt plant or poured cement type of concrete. In the T & F Sand and Gravel application, they will mine the gravel at the same location where they will be mixing other aggregate and doing the construction batch plant. The mining of the material does not have to take place at the location of the batch plant, but it is more convenient for a larger project to be able to do it that way. A temporary plant is determined on a case by case basis. The Cherry Avenue project will probably take five years to complete, but the T & F project is proposed to take eight months and some will take less. These projects are typically done during construction season so it is not anything that would go throughout winter and summer. One of the conditions could be the time limit. Some of the conditions that could be considered for denial are: close proximity to residential, hours of operations, specific hauling routes that would be unacceptable. The Conditional Use Permit process is one of the tightest land use regulators that the City has because it is only for a certain property, a certain owner and a use for a specified time period. Once a property is zoned anything can happen there that is within the zone's permitted uses.

Council member Lammers stated that he did not have a problem with the AG part of this, but had a little difficulty understanding when they would want to put conditions on something in a C-2 and C-3 zone.

Council member Lear stated he could see the leeway in C-3, but it was hard for him to imagine wanting to issue a permit under C-2 where they do not allow AG sales and service facilities, auto auction lots, equipment repair businesses (even by CUP). Some of the things allowed under Conditional Use Permits are auto rental sales, body repair shops, which in his view are not as much of an impact, but are not allowed in a C-2 district today. He asked what the staff's recommendation is. City Planner stated his personal thought is to strike the C-2 and C-3 out and go with the AG and leave the M-1 and M-2. A construction company can find someplace in an M-1, M-2 or an AG zone which opens up a lot of territory to be used and does not need the C-2 or C-3 zoning.

Vice-President Buschkoetter stated he is comfortable with the recommendation either way. The Conditional Use Permit allows them to regulate case by case. There is some C-2 and C-3 land that is zoned as such, but is primarily being used for AG purposes at this time which probably includes some M-1 industrial land as well. He believed there is a piece of property out there that would work and that the Conditional Use Permit gives more flexibility and controls while the Conditional Use Permit gives a fair amount of leeway.

City Planner believed that a batch plant operation should be able to find a place in an M-1, M-2 or AG zoning around Kearney. During discussions at the Planning Commission meeting, the reason C-2 and C-3 were considered is because there is some vacant property around Menards and some vacant property on Archway Parkway that is zoned commercial, but there are not a lot of other examples of undeveloped commercially zoned property around Kearney. It might be appropriate to temporarily have the batch plants on the outskirts of town where it would be subject to the conditions of the CUP.

Council member Kearney said that he depends on the recommendations by the Planning Commission and does not like second guessing them. He did not believe this should be the primary forum for negotiating deals that the Commission has already approved. He respects the Planning Commission's decision and does not feel comfortable overturning their decision.

City Manger Michael Morgan stated there have been batch plants for years in Kearney and it has not been necessary to extend them into these areas. By allowing them in an AG zone, they are actually expanding them anyway so he did not see the benefit of including the C-2 and C-3. He added that a Conditional Use Permit opens the door and puts the Council in the position of defending their position. It is not quite as simple as saying we can place conditions. Those conditions have to be prudent, reasonable and defensible in court. It is still, in essence, an allowance that would have to be defended, so he advised them if their comfort level were not there with these, to use caution in their decision.

City Planner stated that the Code was changed when they adopted the UDO in 2002. The old Code actually listed construction batch plants as a conditional use that could go in any zone, as long as it went through the process of approval and got a Conditional Use Permit issued. The present Code that is being amended approaches the CUP differently in Table 14-1, it allows a certain use by right, prohibits it altogether or allows it as a conditional use.

Council member Lear said he believed that C-2 districts do not appear to be an appropriate place for batch plants and he is not a big fan of Conditional Use Permits in general. He would prefer to limit the number of circumstances where they even have to consider them. He was inclined to say just add AG and was open on C-3. If they had a situation come up that needed C-2 or C-3, they would not approach it any differently than they are doing which is approve the Code amendment and the Conditional Use Permit. He did not believe it was necessary to give the people the expectation if the Council does not think it is ever going to be appropriate.

There was no one present in opposition to this hearing.

Council member Kearney reiterated that he respects the Planning Commission's decision and does not feel comfortable overturning their decision.

Moved by Lear seconded by Buschkoetter to close the hearing and approve the proposed amendment to Table 14-1 "Use Matrix; Miscellaneous Uses" of Chapter 14 "Zoning District Regulations" of the Kearney City Code to permit "construction batch plant" as a conditional use in zoning districts "AG". Roll call resulted as follows: Aye: Buschkoetter, Lear, Lammers. Nay: Kearney. Clouse absent. Motion carried.

**CONDITIONAL USE PERMIT – T & F SAND & GRAVEL FOR WEST OF 62ND AVENUE, NORTH OF LONG ISLAND ROAD/I-80**

Vice-President Buschkoetter opened the public hearing on the Application submitted by T & F Sand & Gravel, Inc. (Applicant) and Keith G. and Julia E. Stafford (Owner) for a

Conditional Use Permit to locate and operate a gravel dredging, stockpile aggregates and temporary crushing and highway concrete batch plant operation on property zoned "District AG, Agricultural District" and described as the South Half of the Northeast Quarter of Section 7, Township 8 North, Range 16 West of the 6th P.M., containing 18 acres, more or less, all in Buffalo County, Nebraska (west of 62nd Avenue, north of Long Island Road/I-80). Planning Commission recommended approval subject to the following conditions: (1) Eight month time limit on the permit; (2) Proposed hours of operation for the concrete crusher shall be limited to Monday through Friday, 6:00 a.m. to 6:00 p.m.; (3) The applicant will maintain dust control on 62nd Avenue with calcium chloride and the speed limit on 62nd Avenue will be reduced to 35 mph maximum; (4) The road shall be maintained with a motor grader periodically as needed to reduce wash boarding and rutting; (5) Operator shall provide dust control for the concrete crushing operation; (6) This operation shall meet all Federal or State agency requirements and standards; (7) 62nd Avenue as constructed will be in either the same or better condition than it currently is upon completion of the project.

The applicant is requesting a Conditional Use Permit (CUP) for dredging sand/gravel and for a construction batch plant to be located on the same site west of 62nd Avenue and north of I-80. The site is approximately 18 acres and is zoned Agricultural. The dredge material will be used to supply aggregate for the batch plant. Limestone and Portland cement will be trucked in and stockpiled. There will be an average of about 10 to 12 trucks per day, except for a fifteen day period when trucks will operate 24 hours per day. The site will also contain a concrete crusher to recycle used concrete and use it for the sub grade of the new pavement. This temporary paving facility is proposed to provide for repaving of 10 miles of I-80, roughly from Kearney to Odessa, including the rest area and shoulders on the interstate. This is an NDOR project that will begin in late March and be completed by November 2009. The applicant has submitted a site plan and a list of proposed conditions.

Neighboring property owners and members of the Planning Commission expressed concern regarding the condition of 62nd Avenue. The road is located in an area with a high seasonal water table which affects the stability of the subgrade. Storm water has been known to overtop the road flowing west to east. Given the number of proposed trucks, maintenance of the road is very important.

Rick Follmer, 74748 "T" Road, Elm Creek, Nebraska, presented this matter to the Council. This is a complete replacement of I-80 between Kearney and Odessa in the west bound lane. The asphalt will be milled off; the concrete removed and brought to a central location where it will be crushed. They will then remove some sub-base and replace it back with the crushed concrete and concrete pave over it. The construction is planned to start April 1st and be completed by the end of October. There is a 14-day period within the heavy paving process where there will be a lot of traffic out there. The site where the plant is located is called the entrance or the inputs where the rock and cement will come in from the north and everything will exit out the south to the Interstate which will control all the traffic in that central location. The project would be located within the right-of-way of the Interstate. That is a lot safer way to do this since it does not impact the traffic in town. There will be 30 loads of limestone that would be brought in per day through the duration of the job. Once the heavy paving is started for that 14-day period, it will be going on 24 hours a day because they do not have enough storage

out there so they have to haul it in during the night. They will continue to haul in during the day to subsidize the bulk tanks that they have out there. The worst case scenario will be within those 14 days when they do the ten miles. They can get about a mile a day done between Odessa and then do the ramp work and the rest area that also needs some renovation.

Vice-President Buschkoetter asked Mr. Follmer if he was comfortable with all the conditions that were set at the Planning Commission. Mr. Follmer stated he was in agreement with them.

There was no one present in opposition to this hearing.

Moved by Buschkoetter seconded by Kearney to close the hearing and approve the Application submitted by T & F Sand & Gravel, Inc. (Applicant) and Keith G. and Julia E. Stafford (Owner) for a Conditional Use Permit to locate and operate a gravel dredging, stockpile aggregates and temporary crushing and highway concrete batch plant operation on property zoned "District AG, Agricultural District" and described as the South Half of the Northeast Quarter of Section 7, Township 8 North, Range 16 West of the 6th P.M., containing 18 acres, more or less, all in Buffalo County, Nebraska (west of 62nd Avenue, north of Long Island Road/I-80) subject to compliance with the following conditions: (1) Eight month time limit on the permit; (2) Proposed hours of operation for the concrete crusher shall be limited to Monday through Friday, 6:00 a.m. to 6:00 p.m.; (3) The applicant will maintain dust control on 62nd Avenue with calcium chloride and the speed limit on 62nd Avenue will be reduced to 35 mph maximum; (4) The road shall be maintained with a motor grader periodically as needed to reduce wash boarding and rutting; (5) Operator shall provide dust control for the concrete crushing operation; (6) This operation shall meet all Federal or State agency requirements and standards; (7) 62nd Avenue as constructed will be in either the same or better condition than it currently is upon completion of the project. Roll call resulted as follows: Aye: Buschkoetter, Lear, Lammers, Kearney. Nay: None. Clouse absent. Motion carried.

### **FINAL PLAT FOR ANTELOPE AVENUE ADDITION**

Vice-President Buschkoetter opened the public hearing on the Application submitted by Mitch Humphrey from Buffalo Surveying (Applicant) for Rovar Park, L.L.C. (Owner) for the Final Plat for "Antelope Avenue Addition" an addition to the City of Kearney, Buffalo County, Nebraska for property described as a tract of land being part of Lot 11 (to be vacated), St. Luke's Good Samaritan Village, an addition to the City of Kearney, containing 5.12 acres, more or less, Buffalo County, Nebraska (3112 Antelope Avenue) and to consider approval of Resolution No. 2009-25. Planning Commission recommended approval.

The applicant is requesting approval to plat a tract of land containing 5.12 acres located on the west side of Antelope Avenue just north of Rovar Park (3112 Antelope Avenue). The subdivision is to be known as Antelope Avenue Addition. The property is zoned M-1, Limited Industrial District and the proposed use is outdoor RV storage on proposed Lot 3, existing building on Lot 1, and a future building site reserved for Lot 2. A Development Plan for the RV Storage Yard was previously approved by the Planning

Commission and City Council in May 2008. The Preliminary Plat for Antelope Avenue Addition was approved by the Planning Commission on February 20, 2009.

No Public Works Plan is required. Stormwater design and computations have been previously approved by the City Engineer. A twenty-foot wide easement has been provided to extend sewer service to the north.

32nd Street Place is not a public street. Please remove all references to 32nd Street Place and replace with verbiage consistent with the final plat of St. Luke's Good Samaritan Village Plat where the street is referred to as Lot 2, to be used for purposes of ingress for use and benefit of all other lots and for off-street parking for Lots 1-10 inclusive, St. Luke's Good Samaritan Village final plat.

Mitch Humphrey from Buffalo Surveying presented this matter to the Council. This property is located north of Highway 30 and west of Antelope Avenue right off of 32nd Street. Near the northeasterly tract is a metal building that has an exiting tenant in it. The owner got a Conditional Use Permit for a large portion of this property so he could use it for storage. The grading and site work has been completed. The next phase is to get a final plat and ordinance approval. The plan is for three lots, one around the metal building, one lot to the west of the metal building and the balance of the property will be used as a storage facility. The Planning Commission wanted a statement on the plat recognizing 32nd Street as not being a public street and what the uses of this street would be. 32nd Street was the roadway that was placed in there a number of years ago when they had the large building out there was used as a daycare center. There is also an assisted facility that is operated by the Evangelical Lutheran Good Samaritan Society. In this area are the old apartment buildings that came off the Army Airbase that were renovated and moved out there. 32nd Street runs in an east/west direction and makes it way around to the west side and blends into sort of a residential corridor. He knows the Evangelical group would like to rehabilitate that area in the future so they would not have that jog in the street and connect to Antelope Avenue. At the present time, they have to live with the way it is.

Director of Public Works Rod Wiederspan stated that 32nd Street from the west to the entrance of St. Luke's Village is a public street. From that point through to Antelope Avenue is a private road. Council member Lear asked if it was unusual to have apartments fronted by a private road. Director of Public Works stated not necessarily and on the plat it is shown as a private ingress/egress from a public street.

There was no one present in opposition to this hearing.

Moved by Kearney seconded by Lammers to close the hearing and approve the Application submitted by Mitch Humphrey from Buffalo Surveying (Applicant) for Rovar Park, L.L.C. (Owner) for the Final Plat for "Antelope Avenue Addition" an addition to the City of Kearney, Buffalo County, Nebraska for property described as a tract of land being part of Lot 11 (to be vacated), St. Luke's Good Samaritan Village, an addition to the City of Kearney, containing 5.12 acres, more or less, Buffalo County, Nebraska (3112 Antelope Avenue) and approve **Resolution No. 2009-25**. Roll call resulted as follows: Aye: Buschkoetter, Lear, Lammers, Kearney. Nay: None. Clouse absent. Motion carried.

**RESOLUTION NO. 2009-25**

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of "ANTELOPE AVENUE ADDITION" to the City of Kearney, Buffalo County, Nebraska for a tract of land described as being part of Lot 11, St. Luke's Good Samaritan Village, an addition to the City of Kearney, Buffalo County, Nebraska, being more particularly described as follows: beginning at the southeast corner of Lot 11 and assuming the east line of Lot 11 as bearing north and all bearings contained herein are relative thereto; thence north on the east line of Lot 11 a distance of 452.1 feet to the northeast corner of said Lot 11; thence N89°48'30"W and on the north line of Lot 11 a distance of 487.8 feet to the northeast corner of Lot 3 in said St. Luke's Good Samaritan Village; thence S01°11'30"W and on the east line of said Lot 3 (if extended southerly) a distance of 453.4 feet to a point on the south line of Lot 11; thence S88°55'30"E and on the south line of said Lot 11 a distance of 497.4 feet to the place of beginning, with the aforescribed tract of land being located in the Northeast Quarter of the Southeast Quarter of Section 31, Township 9 North, Range 15 West of the 6th P.M., containing 5.12 acres, more or less, all in Buffalo County, Nebraska, duly made out, acknowledged and certified, and the same hereby is approved in accordance with the provisions and requirements of Section 19-916 of the Nebraska Revised Statutes, be accepted and ordered filed and recorded in the Office of the Register of Deeds of Buffalo County, Nebraska; said addition is hereby included within the corporate limits of said City and shall be and become a part of said City for all purposes whatsoever, and the inhabitants of such addition shall be entitled to all the rights and privileges and shall be subject to all laws, ordinances, rules and regulations of said City.

BE IT FURTHER RESOLVED that the President of the Council be and is hereby authorized and directed to execute the final plat on behalf of the City of Kearney, Nebraska.

PASSED AND APPROVED THIS 10TH DAY OF MARCH, 2009.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

RANDY BUSCHKOETTER  
PRESIDENT OF THE COUNCIL

**CDBG; COMPREHENSIVE REVITALIZATION PROGRAM**

Vice-President Buschkoetter opened the public hearing on submitting an application to the Department of Economic Development for a Community Development Block Grant for the construction of sidewalks within the grant area located in southeast Kearney and to consider approval of Resolution No. 2009-26.

Grant and Marketing Coordinator Suzanne Brodine presented this matter to the Council. The Comprehensive Revitalization program is a funding category within the Community Development Block Grant program funded and developed by the Nebraska Department of Economic Development. This program allows DED to conditionally guarantee grant awards in 2009, 2010 and 2011 for eight non-entitlement local governments, between 20,000 and 49,999 populations, based on the number of low- and moderate-income

(LMI) persons residing in the community. The method for allocating funds through the CR category presents the following advantages:

- Ability to make greater impact through guaranteed funding for longer period of time;
- Larger, urban municipalities who are non-entitlement communities are eligible;
- CDBG funding is more effectively targeted to persons with lower incomes.

The targeted census tract spans an area east to west from Avenue C to 5th Avenue and north to south from 22nd Street to 16th Street. This census tract is located in southeast and downtown Kearney.

There are several reasons supporting the selection of this census tract. The City of Kearney employed a comprehensive approach to identify and prioritize capital improvement needs throughout the entire community. This effort included a web survey, suggestion cards and a community needs assessment. The City Council and City staff also conducted 42 listening sessions throughout the community, including 2 town hall meetings. Three public meetings were facilitated in LMI designated areas within the City. Citizen response to the request for input was overwhelming. In summary, the City received 1,637 suggestions, 736 suggestion cards returned and over 700 citizens attended the listening sessions.

This area was chosen by examining the priority needs that were discovered during the assessment process. The top five needs, based on the number of comments received, are as follows:

- Streets, sidewalks, traffic
- Library expansion
- Parks and Recreation facilities (Harmon Park Activity Center)
- Downtown Improvements
- Senior Center Improvements

An area selected for improvements had to meet the LMI requirement of 51 percent or greater. In this area, 66.6 percent of residents are considered those with low- to moderate-incomes, which will meet the national objective of the CDBG program to benefit low and moderate-income persons.

The 1800 and 1900 blocks of Central Avenue, Old Town Kearney, fall within the selected census tract. These blocks require significant improvements to sidewalks and streets to meet ADA guidelines and address drainage and maintenance issues. Accessibility in the community is a top priority for the City Council and staff. These two blocks receive a significant amount of traffic, both from the neighborhood and the wider community.

The creation of a new 8-hour parking lot to the north of the Children's Museum addresses several needs in the area. As the City seeks to purchase the museum and the accompanying lots to the North, Park and Recreation offices are expected to move into the facility. A small, "pocket" park and 8-hour lot are planned for the vacant lots. The park will bring recreation and green space to the Downtown and provide aesthetic improvements and the parking lot will replace the parking spaces expected to be lost

with the library expansion project as well as adding additional spaces to the Downtown district, a primary concern of the Downtown Improvement Board.

The City has already made a concerted effort to improve this area through alley improvements and grant opportunities. The location at the core of the city, age of buildings and infrastructure, close proximity to major roadways, and an active Old Town business association and Downtown Board all contribute to the conclusion that this area in Kearney be selected for improvements.

Kearney is estimated to receive slightly over \$150,000 each year for three years as a result of program participation. This amount was determined by the number of LMI persons residing in the community according the 2000 Census, 10,203, multiplied by the amount of funding available per capita which was \$14.79026.

The City is responsible for 1:1 leverage. As a result of the number and nature of the needs discovered during the assessment process, Kearney citizens voted overwhelmingly to implement a ½ percent sales tax, effective April 1, 2006. Combining program funding and the sales tax money will provide the opportunity to serve the low- and moderate-income populations and to improve accessibility to the public facilities, business communities, and along major arterial streets that is the responsibility of the community.

The project will be phased out over the course of three years during which time, residents can expect to see a combination of improvements to sidewalks, streets, and accessible sidewalk ramps at intersections. There will also be a mix of assessments and non-assessments for improvements completed. Residents who are considered LMI will not be assessed for improvements. The project is as follows:

1. Park and Parking – It is proposed to create park space to the south and east of 2005 1st Avenue and 8-hour parking on the four vacant lots to the north of 2005 1st Avenue, primarily for library and Park and Recreation patrons.
2. Sidewalks and Paving – It is proposed to remove brick pavers on Central Avenue from Railroad Street South to 18th Street to allow for regarding and replace with a concrete surface. Sidewalks and gutters will be replaced with a new grade, lower curb and accessible sidewalk ramps at intersections.

City Manager Michael Morgan stated that the South Central project is one that has been discussed for several years with different options being presented over that time. He has asked the Director of Public Works to develop a bare bones project to reduce the height of the curbs and improve drainage in the street. This project will require removal of the bricks in the street and replace with concrete which is a significant change. City staff will arrange some meetings with the property owners in that area. If Old Town does not want to be involved in this renovation those grant funds could be used elsewhere. One of the things that these property owners objected to the first time (with the cost to them) was some of the aesthetic amenities that were proposed in that project. Some of these amenities were: plantings, improved lighting, etc. The plan being proposed is stripped down as far as possible to make it cost effective.

Council member Kearney asked if the proposal for replacing the brick with concrete was included in the first proposal. Grant and Marketing Coordinator stated it was not and the cost needs to be assessed before making that proposal for the grant. Since it is a 3-phase plan, they are not locked in and would have the option to alter and change it as needed. The first project they are looking at is the parking downtown project and doing Central Avenue in the following two years. They are proposing to do one block at a time.

City Manager stated if Old Town chooses as a group that they do not want to lose that brick appeal those funds will be allocated somewhere else. The Council could approve the project without any cost to the property owners. If the property owners want the improvement these projects will bring, but want to maintain the bricks there are not sufficient funds to do that. The project option was presented before to them, but they rejected that option for various reasons. The proposal could not be petitioned out since there is no cost to them. City Council could make the final determination; however, any significant objections would be presented to the Council before doing so.

There was no one present in opposition to this hearing.

Moved by Lammers seconded by Lear to close the hearing on submitting an application to the Department of Economic Development for a Community Development Block Grant for the construction of sidewalks within the grant area located in southeast Kearney and approve **Resolution No. 2009-26**. Roll call resulted as follows: Aye: Buschkoetter, Lammers, Kearney, Lear. Nay: None. Clouse absent. Motion carried.

#### **RESOLUTION NO. 2009-26**

WHEREAS, the City of Kearney, Nebraska, is an eligible unit of a general local government authorized to file an application under the Housing and Community Development Act of 1974 as amended for Small Cities Community Development Block Grant Program; and

WHEREAS, the City of Kearney, Nebraska, has obtained its citizens' comments on community development and housing needs; and has conducted public hearing(s) upon the proposed application and received favorable public comment respecting the application which for an amount of \$12,000 for community development planning.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the Mayor be authorized and directed to proceed with the formulation of any and all contracts, documents or other memoranda between the City of Kearney and the Nebraska Department of Economic Development so as to effect acceptance of the grant application.

PASSED AND APPROVED THIS 10TH DAY OF MARCH, 2009.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

RANDY BUSCHKOETTER  
PRESIDENT OF THE COUNCIL

#### **IV. CONSENT AGENDA**

Moved by Lear seconded by Buschkoetter that Subsections 1 through 9 of Consent Agenda Item IV be approved. Roll call resulted as follows: Aye: Buschkoetter, Kearney,

Lear, Lammers. Nay: None. Clouse absent. Motion carried.

1. Approve Minutes of Regular Meeting held February 24, 2009.

2. Approve the following Claims:

PS	Personnel Services
SMCS	Supplies, Materials & Contractual Services
ER	Equipment Rental
CO	Capital Outlay
DS	Debt Service

2Cocom \$9.50 co; AT&T \$566.41 smcs; ABPA Region 12 \$65.00 smcs; Ace Hardware \$85.38 smcs; Advance Auto Parts \$27.62 smcs; Aflac \$2,721.66 ps; Agent Fe \$40.00 smcs; Agri Coop \$12,980.59 smcs; Air Delights \$77.92 smcs; Airport Shuttle \$30.00 smcs; Akron Brass \$61.58 smcs; Albright,D \$120.00 smcs; Alertshirt \$348.70 smcs; Alexander,R \$10.00 smcs; Alltel \$1,209.12 smcs; Amazon \$394.45 smcs; Amer Electric \$1,191.89 smcs; Amer First Aid \$215.16 smcs; Amer Red Cross \$247.75 smcs; Amsan \$1,391.71 smcs; Andersen Wrecking \$69.20 smcs; Antelope Newspaper \$228.00 smcs; APA-Conference \$874.00 smcs; Apple Books \$4,752.23 smcs; Arbys \$27.55 smcs; BBC Audiobooks \$112.26 smcs; Baker & Taylor Books \$3,812.53 smcs; Bamford \$200.00 smcs; Baruth,S \$110.41 smcs; Baye,S \$78.00 smcs; Beckenhauer,T \$58.50 smcs; Bluecross Blueshield \$98,171.24 smcs; Bobs Super Store \$13.56 smcs; Borders \$179.16 smcs; Bosselman \$8,755.50 smcs; Brodine,S \$88.34 smcs; Brown's Shoe Fit \$50.00 smcs; Bruce Furniture \$540.85 smcs; Bubble Factory \$121.28 smcs; Buffalo Co Treasurer \$45,325.75 smcs; Buffalo Co Court \$292.55 ps; Buffalo Co Reg of Deeds \$62.00 smcs; Buffalo Outdoor Power \$56.10 smcs; Buggy Bath Car Wash \$7.50 smcs; Builders \$933.30 smcs,ps; Burns,A \$35.00 smcs; Burns,M \$55.00 smcs; Carquest \$2,100.69 smcs; Camera Doctor \$121.00 smcs; Cash-Wa Distributing \$29.60 smcs; CED Enterprise Electric \$85.19 smcs; Center Point Large Print \$81.32 smcs; Central Fire & Safety \$254.50 smcs; Central Hydraulic Systems \$1,366.50 smcs; Central Landscape Supply \$134.50 smcs; Central Platte NRD \$1,130.08 smcs; Central NE Bobcat \$325.97 smcs; Chad \$8.00 ps; Charter \$59.99 smcs; Chief Construction \$14,041.22 co; Charter Communication \$59.99 smcs; City of Kearney \$184,395.81 smcs,co,ps; College Savings Plan of NE \$100.00 ps; Comark Distributors \$97.10 smcs; Computer Pros \$56.72 smcs; Computerized Fleet Analysis \$2,995.00 smcs; Consec Life Ins \$24.00 ps; Construction Rental \$122.96 smcs; Control Masters \$3,070.00 smcs; Copycat Printing \$473.83 smcs; Country Inn & Suites \$299.04 smcs; Crossroads Ford \$547.69 smcs; Culligan \$324.47 smcs; Cummins Central Power \$258.10 smcs; Dell \$12,892.39 smcs,co; Depository Trust \$9,447.50 ds; Diamond Vogel Paint \$108.36 smcs; DPC Industries \$6,033.22 smcs; Dubas,J \$19.13 smcs; Dultmeier Sales \$205.88 smcs; Dutton-Lainson \$922.51 smcs; Eakes \$661.25 smcs; Eirich,T \$50.00 smcs; Elliott,R \$1,793.25 smcs; Embassy Suites \$122.04 smcs; Enterprise \$37.00 smcs; Executive Service \$67.00 smcs; Expedia \$50.00 smcs; Fairbanks \$2,999.21 smcs; Farmers Union \$53.64 smcs; Fastenal \$493.38 smcs; Fiddelke Heating \$367.28 smcs; Flynn,B \$58.50 smcs; Footjoy \$837.43 smcs; Fox Print Direct \$103.00 smcs; Frontier \$192.91 smcs; FYR-TEK \$325.79 smcs; Gale \$261.35 smcs; Garrett Tires \$545.63 smcs; Gooch Brake & Equipment \$2,615.93 smcs; Graham Tire \$439.00 smcs; Grainger \$1,243.13 smcs; Graybar Electric \$349.09 smcs; Great Amer Outdoor \$1,745.84 smcs; Great Lakes \$495.00 smcs; Great Plains One Call \$139.07 smcs;

Greg Larson Sports \$174.66 smcs; Hance,C \$20.78 smcs; Hausmann Construction \$208,818.00 co; HD Supply \$35.10 smcs; Hobby-Lobby \$22.04 smcs,co; Holiday Inn \$5,582.21 smcs; Holiday Station Store \$39.00 smcs; Holmes Plumbing \$714.28 smcs; Hometown Leasing \$207.71 smcs; Hydrite Chemical \$1,770.62 smcs; Hydrologic \$207.00 smcs; ICMA RC \$4,785.06 ps; Id-Ideascom \$16.65 smcs; IRS \$101,132.28 ps; Int'l Code Council \$50.00 smcs; IPMA \$999.25 smcs; ISU Conference \$135.00 smcs; Jack Lederman \$107.18 smcs; JEO Consulting Group \$900.00 smcs; Johnson,S \$50.00 smcs; Johnston,J \$47.74 smcs; Johnstone Supply \$199.45 smcs; KGFV-AM \$48.00 smcs; K&K Parts \$467.29 smcs; Ky Area Chamber \$45.00 smcs; Ky Area Humane \$4,000.00 smcs; Ky Community Found \$75.00 smcs; Ky Hub \$635.80 smcs; Ky Implement \$1,532.93 smcs; Ky Towing \$250.00 smcs; Ky United Way \$571.00 ps; Ky Warehouse \$1,237.46 smcs,co; Ky Winlectric \$31.75 smcs; Ky Winnelson \$17.28 smcs; Ky Yamaha \$21.80 smcs; Killion Motors \$149.42 smcs; Kirkham Michael \$8,967.61 co; Kmart \$26.52 smcs; Konica Minolta \$253.17 smcs; Kum & Go \$13.00 smcs; Labsafe \$83.51 smcs; Lang,L \$105.01 smcs; Lawn Builders \$619.81 smcs; LCL Equipment \$877.48 smcs; League of NE Municipalities \$835.00 smcs; Lind Optical \$264.00 smcs; Linweld \$379.32 smcs; Lockmobile \$155.25 smcs; Logan Contractors Supply \$370.50 co; Luke,D \$2,430.78 smcs; Mail Express \$186.96 smcs; Market Place Garage \$10.00 smcs; Marlatt Machine Shop \$154.12 smcs; Marriott Cornhusker Hotel \$570.24 smcs; McCarty,D \$58.50 smcs; Menards \$2,422.04 smcs; Metlife \$6,126.95 ps; Midlands Contracting \$92,523.35 co; Midwest Gang Investigators \$530.00 smcs; Midwest Turf \$153.04 smcs; Miller & Associates \$27,559.05 smcs,co; Miller Signs \$775.00 smcs; Mine Safety \$19,574.82 co; Mirror Image Car Wash \$40.00 smcs; Moonlight Embroidery \$181.50 smcs; Morgan,M \$105.50 smcs; Morris Press \$455.30 smcs; Mrs. Convenience \$22.50 smcs; Municipal Emergency \$12,470.00 co; Napa All Makes Auto \$1,853.19 smcs; Nat'l Alliance for Youth \$155.00 smcs; Nat'l Fire Protection \$229.45 smcs; NCS Equipment \$123.20 smcs; NCVC \$15.00 smcs; NE Child Support \$2,797.89 ps; NE Dept of Health \$80.00 smcs; NE Dept of Revenue \$56,569.81 smcs,ps; NE Forest Service Tree Care \$80.00 smcs; NE Licensed Beverage Assn \$180.00 smcs; NE Machinery \$455.64 smcs; NE Notary Assn \$151.29 smcs; NE Online \$500.00 smcs; NE State Library \$58.25 smcs; NE Supreme Court \$158.25 smcs; NE Truck Center \$200.44 smcs; Newegg \$283.33 smcs,co; NGS \$225.00 smcs; Nordby,S \$153.87 smcs; Northeastern Wisconsin \$375.00 smcs; Northwest Ky \$2,239.50 co; Northwestern Energy \$6,435.85 smcs; NWA Air \$339.80 smcs; Office Depot \$527.22 smcs; Office Max \$806.32 smcs,co; Officenet \$1,307.81 smcs; O'Keefe Elevator \$154.91 smcs; Omaha Truck Center \$127.18 smcs; O'Reilly Auto \$939.39 smcs; Oriental Trading \$164.71 smcs; Orscheln \$203.03 smcs; Overhead Door \$139.00 smcs; Paramount \$75.23 smcs; Payflex Systems \$493.00 ps; Payne,G \$15.80 smcs; Paypal \$435.00 smcs; Penworthy \$4,082.22 smcs; Pep \$51.10 smcs; Platte Valley Comm \$291.25 smcs; Police K-9 Magazine \$300.00 smcs; POR 15 \$26.55 smcs; Positive Promotions \$58.97 smcs; Presto-X \$136.00 smcs; Provantage \$244.83 co; Pump & Pantry \$28.98 smcs; Quick N Easy \$15.00 smcs; Quill \$70.14 smcs; R&R Products \$1,086.70 smcs; Radioshack \$59.88 smcs; Random House \$442.00 smcs; Recognition Unlimited \$83.34 smcs; Recorded Books \$353.47 smcs; Recreonics \$762.10 smcs,co; Redloff Enterprises \$58.75 smcs; Riverside Mfg \$57.22 smcs; RNDC-Eagle Div \$315.56 smcs; RNDC-Falcon Div \$72.10 smcs; Roper's Radiator \$220.00 smcs; Ryland Mfg \$106.00 smcs; S.A. Foster Lumber \$77.38 smcs; Safety-Kleen \$301.54 smcs; Sahling Kenworth \$563.40 smcs; Sanitation Products \$670.98 smcs; Sesna,D \$58.50 smcs; Shell Oil \$20.01 smcs; Sherwin Williams \$1,938.57 smcs; Sports

Village \$159.96 smcs; Starostka Group \$302,094.11 co; St of Ne DAS Comm \$18.33 smcs; St of Ne AS Central Fin \$3,400.13 smcs; State of NE/HHS Lab \$1,898.00 smcs; Steinbrinks Landscaping \$52.50 smcs; Sterling Distributing \$252.60 smcs; Super Buffet \$44.75 smcs; Super Shine Auto \$59.50 smcs; Swanson,K \$85.26 smcs; Sydow,J \$40.00 smcs; Target \$11.98 smcs; Tractor-Supply \$698.37 smcs; Travelocitycom \$26.94 smcs; Tri City Outdoor Power \$89.44 smcs; Turf Works Sioux Falls \$96.49 smcs; Tye & Rademacher \$11,259.56 smcs; Underground Construction \$1,320.00 smcs; Unico Group \$2,007.62 smcs; United Air \$429.20 smcs; US Golf Assn \$110.00 smcs; UNK Human Resources \$257.05 smcs; University of NE Lincoln \$1,600.00 smcs; UNL Center for Applied Rural \$250.00 smcs; UPS Store \$29.37 smcs; Upstart \$117.43 smcs; US Airways \$555.40 smcs; USPS \$187.01 smcs; Van Diest Supply \$8,007.86 smcs; Utility Safeguard \$29.52 smcs; Voss Lighting \$343.20 smcs; Wal-mart \$705.60 smcs,ps; Warrington,D \$58.50 smcs; Weiss,J \$2.38 smcs; Welcoa \$97.20 ps; Weld Fabulous \$72.20 smcs; Welders Source \$995.00 smcs; Wiegand Secutiry \$75.00 smcs; Wilke Donovans \$13.84 smcs; Wilson,D \$49.34 smcs; Yanda's Music \$1,971.00 co; Yousendit \$9.99 smcs; Payroll Ending 2-28-2009 -- \$303,112.30. The foregoing schedule of claims is published in accordance with Section 19-1102 of the Revised Statutes of Nebraska, and is published at an expense of \$\_\_\_\_\_ to the City of Kearney.

3. Approve Change Order No. 6 showing a decrease in the amount of \$7,226.00 submitted by Hausmann Construction and approved by Wilkins Hinrichs Stober for the construction of the Peterson Senior Activity Center located at the E.K. and Mary Yanney Heritage Park and approve **Resolution No. 2009-27**.

**RESOLUTION NO. 2009-27**

WHEREAS, Hausmann Construction of Lincoln, Nebraska has performed services in connection with the construction of the Peterson Senior Activity Center located at the E.K. and Mary Yanney Heritage Park, and the City's engineer, Wilkins Hinrichs Stober Architects, have filed with the City Clerk Change Order No. 6 showing a decrease in the amount of \$7,226.00, as shown on Exhibit "A" attached hereto and made a part hereof by reference as follows:

Original Contract Sum	\$2,879,000.00
Change Order No. 1 (11-25-2008)	- 21,081.00
Change Order No. 2 (11-25-2008)	- 40,000.00
Change Order No. 3 (11-25-2008)	- 25,000.00
Change Order No. 4 (11-25-2008)	+ 4,900.00
Change Order No. 5 (2-24-2009)	- 1,959.00
Change Order No. 6 (3-10-2009)	<u>- 7,226.00</u>
Contract Sum to Date	\$2,788,634.00

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, and hereby find and determine that Change Order No. 6 as shown on Exhibit "A", be and is hereby accepted and approved.

PASSED AND APPROVED THIS 10TH DAY OF MARCH, 2009.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

RANDY BUSCHKOETTER  
PRESIDENT OF THE COUNCIL

4. Approve the application for a Special Designated License submitted by BOULEE LLC, dba "Bico's Sports Bar & Grill" in connection with their Class I-70918 liquor license to dispense beer, wine and distilled spirits in the Ag Pavilion located at the Buffalo County Fairgrounds, 3807 Avenue N, on March 28, 2009 from 3:00 p.m. until 12:30 a.m. for a fund raiser event – Pheasants Forever.

5. Approve the application for a Special Designated License submitted by BOULEE LLC, dba "Bico's Sports Bar & Grill" in connection with their Class I-70918 liquor license to dispense beer, wine and distilled spirits in the Extension Building located at the Buffalo County Fairgrounds, 3807 Avenue N, on June 6, 2009 from 4:00 p.m. until 1:00 a.m. for a reception.

6. Approve the Developer Constructed Infrastructure Agreement between the City of Kearney and PB & G Development, LLC to construct water, storm sewer and paving to serve Lots 1, 2, 3, 4 of Block 1, and Lots 1 through 11 of Block 2, all in Eastbrooke Eighth Addition to the City of Kearney, Buffalo County, Nebraska and approve **Resolution No. 2009-28.**

**RESOLUTION NO. 2009-28**

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA that the agreement entitled "Developer Constructed Infrastructure Agreement" between the City of Kearney and PB & G Development, LLC to construct water, storm sewer and paving to serve Lots 1, 2, 3, 4 of Block 1, and Lots 1 through 11 of Block 2, all in Eastbrooke Eighth Addition to the City of Kearney, Buffalo County, Nebraska be and is hereby accepted and approved. The Agreement, marked as Exhibit 1 is attached hereto, negotiated with Richard Poston, its Manager for PB & G Development, LLC to construct said water, storm sewer and paving as stated above.

BE IT FURTHER RESOLVED that the President of the Council be and is hereby authorized and directed to execute the same agreement on behalf of the City of Kearney.

PASSED AND APPROVED THIS 10TH DAY OF MARCH, 2009.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

RANDY BUSCHKOETTER  
PRESIDENT OF THE COUNCIL

7. Approve Amendment No. 1 to the Consultant Agreement dated December 11, 2007 between the City of Kearney and Kirkham Michael & Associates for AIP Project 3-31-0045-20 which consists of the Crack Seal, Slurry Seal and Runway/Taxiway Markings Project at the Kearney Regional Airport and approve **Resolution No. 2009-29.**

**RESOLUTION NO. 2009-29**

BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the President of the Council be and is hereby authorized and directed to execute Amendment No. 1 to the original Consultant's Agreement with Kirkham Michael & Associates for Airport Improvement Project No. 3-31-0045-20 for the Crack Seal, Slurry Seal and Runway/Taxiway Markings Project at the Kearney Regional Airport.

PASSED AND APPROVED THIS 10TH DAY OF MARCH, 2009.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

RANDY BUSCHKOETTER  
PRESIDENT OF THE COUNCIL

8. Approve the Plans and Specifications for the 2009 Part 3 Improvements for the construction of sidewalks in southeast Kearney and set the bid opening date for April 2, 2009 at 2:00 p.m.

9. Approve the Plans and Specifications for the Centennial Park Ball Field Lighting Project and set the bid opening date for April 2, 2009 at 2:00 p.m.

**V. CONSENT AGENDA ORDINANCES**

None.

**VI. REGULAR AGENDA**

**ORDINANCE NO. 7505 – REZONE WEST OF 4TH AVENUE AT 62ND STREET (PERTAINS TO PUBLIC HEARING 2)**

Moved by Buschkoetter seconded by Kearney to deny Ordinance No. 7505 proposing to rezone from "District C-2/PD, Community Commercial/Planned Development Overlay District" to "District C-3, General Commercial District" property described as Lot 1 of Block 2, North Acre Sixth, an addition to the City of Kearney, Buffalo County, Nebraska (west of 4th Avenue at 62nd Street). Roll call resulted as follows: Aye: Buschkoetter, Lear, Lammers, Kearney. Nay: None. Clouse absent. Motion carried.

**ORDINANCE NO. 7506 – AMEND TABLE 14-1 IN CHAPTER 14 OF THE CITY CODE (PERTAINS TO PUBLIC HEARING 3)**

Council Member Buschkoetter introduced Ordinance No. 7506, being Subsection 2 of Agenda Item VI to amend Table 14-1 "Use Matrix; Miscellaneous Uses" of Chapter 14 "Zoning District Regulations" of the Kearney City Code to permit "construction batch plant" as a conditional use in zoning districts "AG", and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Kearney seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Buschkoetter,

Kearney, Lear, Lammers. Nay: None. Clouse absent. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7506 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Buschkoetter, Kearney, Lear, Lammers. Nay: None. Clouse absent. Motion carried. Ordinance was read by number.

Moved by Kearney seconded by Lammers that Ordinance No. 7506 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Buschkoetter, Lear, Lammers, Kearney. Nay: None. Clouse absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7506 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

**ORDINANCE NO. 7507 – CONDITIONAL USE PERMIT TO T & F SAND & GRAVEL  
(PERTAINS TO PUBLIC HEARING 4)**

Council Member Lammers introduced Ordinance No. 7507, being Subsection 3 of Agenda Item VI to grant a Conditional Use Permit to T & F Sand & Gravel, Inc. (Applicant) and Keith G. and Julia E. Stafford (Owner) to locate and operate a gravel dredging, stockpile aggregates and temporary crushing and highway concrete batch plant operation on property zoned "District AG, Agricultural District" and described as the South Half of the Northeast Quarter of Section 7, Township 8 North, Range 16 West of the 6th P.M., containing 18 acres, more or less, all in Buffalo County, Nebraska (west of 62nd Avenue, north of Long Island Road/I-80) subject to compliance with the following conditions: (1) Eight month time limit on the permit; (2) Proposed hours of operation for the concrete crusher shall be limited to Monday through Friday, 6:00 a.m. to 6:00 p.m.; (3) The applicant will maintain dust control on 62nd Avenue with calcium chloride and the speed limit on 62nd Avenue will be reduced to 35 mph maximum; (4) The road shall be maintained with a motor grader periodically as needed to reduce wash boarding and rutting; (5) Operator shall provide dust control for the concrete crushing operation; (6) This operation shall meet all Federal or State agency requirements and standards; (7) 62nd Avenue as constructed will be in either the same or better condition than it currently is upon completion of the project, and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Lear seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Buschkoetter, Lear, Lammers, Kearney. Nay: None. Clouse absent. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7507 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Buschkoetter, Lear, Lammers, Kearney. Nay: None. Clouse absent. Motion carried. Ordinance was read by number.

Moved by Lear seconded by Buschkoetter that Ordinance No. 7507 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Buschkoetter, Lammers, Kearney, Lear. Nay: None. Clouse absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7507 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

**ORDINANCE NO. 7508 – VACATE PORTION OF ST. LUKE’S GOOD SAMARITAN VILLAGE (PERTAINS TO PUBLIC HEARING 5)**

Council Member Buschkoetter introduced Ordinance No. 7508, being Subsection 4 of Agenda Item VI to vacate property described as a tract of land being part of Lot 11, St. Luke’s Good Samaritan Village, an addition to the City of Kearney, Buffalo County, Nebraska (3112 Antelope Avenue), and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Kearney seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Buschkoetter, Kearney, Lear, Lammers. Nay: None. Clouse absent. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7508 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Buschkoetter, Kearney, Lear, Lammers. Nay: None. Clouse absent. Motion carried. Ordinance was read by number.

Moved by Kearney seconded by Lammers that Ordinance No. 7508 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Buschkoetter, Lear, Lammers, Kearney. Nay: None. Clouse absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7508 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

**REDEMPTION OF 2002 VARIOUS PURPOSE GENERAL OBLIGATION BONDS**

Regular Agenda Items 5, 6, 7 and 8 were discussed together but voted on separately.

Vice-President Buschkoetter opened for discussion the calling for the redemption of the Various Purpose General Obligation Bonds, Series 2002 and to consider approval of Resolution No. 2009-30.

The City of Kearney currently has Highway Allocation Fund Pledge Bonds Series 2001 (Series 2001), and Various Purpose General Obligation Bonds Series 2002 (Series 2002) outstanding. The outstanding Series 2001 Bonds have an interest coupon rate ranging from 4.40% to 5.35% and mature on June 15, 2021 and the outstanding Series 2002 Bonds have an interest coupon rate ranging from 4.20% to 5.05% and mature on April 1, 2017.

After monitoring the municipal bond market over the past several months, it appears that the City of Kearney could save considerable interest costs by refinancing the Series 2001 Bonds and Series 2002 Bonds. It is estimated that the Highway Allocation Refunding Bonds Series 2009 will have an interest rate ranging from 1.25% to 4.40% and will mature on June 15, 2021 and the Various Purpose General Obligation Refunding Bonds Series 2009 will have an interest rate ranging from 1.75% to 3.70% and will mature on April 1, 2017.

The City of Kearney has an opportunity to save approximately \$207,000 over the term of the refunding bonds by refinancing the Series 2001 Bonds and the Series 2002 Bonds.

Bruce Lefler from Ameritas presented this matter to the Council. The Council was presented with an analysis summary. The Series 2001 Highway Allocation Bonds are currently outstanding at an average interest rate of 5.16 percent. He suggested issuing the refunding over the same period as those bonds are outstanding at an average rate of 3.88 percent. This would provide a saving debt service on these bonds of \$131,540 over the reigning 12 years of the life of those bonds. In addition on the Series 2002 Various Purpose Bonds that are currently outstanding of 4.87 percent over the same term and same period. By issuing Refunding Bonds at an average interest rate of 3.44 percent, would provide a saving debt service of \$36,918 over the remaining eight year period of time. This would be a combined savings to the City of a little over \$200,000 over the refinancing by lowering interest rates. The net savings to the City to the extent that issuance expenses have been factored in are true bottom line savings. The interest rates on these notes are a little higher than a month ago on the combined utility bonds about 10-40 basis points higher. He will continue to monitor some of the other outstanding debt issue. There was another issue they were looking at but with the rates slipping away, they decided to keep that one sitting on the sideline waiting for some improvements. They were able to capture these saving for these two particular issues.

Moved by Lammers seconded by Lear to approve calling for the redemption of the Various Purpose General Obligation Bonds, Series 2002 approve **Resolution No. 2009-30**. Roll call resulted as follows: Aye: Buschkoetter, Lear, Lammers, Kearney. Nay: None. Clouse absent. Motion carried.

### **RESOLUTION NO. 2009-30**

BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska:

Section 1. The following bonds of the City of Kearney Nebraska, in accordance with their option provisions are hereby called for payment on April 15, 2009, after which date interest on the bonds will cease:

General Obligation Bonds, Series 2002, of the City of Kearney, Nebraska, date of original issue – April 2, 2002, in the principal amount of Five Hundred Thirty-five Thousand Dollars (\$535,000), numbered as shown on the books of the Paying Agent and Registrar, in denomination of \$5,000 each, becoming due and bearing interest as follows:

<u>Principal Amount</u>	<u>Maturity Date</u>	<u>Interest Rate</u>	<u>CUSIP No.</u>
\$55,000	April 1, 2010	4.35%	486890 QG4
60,000	April 1, 2011	4.45	486890 QH2
60,000	April 1, 2012	4.55	486890 QJ8
65,000	April 1, 2013	4.70	486890 QK5
70,000	April 1, 2014	4.80	486890 QL3
70,000	April 1, 2015	4.90	486890 QM1
75,000	April 1, 2016	5.00	486890 QN9
80,000	April 1, 2017	5.05	486890 QP4

Said bonds are hereinafter referred to as the “Refunded Bonds.”

The Refunded Bonds are subject to redemption at any time on or after April 1, 2007, at par and accrued interest, and said interest is payable semiannually. The proceeds of the Refunded Bonds were used for the purpose of reconstructing a swimming pool and providing for repairs and improvements of existing swimming pool facilities for Centennial Park.

Section 2. The Refunded Bonds are to be paid at the office of the Treasurer of the City of Kearney, in Kearney, Nebraska, as paying agent and registrar.

Section 3. A true copy of this resolution shall be filed immediately with the Treasurer of the City of Kearney in Kearney, Nebraska, as Paying Agent and Registrar for the Refunded Bonds, and said Paying Agent and Registrar is hereby instructed to mail notice to each registered owner of said bonds not less than thirty days prior to the date fixed for redemption, all in accordance with the ordinance authorizing said Refunded Bonds.

PASSED AND APPROVED THIS 10TH DAY OF MARCH, 2009.

ATTEST:  
 MICHAELLE E. TREMBLY  
 CITY CLERK

RANDY BUSCHKOETTER  
 PRESIDENT OF THE COUNCIL

**ORDINANCE NO. 7509 – ISSUANCE OF GENERAL OBLIGATION REFUNDING BONDS**

Regular Agenda Items 5, 6, 7 and 8 were discussed together but voted on separately.

Council Member Lear introduced Ordinance No. 7509, being Subsection 6 of Agenda Item VI to authorize the issuance of General Obligation Refunding Bonds, Series 2009 of the City of Kearney, Nebraska in the principal amount of \$545,000.00 for the purpose of paying and redeeming \$535,000 of the City’s outstanding General Obligation Bonds, Date of Original Issue - April 2, 2002; directing the application of the proceeds of said bonds; prescribing the form of said bonds; providing for the levy and collection of taxes

to pay the same; providing for the sale of the bonds; authorizing the delivery of the bonds to the purchaser; and ordering the ordinance published in pamphlet form, and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Buschkoetter seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Buschkoetter, Kearney, Lear, Lammers. Nay: None. Clouse absent. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7509 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Buschkoetter, Kearney, Lear, Lammers. Nay: None. Clouse absent. Motion carried. Ordinance was read by number.

Moved by Buschkoetter seconded by Kearney that Ordinance No. 7509 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Buschkoetter, Lear, Lammers, Kearney. Nay: None. Clouse absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7509 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

### **REDEMPTION OF 2001 HIGHWAY ALLOCATION FUND PLEDGE BONDS**

Regular Agenda Items 5, 6, 7 and 8 were discussed together but voted on separately.

Vice-President Buschkoetter opened for discussion the calling for the redemption of the Highway Allocation Fund Pledge Bonds, Series 2001 and to consider approval of Resolution No. 2009-31.

Moved by Kearney seconded by Lear to approve calling for the redemption of the Highway Allocation Fund Pledge Bonds, Series 2001 and approve **Resolution No. 2009-31**. Roll call resulted as follows: Aye: Buschkoetter, Lammers, Kearney, Lear. Nay: None. Clouse absent. Motion carried.

### **RESOLUTION NO. 2009-31**

BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska:

Section 1. The following bonds of the City of Kearney Nebraska, in accordance with their option provisions are hereby called for payment on April 15, 2009, after which date interest on the bonds will cease:

Highway Allocation Fund Pledge Bonds, Series 2001, of the City of Kearney, Nebraska, dated June 15, 2001, in the principal amount of One Million Eight Hundred Sixty-five Thousand Dollars (\$1,865,000), numbered as shown on the

books of the Paying Agent and Registrar, in denomination of \$5,000 each, becoming due and bearing interest as follows:

<u>Principal Amount</u>	<u>Maturity Date</u>	<u>Interest Rate</u>	<u>CUSIP No.</u>
\$105,000	June 15, 2009	4.40%	486890 PL4
110,000	June 15, 2010	4.50	486890 PM2
115,000	June 15, 2011	4.60	486890 PN0
120,000	June 15, 2012	4.75	486890 PP5
130,000	June 15, 2013	4.85	486890 PQ3
135,000	June 15, 2014	4.95	486890 PR1
140,000	June 15, 2015	5.05	486890 PS9
150,000	June 15, 2016	5.10	486890 PT7
155,000	June 15, 2017	5.15	486890 PU4
165,000	June 15, 2018	5.20	486890 PV2
170,000	June 15, 2019	5.25	486890 PW0
180,000	June 15, 2020	5.30	486890 PX8
190,000	June 15, 2021	5.35	486890 PY6

Said bonds are hereinafter referred to as the "Refunded Bonds."

The Refunded Bonds are subject to redemption at any time on or after June 15, 2006, at par and accrued interest, and said interest is payable semiannually. The proceeds of the Refunded Bonds were used for the purpose of paying the costs of street construction in the City of Kearney.

Section 2. The Refunded Bonds are to be paid at the office of the Treasurer of the City of Kearney, in Kearney, Nebraska, as paying agent and registrar.

Section 3. A true copy of this resolution shall be filed immediately with the Treasurer of the City of Kearney in Kearney, Nebraska, as Paying Agent and Registrar for the Refunded Bonds, and said Paying Agent and Registrar is hereby instructed to mail notice to each registered owner of said bonds not less than thirty days prior to the date fixed for redemption, all in accordance with the ordinance authorizing said Refunded Bonds.

PASSED AND APPROVED THIS 10TH DAY OF MARCH, 2009.

ATTEST:  
 MICHAELLE E. TREMBLY  
 CITY CLERK

RANDY BUSCHKOETTER  
 PRESIDENT OF THE COUNCIL

**ORDINANCE NO. 7510 – ISSUANCE OF HIGHWAY ALLOCATION FUND PLEDGE REFUNDING BONDS**

Regular Agenda Items 5, 6, 7 and 8 were discussed together but voted on separately.

Council Member Lammers introduced Ordinance No. 7510, being Subsection 8 of Agenda Item VI to authorize the issuance of Highway Allocation Fund Pledge Refunding Bonds of the City of Kearney, Nebraska in the principal amount of \$1,805,000.00 for the purpose of paying and redeeming the City’s Highway Allocation Fund Pledge Bonds, Series 2001, Dated June 15, 2001, presently outstanding in the principal amount of

\$1,865,000; prescribing the form of said bonds; pledging funds to be received by the City from the State of Nebraska Highway Allocation Fund for the payment of said bonds; providing for the levy and collection of taxes to pay the same if necessary; authorizing the delivery of the bonds to the purchaser; providing for the disposition of bond proceeds; and ordering the ordinance published in pamphlet form, and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Lear seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Buschkoetter, Lear, Lammers, Kearney. Nay: None. Clouse absent. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7510 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Buschkoetter, Lear, Lammers, Kearney. Nay: None. Clouse absent. Motion carried. Ordinance was read by number.

Moved by Lear seconded by Buschkoetter that Ordinance No. 7510 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Buschkoetter, Lammers, Kearney, Lear. Nay: None. Clouse absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7510 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

**OPEN ACCOUNT CLAIMS: NPPD - \$171.67, PLATTE VALLEY STATE BANK - \$45,832.95, SCHOOL DISTRICT #7 - \$2,937.70**

Vice-President Buschkoetter stated there are three Open Account Claims. With the absence of Mayor Clouse and the abstention of Council members Buschkoetter and Lammers, the Open Account Claim for School District #7 will be placed on the March 24, 2009 Council Agenda for consideration.

Moved by Kearney seconded by Lammers that Open Account Claims in the amount of \$45,932.95 payable to Platte Valley State Bank, and in the amount of \$171.67 payable to Nebraska Public Power District be allowed. Roll call resulted as follows: Aye: Kearney, Buschkoetter, Lammers. Nay: None. Lear abstained. Clouse absent. Motion carried.

## **VII. REPORTS**

### **CLOSED SESSION**

Moved by Lear seconded by Buschkoetter that Council adjourn into closed session at 7:55 p.m. for the protection of the public interest to discuss a possible real estate purchase. Roll call resulted as follows: Aye: Buschkoetter, Lear, Lammers. Nay: None.

Kearney abstained. Clouse absent. Motion carried.

Vice-President Buschkoetter restated the purpose for the closed session is for the protection of the public interest to discuss a possible real estate purchase. According to law, the Council has the option to reconvene back into open session and may take any formal action it deems appropriate.

Council member Kearney left the meeting at 8:56 p.m. prior to the other Council members going into closed session.

Moved by Buschkoetter seconded by Lammers that Council reconvene in regular session at 8:56 p.m. Roll call resulted as follows: Aye: Buschkoetter, Lammers, Lear. Nay: None. Clouse and Kearney absent. Motion carried.

### **VIII. ADJOURN**

Moved by Lear seconded by Buschkoetter that Council adjourn at 8:56 p.m. Roll call resulted as follows: Aye: Buschkoetter, Lear, Lammers. Nay: None. Clouse and Kearney absent. Motion carried.

**ATTEST:**

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**RANDY BUSCHKOETTER**  
**VICE-PRESIDENT OF THE COUNCIL**

\_\_\_\_\_  
**MICHAELLE E. TREMBLY**  
**CITY CLERK**