

**Kearney, Nebraska**  
**March 9, 2010**  
**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 9, 2010 in the Council Chambers at City Hall. Present were: Randy Buschkoetter, Vice-President of the Council; Michaelle Trembly, City Clerk; Council Members Randy Buschkoetter, 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; Kirk Stocker, Director of Utilities; Rod Wiederspan, Director of Public Works; and Dan Lynch, Chief of Police; Lance Lang, City Planner; and Neal Lewis, Director of Park & Recreation were also present. Some of the citizens present in the audience included: Doris Maurer, Dave Malone, Don Wooley, Steve Loveless, Rob Cunningham, Marvion Reichert, Craig Bennett, Sean Denney, Seth Denney, Jeremiah Quintin, Paul Hazard, Tammy Koupal, Shaila Hisey, Greg Shea, Steve Altmaier from KGFW Radio, Kevin Hervert from Kearney Hub, NTV, KHAS TV, several other citizens were in the audience.

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**

With the absence of a representative from the Kearney Ministerial Association, the Council held a moment of silent prayer.

### **PLEDGE OF ALLEGIANCE**

Two 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**

### **AWARD BID FOR 2009 PART 12 IMPROVEMENTS**

Vice-President Buschkoetter opened for discussion the bids received for the construction of the 2009 Part 12 Improvements consisting of Water Connection District No. 2009-4 and Sanitary Sewer Connection District No. 2009-2 in 11th Street from the existing main in 11th Street and Kea West Avenue to 30th Avenue, 30th Avenue between North Railroad Street and 11th Street, and 16th Street from 30th Avenue east to its terminus and to consider Resolution No. 2010-33 awarding the bid to Midlands Contracting, Inc. in the amount of \$2,269,439.00.

Director of Utilities Kirk Stocker stated on January 25, 2010 the City received four bids for the 2009 Part 12 Improvements. The 2009 Part 12 Improvements consists of Water Connection District 2009-4 and Sanitary Sewer Connection District 2009-2 to construct a sixteen inch diameter water main and a 21 inch diameter sanitary sewer main in 11th Street from the existing water and sanitary sewer mains located in 11th Street and Kea West Road westward to 30th Avenue then northward in 30th Avenue to 16th Street; and water and sanitary sewer mains being built in 30th Avenue north of 16th Street and in 16th Street east of 30th Avenue to the east line of the Buckle Addition.

Midlands Contracting of Kearney submitted the low bid in the amount of \$2,269,439.00. The Engineer's Opinion of Probable Construction cost was \$2,630,050.00. The low bid is \$360,611.00 below the Engineer's estimate. The City's Engineer for the project has reviewed the bids received, prepared bid tabulations sheet summarizing the bids received and has submitted a letter recommending that the bid be awarded to Midlands Contracting of Kearney.

The water and sanitary sewer built in 30th Avenue from 16th Street northward to North Railroad Street and in 16th Street east of 30th Avenue will be paid upfront by the Buckle, in exchange, the City has agreed to refund to the Buckle an equal amount from the Tax Increment Financing captured from the area. The water and sanitary sewer mains being built using the connection district process will be paid for by the grant received by the United States Department of Commerce, Economic Development Administration (EDA) and the CDBG-R program.

Moved by Kearney seconded by Lammers to approve the bids received for the construction of the 2009 Part 12 Improvements consisting of Water Connection District No. 2009-4 and Sanitary Sewer Connection District No. 2009-2 in 11th Street from the existing main in 11th Street and Kea West Avenue to 30th Avenue, 30th Avenue between North Railroad Street and 11th Street, and 16th Street from 30th Avenue east to its terminus and approve **Resolution No. 2010-33** awarding the bid to Midlands Contracting, Inc. in the amount of \$2,269,439.00. Roll call resulted as follows: Aye: Buschkoetter, Lammers, Kearney, Lear. Nay: None. Clouse absent. Motion carried.

### **RESOLUTION NO. 2010-33**

WHEREAS, Miller & Associates and the City of Kearney have reviewed the sealed bids which were opened on January 25, 2010 at 2:00 p.m. for the 2009 Part 12

Improvements consisting of Water Connection District No. 2009-4 and Sanitary Sewer Connection District No. 2009-2 in 11th Street from the existing main in 11th Street and Kea West Avenue to 30th Avenue, 30th Avenue between North Railroad Street and 11th Street, and 16th Street from 30th Avenue east to its terminus; and

WHEREAS, the Engineer's Opinion of Probable Construction Cost was \$2,630,050; and

WHEREAS, the said engineers have recommended the bid offered by Midlands Contracting, Inc. of Kearney, Nebraska in the sum of \$2,269,439 be accepted as the lowest responsible bid; and

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska that the Engineers recommendation is hereby accepted and approved, that Midlands Contracting, Inc. of Kearney, Nebraska be and is the lowest responsible bidder for the 2009 Part 12 Improvements consisting of Water Connection District No. 2009-4 and Sanitary Sewer Connection District No. 2009-2 in 11th Street from the existing main in 11th Street and Kea West Avenue to 30th Avenue, 30th Avenue between North Railroad Street and 11th Street, and 16th Street from 30th Avenue east to its terminus to be constructed in accordance with the plans and specifications on file with the City Clerk and that the bid of Midlands Contracting, Inc. of Kearney, Nebraska in the sum of \$2,269,439 be and is hereby accepted.

BE IT FURTHER RESOLVED the Engineer's Opinion of Probable Construction Cost in the amount of \$2,630,050 be and is hereby accepted.

BE IT FURTHER RESOLVED that the President of the Council of the City of Kearney, Nebraska, be and is hereby authorized and directed to execute contracts for such improvements in accordance with the bid, plans, specifications, and general stipulations pertaining thereto.

PASSED AND APPROVED THIS 9TH DAY OF MARCH, 2010.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

RANDY BUSCHKOETTER  
VICE-PRESIDENT OF THE COUNCIL

### **III. PUBLIC HEARINGS**

#### **CONDITIONAL USE PERMIT TO LITTLE SHEPHERD'S KIDZ PLACE, 412 WEST 18TH STREET**

Vice-President Buschkoetter opened the public hearing on the Application submitted by Mt. Carmel Nursing Home-Little Shepherd's Kidz Place (Applicant) and Corpis Christi Carmelites (Owner) for a Conditional Use Permit to locate a private child care center for nursing home staff on property zoned District R-3, Urban Residential Multi Family District (Medium Density) and described as Block 11, Kearney Land & Investment Company's First Addition to the City of Kearney, Buffalo County, Nebraska (412 West 18th Street). Planning Commission recommended approval.

The applicant is requesting a Conditional Use Permit (CUP) for an existing private child care center located within Mount Carmel Nursing Home that was established in June 2006. The child care center provides service exclusively in-house to the nursing home staff. The property is zoned R-3, Urban Residential Multi-Family District (Medium Density). The daycare is licensed for 19 children with Nebraska Health and Human

Services. A CUP is required by the City for any daycare that has more than six children in attendance. Apparently, the staff at Mount Carmel was unaware that a CUP is required for daycares in the City jurisdiction. This application is intended to correct that deficiency. The CUP shall allow up to and including 19 children and shall be automatically renewable every year unless there are complaints filed with the City in regards to the daycare.

Tammy Koupal, Director of the Little Shepherd's Kidz Place at Mr. Carmel Nursing Home, presented this matter to the Council. The facility opened in July 2007 under a different administrator and childcare director, who were not aware that they needed to have a Conditional Use Permit to operate. They have recently become aware of this requirement and so have been trying to get it in place. This is a private childcare center for the staff that works at Mr. Carmel. There have never been any concerns reported regarding their daycare. They are open Monday through Friday from 5:45 a.m. to 5:30 p.m. and every other weekend from 6:00 a.m. to 3:00 p.m. for the nurses.

There was no one present in opposition to this hearing.

Moved by Lammers seconded by Lear to close the hearing and approve the Application submitted by Mt. Carmel Nursing Home-Little Shepherd's Kidz Place (Applicant) and Corpis Christi Carmelites (Owner) for a Conditional Use Permit to locate a private child care center for nursing home staff on property zoned District R-3, Urban Residential Multi Family District (Medium Density) and described as Block 11, Kearney Land & Investment Company's First Addition to the City of Kearney, Buffalo County, Nebraska (412 West 18th Street). Roll call resulted as follows: Aye: Buschkoetter, Kearney, Lear, Lammers. Nay: None. Clouse absent. Motion carried.

### **LAND USE MAP AMENDMENT FOR 412 WEST 18TH STREET**

Public Hearings 2 and 3 were discussed together but voted on separately.

Vice-President Buschkoetter opened the public hearing on the Application submitted by Shaila Hisey (Applicant) and Senior Hospitality Center, Inc. (Owner) for an amendment to the Land Use Map of the City of Kearney Comprehensive Development Plan from Medium Density Residential to High Density Residential for property described as Lots 8, 9, 10, Lee's Subdivision and Lot 1, Edgeworth Subdivision, all in the City of Kearney, Buffalo County, Nebraska (712 East 28th Street) and to consider Resolution No. 2010-42. Planning Commission voted seven in favor and one opposed.

The applicant is requesting rezoning from District R-3, Urban Residential Multi-Family (Medium Density) to R-4, Urban Residential Multi-Family (High Density) for the former Senior Center at 712 East 28th Street. You will recall, approximately a year and one half ago, a complaint against the present location of Little Monsters Daycare in a residential neighborhood at 1411 East 33rd Drive caused the Conditional Use Permit for that location to be revoked in two years. The two-year interim period was awarded to the owners by Commission and Council to give them time to find a suitable place to relocate the daycare which had outgrown its residential surroundings. Staff suggested a commercial location would be a more appropriate setting for the daycare facility. The owners of the daycare have found what they believe is a very good location for the

daycare at the former Senior Center. Not only is the building large enough and located in an area of town with a mixture of land uses, it contains a commercial kitchen and other amenities well suited to the needs of the daycare business. Daycare centers are an allowable use by right in an R-4 district while a Conditional Use Permit is required in R-3. The owners would prefer zoning by right over a CUP and are therefore requesting this rezoning from R-3 to R-4. The Future Land Use Map of the Comprehensive Development Plan must be changed from "Medium Density Residential to "High Density Residential" to accommodate this rezoning request.

The Planning Commission expressed some concern over zoning this single parcel for higher density and also the fact that R-4 has not been established anywhere else in the City. When RDG updated the zoning ordinance in 2002, R-4 was added as a new zoning category that allows higher density multi-family development. To date, no developer has chosen to pursue R-4 zoning, but there is no reason that the Hisey's cannot request it. To staff, the R-4 is so similar to R-3 that rezoning to R-4 does not cause concern. The only difference between the two zoning districts is the density. All the setbacks, parking requirements, height limitations etc. are the same in both districts. In this case, the building is existing, so the R-4 zoning provides no real advantage in terms of density. If the building were divided into apartments there are only so many apartments that the existing building could accommodate. The other option considered by staff was rezoning to C-0, Office District. C-0 would allow offices or apartments and a daycare would be allowed by right.

Shaila Hisey, 912 East 13th Street, presented this matter to the Council. The plan is to take this existing building and turn it into a daycare center. By rezoning it to R-4, it would allow them to own and operate a daycare center without a Conditional Use Permit. They have outgrown their daycare center which is located in a residential zone and operated under a Conditional Use Permit for two years which could not be renewed. They did not want to purchase this building and then potentially end up with the same situation again. They will continue to comply with the guidelines for State licensing.

Vice-President Buschkoetter stated there are presently a tremendous number of handicapped parking spaces in the facility's lot and asked if those would remain. Ms. Hisey stated that the State does not require them to have any handicapped spaces available for their daycare, but they want to retain a couple of them. They plan to use that parking lot for the parents to park so they will not be parking on the street. There is actually the capability to drive around the building. The parking lot across the street is where the employees will park.

Council member Lammers asked about the difference between R-3 and R-4 zones. City Planner Lance Lang stated that traditionally multi-family zoning is considered R-3. In 2002 when the City did the Code update, R-4 was added which is a higher density residential zone for multi-family use. They have not used it anywhere in Kearney because they have not had any developers that have pursued it, but it is an option within the Code. All the development parameters are the same except the density. If this existing building were to be used for apartments, it could only be divided into so many pieces. This use will not be imposing a great amount of density on the neighborhood and seemed like a good fit to City staff. The Hiseys have had their

struggles with the residential setting and this property has a commercial kitchen and some other amenities that work well for a daycare. R-4 zoning allow daycares by right and does not require a Conditional Use Permit.

There was no one present in opposition to this hearing.

Moved by Lear seconded by Buschkoetter to close the hearing and approve the Application submitted by Shaila Hisey (Applicant) and Senior Hospitality Center, Inc. (Owner) for an amendment to the Land Use Map of the City of Kearney Comprehensive Development Plan from Medium Density Residential to High Density Residential for property described as Lots 8, 9, 10, Lee's Subdivision and Lot 1, Edgeworth Subdivision, all in the City of Kearney, Buffalo County, Nebraska (712 East 28th Street) and approve **Resolution No. 2010-42**. Roll call resulted as follows: Aye: Buschkoetter, Lear, Lammers, Kearney. Nay: None. Clouse absent. Motion carried.

### **RESOLUTION NO. 2010-42**

WHEREAS, an application for a revision of the Land Use Map of the Comprehensive Plan has been filed in conjunction with and as a requisite part of its application for a change in the zoning for a tract of land described as Lots 8, 9, 10, Lee's Subdivision and Lot 1, Edgeworth Subdivision, all in the City of Kearney, Buffalo County, Nebraska from Medium Density Residential to High Density Residential, and

WHEREAS, the said application for change in the Comprehensive Land Use Plan has been approved by the City Planning Commission, after a public hearing properly published and held, and

WHEREAS, the City Council has held a public hearing upon the said revision and voted in favor of a motion to approve the change in the Land Use Plan as requested by the applicant.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the Comprehensive Land Use Plan be and is hereby amended to change from Medium Density Residential to High Density Residential the use classification for a tract of land described as Lots 8, 9, 10, Lee's Subdivision and Lot 1, Edgeworth Subdivision, all in the City of Kearney, Buffalo County, Nebraska.

PASSED AND APPROVED THIS 12TH DAY OF JANUARY, 2010.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

RANDY BUSCHKOETTER  
VICE-PRESIDENT OF THE COUNCIL

### **REZONING AT 412 WEST 18TH STREET**

Public Hearings 2 and 3 were discussed together but voted on separately.

Vice-President Buschkoetter opened the public hearing on the Application submitted by Shaila Hisey (Applicant) and Senior Hospitality Center, Inc. (Owner) to rezone from District R-3, Urban Residential Multi Family District (Medium Density) to District R-4, Urban Residential Multi Family District (High Density) for property described as Lots 8, 9, 10, Lee's Subdivision and Lot 1, Edgeworth Subdivision, all in the City of Kearney, Buffalo County, Nebraska (712 East 28th Street). Planning Commission voted seven in

favor and one opposed.

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 Shaila Hisey (Applicant) and Senior Hospitality Center, Inc. (Owner) to rezone from District R-3, Urban Residential Multi Family District (Medium Density) to District R-4, Urban Residential Multi Family District (High Density) for property described as Lots 8, 9, 10, Lee's Subdivision and Lot 1, Edgeworth Subdivision, all in the City of Kearney, Buffalo County, Nebraska (712 East 28th Street). Roll call resulted as follows: Aye: Buschkoetter, Lammers, Kearney, Lear. Nay: None. Clouse absent. Motion carried.

### **LAND USE MAP AMENDMENT FOR THE SOUTHWEST CORNER OF 11TH STREET AND KEA WEST AVENUE**

Public Hearings 4 through 8 were discussed together but voted on separately.

City Attorney Michael Tye vacated his chair and abstained from discussion on this matter because of a conflict of interest. The City Attorney's replacement for this matter was Attorney Tom Lieske.

Vice-President Buschkoetter opened the public hearing on the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Spencer Land Company (Owner) for an amendment to the Land Use Map of the City of Kearney Comprehensive Development Plan from Low Density Residential and Conservation Reserve to High Density Residential and Mixed Use 1 for a tract of land being part of the Northwest Quarter of the Northeast Quarter and part of Government Lot 3 all in Section 10, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (southwest corner of 11th Street and Kea West Avenue) and to consider Resolution No. 2010-43.

The applicant is requesting approval to develop property located south of 11th Street on the west side of Kea West Avenue. The entire property contains 84.36 acres and the applicant is requesting a phased approach to the development of this property. Roughly, the north half of this property will be rezoned, final platted, and annexed. Development plans have been submitted for the first phase which is a proposed hospital. In addition, amendments to the Land Use Map are requested for the entire 80-acre parcel and a Preliminary Plat for the entire parcel has been approved by the Planning Commission on February 19, 2010. These actions set the stage for future development of the south half of the 80 acres of land.

State law requires consideration of amending the Future Land Use Map of the City's Comprehensive Development Plan anytime that a proposed rezoning is not in conformance with the land use designation on the plan. In this case, the subject property is designated for "Low Density Residential" and "Conservation Reserve" on the Future Land Use Map. The requested rezoning to C-0/PD and R-3/PD requires an amendment of the land use designation to "Mixed Use 1" and "High Density Residential" respectively. The Conservation Reserve designator is due to the 100-year floodplain

that traverses the southerly portion of the site. A 200-foot wide strip of wildlife corridor or approximately 6.75 acres is proposed as Conservation Reserve with the proposed plan. The Planning Commission requested that the Conservation Reserve area be increased to a minimum of 10 acres and that a conservation easement be filed for this property and that the future hike-bike trail in this general area be extended on the south side of the creek and not through the conservation easement. There is 100-year and 500-year floodplain across a portion of the 80-acre site. Development is allowable in the 500-year floodplain but structures in the 100-year floodplain must be constructed so that the lowest floor is at least one foot above the base flood elevation.

The proposed land use categories and acreages for the 80-acre tract are depicted on the attached exhibit entitled "Land Use Plat" and can be summarized as follows:

	Mixed Use 1	High Density Residential	Conservation Reserve
+/- North half of the 80-acre parcel (in acres)	29.80	12.80	0.00
+/- South half of the 80-acre parcel (in acres)	<u>17.22</u>	<u>17.79</u>	<u>6.75</u> (PC requested 10)
<b>TOTAL</b>	47.02	30.59	6.75

Even though the south half of the 80-acre parcel is not proposed for rezoning at this time, changing the Land Use Map for the southerly half commits the developer to what the land can be used for in the future and what types of zoning districts will be compatible with the Land Use Map in the future.

The applicant is requesting rezoning from AG to C-0/PD, Office/Planned Development Overlay District and R-3/PD, Urban Residential Multi-Family (Medium Density)/Planned Development Overlay District. The rezoning application is limited to the north half of the 80-acre site. Hospitals are allowed by right in the C-0 district as are many potential office uses that would compliment a hospital such as medical offices, pharmacies, banks, assisted living, nursing homes, etc. A medical office building (MOB) is proposed for phase two just north of the hospital site. Both the hospital and the MOB are contained on one lot. The other commercial lots will front 11th Street. The lots along Kea West Avenue are proposed for R-3 zoning. The anticipated plan at this time is to develop those lots in the future as a nursing home and assisted living facility. In the future there may even be independent living units developed on the south half of the 80-acre parcel. The land area for rezoning is split as follows:

C-0/PD            29.80 acres    Hospital/MOB lot plus 3 lots on 11th Street  
 R-3/PD            12.80 acres    2 lots on Kea West Avenue

The Preliminary Plat shows the conceptual layout of the roads, lots and blocks for the 80-acre tract of land. The Preliminary Plat is voted on by the Planning Commission and does not move forward to the City Council. Roughly, the north half of the 80 acres is depicted on the Final Plat which includes six lots. Three additional lots are shown south of the Final Plat area and are reserved for future development. There are two access points off of 11th Street: 24th Avenue at the northwest corner of the site that will provide

shared future access to the property to the west, and 22nd Avenue, roughly 560 feet east of 24th Avenue. 22nd Avenue will be the main entrance to the hospital campus and may be signalized in the future. 11th Street will be widened to four lanes this summer. Any intersection improvements that are required for adequate maneuvering now, or in the future, including, but not limited to design and construction of road widening, signalization, median construction, turn lanes, and deceleration lanes will be paid for by the developer. There is only one access point proposed for Kea West Avenue located well south, some 600 feet from the south boundary of the Final Plat. This access point will be future 6th Street and will provide east-west traffic flow for future development in the area as well as a utility corridor for future extension of water and sewer to the west.

Lot 1 of Block 3 is the lot where the proposed hospital and future MOB will be constructed if the project is approved. Lot 1 of Block 1 and Lots 1 and 2 of Block 2 front on 11th Street and Lot 2 also has frontage on Kea West Avenue. Lots 3 and 4 of Block 2 front on Kea West Avenue. The size of the lots and potential uses are summarized as follows:

#### Block 1

Lot 1 3.69 acres future commercial office use

#### Block 2

Lot 1 1.98 acres future commercial office use

Lot 2 2.88 acres future commercial office use

Lot 3 5.97 acres future nursing home

Lot 4 3.40 acres future assisted living facility

#### Block 3

Lot 1 15.93 acres Hospital (phase 1) and MOB (phase 2)

Other than the hospital and the MOB, the uses listed above are the best guess as to what these lots might develop as in the future, and the uses may be modified.

A 75-foot no-build landscape buffer strip is shown on the east side of Lots 2, 3, and 4 of Block 2 along Kea West Avenue. This buffer strip is offered by the developer to appease concerns about how the proposed development will interface with the existing park. The 75-foot strip is measured from the property line into the site so the total width of green space from the edge of the road is actually 107 feet including the right-of-way.

22nd Avenue is the major north-south on-site roadway with 80 feet of right-of-way. A temporary cul-de-sac will be required at the point that 22nd Avenue ends with phase one. In subsequent phases, that cul-de-sac bulb can be removed and the street extended further south. The cul-de-sac can be avoided if the developer demonstrates adequate circulation and turn-around ability with interior drives and parking lots. As previously mentioned, future 6th Street will provide east-west movement.

A Public Works Plan has been submitted depicting the feasibility of serving the site with public infrastructure. The Public Works Plan also addresses stormwater. A detention cell to serve the hospital and MOB will be constructed on the same lot or just south of

Lot 4 of Block 2. Future phases of development will require additional stormwater facilities. Future stormwater facilities can be located in the conservation easement at the south end of the 80-acre tract. Water and sewer mains are going to be constructed in the 11th Street corridor this construction season. Water service to the hospital will be extended south from 11th Street and will tie back into existing water service at Kea West Avenue to provide looping and fire protection for the new hospital. Sanitary sewer will be extended west from Kea West Avenue. All water and sewer connection fees and paving deferment fees will be paid for the north half of the 80-acre parcel. A subdivision agreement has been prepared and a copy is included in the attachments for review.

The north half of the 80-acre tract (same area as Final Plat) will be annexed into the corporate limits of the City if this project is approved.

A Master Conceptual Development Plan is included in the Development Plan submittal that depicts development on all six lots of the Final Plat. This plan is for illustrative and discussion purposes only. Development on all lots except the south portion of Lot 1 of Block 3 will occur in the future and since each lot is regulated by the planned district overlay, detailed Development Plans will be required for each lot in the future. Development Plan details have been provided for Lot 1 of Block 3, the lot that contains the proposed hospital and the MOB. There is a phase line that separates the two buildings on the site. If the project is approved, the hospital building will be constructed as the first phase of development on this campus. Construction of the MOB in the future will require additional information.

City Code requires all public improvements to be in place for the length of all abutting streets for the development lot. In this case, the hospital building will be located on the southern portion of the lot while the north part that is reserved for the MOB will remain undeveloped. The streets, water, sewer, storm sewer, public sidewalks and street trees must be installed for the length of the streets as they abut the lot. This means that street trees, irrigated turf grass and public sidewalks will be installed on both the hospital and MOB portions of the site with the initial phase.

While the main hospital entrance will be oriented to 22nd Avenue, emergency traffic and service vehicles will be routed around the west side of the building to the south side. Proposed architectural elevations for the building facades are included in the submittal.

A Concept Landscape Plan is also included for Lot 1 of Block 3. It depicts the specific location of street trees, parking lot trees, screening of service areas, and general location of other landscape improvements such as shrub beds, foundation plantings, flower beds, outdoor seating areas, etc. A detailed Landscape Plan based upon the Conceptual Landscape Plan will be submitted as part of the building permit application. This plan will provide the location, quantity, species and size of all landscape materials. The 75-foot wide buffer strip along the east side of Lots 2, 3, and 4 of Block 2 will be handled in a similar fashion. The street trees will be shown on the Concept Plan and will be installed as part of the initial phase of development. A more refined landscape plan will be submitted as a building permit application is made for each lot. The detailed landscape plan will address the building, parking lot, and other improvements as well as finishing out the buffer yard landscaping. This two-step approach to landscaping is made a part of the subdivision agreement.

All outdoor lighting fixtures shall be shielded sharp cut-off fixtures. All landscaped areas must be irrigated with underground sprinkler systems. The use of drought tolerant native plant species and drip irrigation are not required, but encouraged. The City of Kearney has minimum tree and plant sizes for commercial landscapes.

Craig Bennett from Miller & Associates presented this matter to the Council. He highlighted the changes made since the plan was previously brought to the Council. The proposed Land Use Map has been changed to Mixed Use 1. They are only final platting a portion of this property and what they have done is a little different than has been done in the past. The north 40 acres is basically what they are rezoning and platting. Typically, a Land Use Map amendment happens by default when the south 40 acres is rezoned. They are actually requesting to amend the Land Use Map on the south 40+ acres so that it is already tied in and has updated the comp plan and future Land Use Map.

Along the east side is high density residential. He believed this makes a good transition from the CO – Mixed Use 1 zoning. Along the west side would be more of a residential setting. They plan to transition from the hospital located on the west side to assisted living and skilled nursing. On the south side is the conservation reserve area. When this initially went to Planning Commission, they showed an area of 6.45 acres for conservation, but Planning Commission recommended increasing that to ten acres. They have increased the boundary of that to 10.01 acres which results in about 8.8 acres of pure conservation reserve. The length of the north/south ten acres is about a block long by about a quarter of mile wide. This means that it is a no build site. This will be returned to natural grasses.

Rezoning of the north 42 acres is CO/PD-Mixed Use 1. The PD designation after the R-3 zoning requires the development of that area to come back through the Planning Commission and Council. In the original plan, there were three accesses shown from the parcel on the west side onto Kea West Avenue. In this plan, there is only a north/south circulation that basically ties off of 11th Street (known as 22nd Avenue). For future platting, in the preliminary platted area they proposed an east/west circulation road. This would be considered in future phases. This would allow some access. They did negate what was shown as the 10th Street Place and the 8th Street access locations. They have replaced that with a cul-de-sac. The only accesses are 24th Avenue and 22nd Avenue both going onto 11th Street.

The public works plan has not changed much, except lining up those infrastructure features with the new right-of-way changes and street dynamics. They envision medical arts buildings along the north lots. Basically, the plan is keeping the same configuration as before, but with no access points.

One of the things requested at the last Council meeting was to have more landscape buffer. This plan provides a no build setback along the east side of the property from 11th Street to the North Channel of the Platte River (1/2 mile). It is a 75-foot platted buffer, but what that means is it is really over a 100-foot buffer before you would see the closest structure. The setback is 75-foot of private property once the 25-foot right-of-way has been given so it is 100 feet from the curb.

North of the hospital would be a medical office building (MOB). This would be done in a future phase. The hospital and parking would be phase I and north of that would be the MOB and associated parking in phase II. They are not doing a development plan on the north lots, but envision a MOB, skilled nursing facility and assisted living. They believed this is a good fit being in the area of the park and Senior Center for participants, guests and visitors. There will be an internal hike/bike trail that would allow access to the park. The hike/bike trail would not be in the conservation area.

One of the things that is in the subdivision agreement is when building the hospital, they would place trees in the 10-foot landscape buffer at the time of construction. They also agreed to put in a sidewalk that would go along the west and south sides. Although the MOB and associated parking are in another phase, in order to make all the trees similar in age and characteristics they must be planted at the same time to make them all tie in together.

The proposed building entry will be a brick façade facing the east side and concrete cast wall panels along the other three sides. This facility will have masonry of some sort on all sides of it although only street facing facades are required to have masonry.

Vice-President Buschkoetter asked about the 10-acre conservation area. Mr. Bennett stated that they submitted a new legal description after Planning Commission that revised the plan to ten acres. The sidewalks will not be put in along 11th Street until phase II when those lots are built out. When those lots come into play some landscaping challenges may occur due to the fact there is a high pressure gas main in the area. They focused on Lot 1 and brought in a master conceptual development plan.

Rob Cunningham, 2203 West 50th Street, stated his is a member of the City Planning Commission, but has abstained from the discussion and vote on any of the resolutions at that level. The main reason is that he is a vice-president at Good Samaritan Hospital. He addressed several reasons he believed the Council should not approve the resolutions before them. There are several individuals who do not want to see a hospital next to Yanney Park, making it the only park in Kearney not entirely surrounded by residential neighborhoods. The proposal includes the possibility of having a nursing home or skilled nursing facility on the campus which might meet this burden. The State of Nebraska government controls the issuing of nursing home bed licenses through a certificate of need. Mr. Cunningham stated that currently the State of Nebraska says there is no demonstrated need for additional nursing home beds anywhere in the State of Nebraska. Currently, the U.S. Congress through their reconciliation process is poised to ban physician owned hospitals because of many concerns. This continues to be attached to the Health Care Reform legislation in Washington D.C.

Mr. Cunningham believed this is a risky venture and similar facilities have met with varying degrees of success. The Nebraska Nursing Association, the Nebraska Respiratory Therapy Association, the Nebraska Rural Health Association, the Nebraska Hospital Association and the Nebraska Catholic Conference all support a temporary halt on new hospitals, excepting critical care hospitals because of the negative impact these facilities have on access, quality and costs.

Marvion Reichert, 18 Rolling Hills, stated he believed the hospital would be an asset to Kearney. It is no different than trying to stop any other type of business that wants in that might be competition to an existing business in Kearney. He did not agree that it is up to the legislature, but to the Council of Kearney.

Vice-President Buschkoetter asked Attorney Lieske what legal difficulties might be created to allow the land to be rezoned for one thing and then the development does not occur. Would the City have recourse if another developer would want to buy the property for a different use.

Attorney Tom Lieske, stated the property would still be available for the type allowed in the approved zoning. It could be brought back to the Council to be rezoned again if requested. However, any developer would have to bring their development plan to the Planning Commission and Council for approval no matter what they wanted to use it for.

Council member Lammers stated when he looks at zoning he looks at the whole ramifications of it. He believed they have met the request for providing a buffer zone between Yanney Park and the proposed development, transitioning to the hospital location. This happened with the R-3/PD zone designation that opened that up for assisted living. With a buffer zone of 100 feet, it provides a nice transition to Yanney Park. The development is over a quarter of a mile away from residential areas and 11th Street is an arterial which was set up for these types of things. He does not have a problem with the zoning issue.

Vice-President Buschkoetter stated the development that has been going on in that area has been predicated by non-residential uses. That land sat idle for a long time, until The Buckle and the Church went out to that area. It had the potential of a residential area for a good decade without development. With this development that is going to go on out there and the construction of the infrastructure, he believed the residential development will fill in. This is the City's beltway and he does not have a good answer to the question if this facility does not go on a beltway, where does it go. It is uncertain what the legislature is going to do. There have been many developments that have begun in our community that did not pan out. Not too far from the area being discussed, rezoning was approved several years ago for a convenience store that has not developed. There was a truck stop that was going to be designed for another area which has not gone forward. The Council still has some control over what happens if something like this falls through.

Council member Lear stated the crux of this discussion seems to have boiled down to whether Kearney should have two hospitals. The problem is that the City Code does not give the Council authority to decide that. They do not decide how many convenience stores, grocery stores, etc. They look at the Land Use Map and what kinds of development can go there. He believed that the way this plan is configured, the zoning is not inappropriate, nor is the amendment to the Land Use Map. There are issues surrounding this development which may have an impact, but the Council's issue is zoning. When they use zoning as a tool to implement public health care policy, they would be taking an inappropriate step in his opinion. He believed the development has met the requirements as requested.

Moved by Kearney seconded by Lammers to close the hearing and approve the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Spencer Land Company (Owner) for an amendment to the Land Use Map of the City of Kearney Comprehensive Development Plan from Low Density Residential and Conservation Reserve to High Density Residential and Mixed Use 1 for a tract of land being part of the Northwest Quarter of the Northeast Quarter and part of Government Lot 3 all in Section 10, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (southwest corner of 11th Street and Kea West Avenue) and approve **Resolution No. 2010-43**. Roll call resulted as follows: Aye: Buschkoetter, Kearney, Lear, Lammers. Nay: None. Clouse absent. Motion carried.

### **RESOLUTION NO. 2010-43**

WHEREAS, an application for a revision of the Land Use Map of the Comprehensive Plan has been filed in conjunction with and as a requisite part of its application for a change in the zoning for a tract of land being part of Government Lot 3 in Section 10, Township 8 North, Range 16 West, of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Referring to the Northwest Corner of the Northeast Quarter of said Section 10 and assuming the West line of said Northeast Quarter as bearing S00°54'28"W and all other bearings shown hereon relative thereto; thence S00°54'28"W on said West line a distance of 1393.63 feet to the ACTUAL POINT OF BEGINNING; thence continuing S00°54'28"W on said West line a distance of 1060.29 feet; thence S89°05'32"E a distance of 637.71 feet; thence N00°54'28"E parallel with said West line a distance of 695.53 feet to the beginning of a tangent curve to the right having a central angle of 25°30'47", a radius of 500.00 feet and an arc length of 222.64 feet; thence N26°25'16"E tangent to said curve a distance of 101.50 feet to the beginning of a tangent curve to the left having a central angle of 03°37'04", a radius of 1000.00 feet, and an arc length of 63.14 feet; thence non-tangent to said curve N89°05'32"W a distance of 755.42 feet to the point of beginning, said tract containing 15.89 acres, more or less, all in Buffalo County, Nebraska from Low Density Residential and Conservation Reserve to Mixed Use 1, and

WHEREAS, an application for a revision of the Land Use Map of the Comprehensive Plan has been filed in conjunction with and as a requisite part of its application for a change in the zoning for a tract of land being part of Government Lot 3 in Section 10, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Referring to the Northwest Corner of the Northeast Quarter of said Section 10 and assuming the West line of said Northeast Quarter as bearing S00°54'28"W and all other bearings shown hereon relative thereto; thence S00°54'28"W on said West line a distance of 2453.92 feet; thence S89°05'32"E a distance of 637.71 feet to the ACTUAL POINT OF BEGINNING; thence continuing S89°05'32"E a distance of 412.50 feet; thence N00°54'28"E a distance of 95.64 feet; thence S89°04'18"E a distance of 274.16 feet to the East line of said Government Lot 3; thence N01°00'27"E on said East line a distance of 964.75 feet; thence N89°05'32"W a distance of 570.63 feet to the beginning of a non-tangent curve to the right having a central angle of 03°37'04", a radius of 1000.00 feet, an arc length of 63.14 feet and a chord bearing S24°36'44"W a distance of 63.13 feet; thence S26°25'16"W tangent to said curve a distance of 101.50 feet to the beginning of a tangent curve to the left having a central angle of 25°30'47", a radius of 500.00 feet and an arc length of 222.64 feet; thence S00°54'28"W parallel with said West line and tangent to said curve a

distance of 695.53 feet to the point of beginning, said tract containing 15.76 acres, more or less, all in Buffalo County, Nebraska from Low Density Residential and Conservation Reserve to High Density Residential, and

WHEREAS, an application for a revision of the Land Use Map of the Comprehensive Plan has been filed in conjunction with and as a requisite part of its application for a change in the zoning for a tract of land being part of Government Lot 3 in Section 10, Township 8 North, Range 16 West, of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Referring to the Northwest Corner of the Northeast Quarter of said Section 10 and assuming the West line of said Northeast Quarter as bearing S00°54'28"W and all other bearings shown hereon relative thereto; thence S00°54'28"W on said West line a distance of 2453.92 feet to the ACTUAL POINT OF BEGINNING; thence continuing S00°54'28"W on said West line a distance of 256.23 feet; thence S17°51'52"W perpendicular to the Geographic Centerline of the North Channel of the Platte River a distance of 58.25 feet; thence S72°08'08"E on said Geographic Centerline a distance of 42.59 feet; thence N88°56'28"E continuing on said centerline a distance of 41.41 feet; thence S85°08'14"E a distance of 72.42 feet; thence N88°22'15"E a distance of 80.58 feet; thence N80°32'03"E a distance of 50.33 feet; thence S87°15'43"E a distance of 88.15 feet; thence N74°18'13"E a distance of 48.76 feet; thence S83°54'45"E a distance of 75.33 feet; thence N62°14'25"E a distance of 17.07 feet; thence N89°49'55"E a distance of 63.57 feet; thence S74°50'51"E a distance of 45.59 feet; thence N87°27'57"E a distance of 56.64 feet; thence S88°54'25"E a distance of 124.35 feet; thence N86°05'02"E a distance of 162.61 feet; thence S84°30'48"E a distance of 45.47 feet; thence N78°40'32"E a distance of 44.06 feet; thence S87°31'24"E a distance of 70.89 feet; thence S72°01'17"E a distance of 91.25 feet; thence N80°59'26"E a distance of 17.49 feet; thence S52°26'33"E a distance of 25.82 feet; thence S84°20'14"E a distance of 27.52 feet; thence S60°21'07"E a distance of 22.10 feet to the west right-of-way line of Kea West Avenue as platted in the City of Kearney, Buffalo County, Nebraska; thence S75°13'14"E a distance of 39.41 feet; thence leaving said Geographic Centerline N14°46'46"E perpendicular to said Geographic Centerline a distance of 47.13 feet to the East line of said Government Lot 3; thence N01°00'27"E on said East line a distance of 403.72 feet; thence N89°04'18"W a distance of 274.16 feet; thence S00°54'28"W a distance of 95.64 feet; thence N89°05'32"W a distance of 1050.21 feet to the point of beginning, said tract containing 10.10 acres, more or less, all in Buffalo County, Nebraska from Low Density Residential and Conservation Reserve to Conservation Reserve, and

WHEREAS, the said application for change in the Comprehensive Land Use Plan has been approved by the City Planning Commission, after a public hearing properly published and held, and

WHEREAS, the City Council has held a public hearing upon the said revision and voted in favor of a motion to approve the change in the Land Use Plan as requested by the applicant.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the Comprehensive Land Use Plan be and is hereby amended to change from Low Density Residential and Conservation Reserve to Mixed Use 1 the use classification for a tract of land being part of Government Lot 3 in Section 10, Township 8 North, Range 16 West, of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Referring to the Northwest Corner of the Northeast Quarter of said Section 10 and assuming the West line of said Northeast Quarter as bearing S00°54'28"W and all other bearings shown hereon relative thereto; thence

S00°54'28"W on said West line a distance of 1393.63 feet to the ACTUAL POINT OF BEGINNING; thence continuing S00°54'28"W on said West line a distance of 1060.29 feet; thence S89°05'32"E a distance of 637.71 feet; thence N00°54'28"E parallel with said West line a distance of 695.53 feet to the beginning of a tangent curve to the right having a central angle of 25°30'47", a radius of 500.00 feet and an arc length of 222.64 feet; thence N26°25'16"E tangent to said curve a distance of 101.50 feet to the beginning of a tangent curve to the left having a central angle of 03°37'04", a radius of 1000.00 feet, and an arc length of 63.14 feet; thence non-tangent to said curve N89°05'32"W a distance of 755.42 feet to the point of beginning, said tract containing 15.89 acres, more or less, all in Buffalo County, Nebraska.

BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the Comprehensive Land Use Plan be and is hereby amended to change from Low Density Residential and Conservation Reserve to High Density Residential the use classification for a tract of land being part of Government Lot 3 in Section 10, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Referring to the Northwest Corner of the Northeast Quarter of said Section 10 and assuming the West line of said Northeast Quarter as bearing S00°54'28"W and all other bearings shown hereon relative thereto; thence S00°54'28"W on said West line a distance of 2453.92 feet; thence S89°05'32"E a distance of 637.71 feet to the ACTUAL POINT OF BEGINNING; thence continuing S89°05'32"E a distance of 412.50 feet; thence N00°54'28"E a distance of 95.64 feet; thence S89°04'18"E a distance of 274.16 feet to the East line of said Government Lot 3; thence N01°00'27"E on said East line a distance of 964.75 feet; thence N89°05'32"W a distance of 570.63 feet to the beginning of a non-tangent curve to the right having a central angle of 03°37'04", a radius of 1000.00 feet, an arc length of 63.14 feet and a chord bearing S24°36'44"W a distance of 63.13 feet; thence S26°25'16"W tangent to said curve a distance of 101.50 feet to the beginning of a tangent curve to the left having a central angle of 25°30'47", a radius of 500.00 feet and an arc length of 222.64 feet; thence S00°54'28"W parallel with said West line and tangent to said curve a distance of 695.53 feet to the point of beginning, said tract containing 15.76 acres, more or less, all in Buffalo County, Nebraska.

BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the Comprehensive Land Use Plan be and is hereby amended to change from Low Density Residential and Conservation Reserve to Conservation Reserve the use classification for a tract of land being part of Government Lot 3 in Section 10, Township 8 North, Range 16 West, of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Referring to the Northwest Corner of the Northeast Quarter of said Section 10 and assuming the West line of said Northeast Quarter as bearing S00°54'28"W and all other bearings shown hereon relative thereto; thence S00°54'28"W on said West line a distance of 2453.92 feet to the ACTUAL POINT OF BEGINNING; thence continuing S00°54'28"W on said West line a distance of 256.23 feet; thence S17°51'52"W perpendicular to the Geographic Centerline of the North Channel of the Platte River a distance of 58.25 feet; thence S72°08'08"E on said Geographic Centerline a distance of 42.59 feet; thence N88°56'28"E continuing on said centerline a distance of 41.41 feet; thence S85°08'14"E a distance of 72.42 feet; thence N88°22'15"E a distance of 80.58 feet; thence N80°32'03"E a distance of 50.33 feet; thence S87°15'43"E a distance of 88.15 feet; thence N74°18'13"E a distance of 48.76 feet; thence S83°54'45"E a distance of 75.33 feet; thence N62°14'25"E a distance of 17.07 feet; thence N89°49'55"E a distance of 63.57 feet; thence S74°50'51"E a distance

of 45.59 feet; thence N87°27'57"E a distance of 56.64 feet; thence S88°54'25"E a distance of 124.35 feet; thence N86°05'02"E a distance of 162.61 feet; thence S84°30'48"E a distance of 45.47 feet; thence N78°40'32"E a distance of 44.06 feet; thence S87°31'24"E a distance of 70.89 feet; thence S72°01'17"E a distance of 91.25 feet; thence N80°59'26"E a distance of 17.49 feet; thence S52°26'33"E a distance of 25.82 feet; thence S84°20'14"E a distance of 27.52 feet; thence S60°21'07"E a distance of 22.10 feet to the west right-of-way line of Kea West Avenue as platted in the City of Kearney, Buffalo County, Nebraska; thence S75°13'14"E a distance of 39.41 feet; thence leaving said Geographic Centerline N14°46'46"E perpendicular to said Geographic Centerline a distance of 47.13 feet to the East line of said Government Lot 3; thence N01°00'27"E on said East line a distance of 403.72 feet; thence N89°04'18"W a distance of 274.16 feet; thence S00°54'28"W a distance of 95.64 feet; thence N89°05'32"W a distance of 1050.21 feet to the point of beginning, said tract containing 10.10 acres, more or less, all in Buffalo County, Nebraska.

PASSED AND APPROVED THIS 9TH DAY OF MARCH, 2010.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

RANDY BUSCHKOETTER  
VICE-PRESIDENT OF THE COUNCIL

**REZONING FOR THE SOUTHWEST CORNER OF 11TH STREET AND KEA WEST AVENUE**

Public Hearings 4 through 8 were discussed together but voted on separately.

Vice-President Buschkoetter opened the public hearing on the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Spencer Land Company (Owner) to rezone from District AG, Agricultural District to District R-3/PD District, Urban Residential Multi Family (Medium Density)/Planned Development Overlay District and to District C-O/PD, Office/Planned Development Overlay District for property described as a tract of land being part of the Northwest Quarter of the Northeast Quarter and part of Government Lot 3 all in Section 10, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (southwest corner of 11th Street and Kea West Avenue).

Moved by Lammers seconded by Lear to close the hearing and approve the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Spencer Land Company (Owner) to rezone from District AG, Agricultural District to District R-3/PD District, Urban Residential Multi Family (Medium Density)/Planned Development Overlay District and to District C-O/PD, Office/Planned Development Overlay District for property described as a tract of land being part of the Northwest Quarter of the Northeast Quarter and part of Government Lot 3 all in Section 10, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (southwest corner of 11th Street and Kea West Avenue). Roll call resulted as follows: Aye: Buschkoetter, Lear, Lammers, Kearney. Nay: None. Clouse absent. Motion carried.

**FINAL PLAT FOR WESTERN NEBRASKA PROPERTY DEVELOPMENT ADDITION**

Public Hearings 4 through 8 were discussed together but voted on separately.

Vice-President Buschkoetter opened the public hearing on the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Spencer Land Company (Owner) for the Final Plat and Subdivision Agreement for Western Nebraska Property Development Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as a tract of land being part of the Northwest Quarter of the Northeast Quarter and part of Government Lot 3 all in Section 10, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (southwest corner of 11th Street and Kea West Avenue) and to consider Resolution No. 2010-44.

Moved by Lear seconded by Buschkoetter to close the hearing and approve the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Spencer Land Company (Owner) for the Final Plat and Subdivision Agreement for Western Nebraska Property Development Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as a tract of land being part of the Northwest Quarter of the Northeast Quarter and part of Government Lot 3 all in Section 10, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (southwest corner of 11th Street and Kea West Avenue) and approve **Resolution No. 2010-44**. Roll call resulted as follows: Aye: Buschkoetter, Lammers, Kearney, Lear. Nay: None. Clouse absent. Motion carried.

#### **RESOLUTION NO. 2010-44**

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of Western Nebraska Property Development Addition, an addition to the City of Kearney, Buffalo County, Nebraska for a tract of land located in the Northwest Quarter of the Northeast Quarter and part of Government Lot 3 in Section 10, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: considering the north line of the Northwest Quarter of the Northeast Quarter of said Section 10 as assumed bearing S89°27'38"E and with all bearings contained herein and relative thereto: point of beginning being the northeast corner of the Northwest Quarter of said Northeast Quarter; thence S01°00'27"W on the east line of the Northwest Quarter of said Northeast Quarter and said Government Lot 3 a distance of 1402.17 feet; thence N89°05'32"W a distance of 1326.05 feet to the west line of the Northwest Quarter of said Northeast Quarter and said Government Lot 3; thence N00°54'28"E on said west line a distance of 1393.63 feet to the north line of said Northeast Quarter (also being the centerline of 11th Street as platted in the City of Kearney, Buffalo County, Nebraska); thence S89°27'38"E on said north line a distance of 1328.52 feet to the point of beginning, containing 42.59 acres more or less of which 2.56 acres more or less are presently being used for street purposes, 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 Subdivision Agreement, marked as Exhibit "A" attached hereto and made a part hereof by reference, be and is hereby approved

and that the President of the Council be and is hereby authorized and directed to execute said agreement on behalf of the City of Kearney, Nebraska. Said Subdivision Agreement shall be filed with the final plat with the Buffalo County Register of Deeds.

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 9TH DAY OF MARCH, 2010.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

RANDY BUSCHKOETTER  
VICE-PRESIDENT OF THE COUNCIL

### **ANNEXATION OF WESTERN NEBRASKA PROPERTY DEVELOPMENT ADDITION**

Public Hearings 4 through 8 were discussed together but voted on separately.

Vice-President Buschkoetter opened the public hearing on the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Spencer Land Company (Owner) for the annexation of Western Nebraska Property Development Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as a tract of land being part of the Northwest Quarter of the Northeast Quarter and part of Government Lot 3 all in Section 10, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (southwest corner of 11th Street and Kea West Avenue) and to consider Resolution No. 2010-45.

Moved by Buschkoetter seconded by Kearney to close the hearing and approve the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Spencer Land Company (Owner) for the annexation of Western Nebraska Property Development Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as a tract of land being part of the Northwest Quarter of the Northeast Quarter and part of Government Lot 3 all in Section 10, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (southwest corner of 11th Street and Kea West Avenue) and approve **Resolution No. 2010-45**. Roll call resulted as follows: Aye: Buschkoetter, Kearney, Lear, Lammers. Nay: None. Clouse absent. Motion carried.

### **RESOLUTION NO. 2010-45**

WHEREAS, an Application has been submitted by Craig Bennett from Miller & Associates (Applicant) for Spencer Land Company (Owner) for the inclusion of Western Nebraska Property Development Addition, an addition within the corporate boundaries of the City of Kearney said property described as a tract of land located in the Northwest Quarter of the Northeast Quarter and part of Government Lot 3 in Section 10, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: considering the north line of the Northwest Quarter of the Northeast Quarter of said Section 10 as assumed bearing S89°27'38"E and with all bearings contained herein and relative thereto: point of beginning being the northeast corner of the Northwest Quarter of said Northeast Quarter; thence S01°00'27"W on the east line of the Northwest Quarter of said Northeast Quarter and said Government Lot 3

a distance of 1402.17 feet; thence N89°05'32"W a distance of 1326.05 feet to the west line of the Northwest Quarter of said Northeast Quarter and said Government Lot 3; thence N00°54'28"E on said west line a distance of 1393.63 feet to the north line of said Northeast Quarter (also being the centerline of 11th Street as platted in the City of Kearney, Buffalo County, Nebraska); thence S89°27'38"E on said north line a distance of 1328.52 feet to the point of beginning, containing 42.59 acres more or less of which 2.56 acres more or less are presently being used for street purposes, all in Buffalo County, Nebraska; and

WHEREAS, the Kearney City Planning Commission has received and held a public hearing on February 19, 2010 on the inclusion of Western Nebraska Property Development Addition within the corporate limits and recommended the Kearney City Council approve said application; and

WHEREAS, said application to include the land within the corporate limits was duly signed by the owners of the land affected with the express intent of platting the land as Western Nebraska Property Development Addition, an addition to the City of Kearney, Buffalo County, Nebraska;

WHEREAS, a public hearing was held by the Kearney City Council relating to said application on March 9, 2010 who deemed the said addition to be included within the corporate limits to be advantageous to and in the best interests of the City.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the land to be platted as Western Nebraska Property Development Addition shall be included within the corporate limits of the City of Kearney, Buffalo County, Nebraska, that the inhabitants of such addition shall be entitled to all the rights and privileges, and shall be subject to all the laws, ordinances, rules and regulations of the City of Kearney.

BE IT FURTHER RESOLVED that the inclusion of Western Nebraska Property Development Addition within the corporate limits of the City of Kearney is subject to the final plat being filed with the Buffalo County Register of Deeds.

PASSED AND APPROVED THIS 9TH DAY OF MARCH, 2010.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

RANDY BUSCHKOETTER  
VICE-PRESIDENT OF THE COUNCIL

**DEVELOPMENT PLANS FOR HOSPITAL AND MEDICAL OFFICE BUILDING  
LOCATED WEST OF PROPOSED 22ND AVENUE SOUTH OF PROPOSED 10TH  
STREET**

Public Hearings 4 through 8 were discussed together but voted on separately.

Vice-President Buschkoetter opened the public hearing on the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Spencer Land Company (Owner) for Planned District Development Plan Approval for the construction of a hospital and medical office building on property to be zoned District C-O/PD, Office/Planned Development Overlay District and described as Lot 1 of Block Three of proposed Western Nebraska Property Development Addition, an addition to the City of Kearney, Buffalo County, Nebraska (west of proposed 22nd Avenue south of proposed 10th Street) and to consider Resolution No. 2010-46.

Moved by Kearney seconded by Lammers to close the hearing and approve the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Spencer Land Company (Owner) for Planned District Development Plan Approval for the construction of a hospital and medical office building on property to be zoned District C-O/PD, Office/Planned Development Overlay District and described as Lot 1 of Block Three of proposed Western Nebraska Property Development Addition, an addition to the City of Kearney, Buffalo County, Nebraska (west of proposed 22nd Avenue south of proposed 10th Street) and approve **Resolution No. 2010-46**. Roll call resulted as follows: Aye: Buschkoetter, Lear, Lammers, Kearney. Nay: None. Clouse absent. Motion carried.

### **RESOLUTION NO. 2010-46**

WHEREAS, Craig Bennett from Miller & Associates (Applicant) for Spencer Land Company (Owner) has applied for Planned District Development Plan Approval for the construction of a hospital and medical office building on property to be zoned District C-O/PD, Office/Planned Development Overlay District and described as Lot 1 of Block Three of proposed Western Nebraska Property Development Addition, an addition to the City of Kearney, Buffalo County, Nebraska (west of proposed 22nd Avenue south of proposed 10th Street).

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the application of Craig Bennett from Miller & Associates (Applicant) for Spencer Land Company (Owner) for Planned District Development Plan Approval for the construction of a hospital and medical office building on property to be zoned District C-O/PD, Office/Planned Development Overlay District and described as Lot 1 of Block Three of proposed Western Nebraska Property Development Addition, an addition to the City of Kearney, Buffalo County, Nebraska (west of proposed 22nd Avenue south of proposed 10th Street) be approved.

PASSED AND APPROVED THIS 9TH DAY OF MARCH, 2010.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

RANDY BUSCHKOETTER  
VICE-PRESIDENT OF THE COUNCIL

### **IV. CONSENT AGENDA**

Vice-President Buschkoetter stated the Agenda has been amended to include Item 9 designating and appointing the Human Resources Director as the ADA Coordinator; and Item 10 to approve Change Order No. 1 pertaining to the 2009 Part 12 Improvements.

Moved by Lammers seconded by Lear that Subsections 1 through 10 of Consent Agenda Item IV be approved. Roll call resulted as follows: Aye: Buschkoetter, Lammers, Kearney, Lear. Nay: None. Clouse absent. Motion carried.

1. Approve Minutes of Regular Meeting held February 23, 2010.
2. Approve the following Claims:
  - PS Personnel Services

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

4Imprint \$292.95 co; Ace Eaton Medals \$540.00 smcs; Ace Hardware \$74.90 smcs; Advance Auto Parts \$64.32 smcs; Aflac \$2,871.62 ps; Afternooners \$96.18 smcs; Air Cleaning \$47.47 smcs; Airgas \$253.85 smcs; Airport Inn \$32.43 smcs; Alamar Uniforms \$109.67 smcs; Al-Jon Manufacturing \$35.16 smcs; Allied Electronics \$150.67 smcs; Amazon \$250.50 smcs; Amer Electric \$16.41 smcs; Amer First Aid \$66.20 smcs; Andersen Wrecking \$15.00 smcs; Angry Cow Adventures \$1,000.00 smcs; Antelope Newspaper \$150.00 smcs; Arc of Buffalo Co \$2,870.00 smcs; ASCAP \$305.00 smcs; Ask Supply \$1,480.48 smcs,co; Auto Glass Center \$248.76 smcs; Axtell Quasiquicentennial \$56.00 smcs; Baker & Taylor Books \$2,252.31 smcs; Bamford \$200.00 smcs; Bennett,T \$785.25 smcs; Bennington Implement \$89.90 smcs; Bentley,D \$340.00 smcs; Bosselman \$18,808.73 smcs; Brown Transfer \$130.12 smcs; Buck,T \$31.00 smcs; Buffalo Outdoor Power \$69.12 smcs; Buggy Bath \$500.00 smcs; Builders \$4,337.95 smcs,co; Byrne,D \$10.00 smcs; Cabela's \$101.68 smcs; Calendars \$33.29 smcs; Carquest \$1,710.36 smcs; Cash-Wa \$786.55 smcs; Central Fire & Safety \$154.50 smcs; Central Hydraulic \$919.28 smcs; Central NE Bobcat \$249.32 smcs; Central Restaurant \$329.97 co; Certified Power \$455.81 smcs; CFA Software \$2,995.00 smcs; Charter \$444.39 smcs; Chili's Grill \$28.69 smcs; City of Ky \$239,277.45 smcs,ps; College Savings Plan of NE \$150.00 ps; Colorado Chapter of INL \$325.00 smcs; Computer Hardware \$79.00 smcs; Consec Life Ins \$24.00 ps; Construction Rental \$360.99 smcs; Copycat Printing \$1,733.85 smcs; Cranewood Properties \$29.84 smcs; Crime Reports \$497.00 smcs; Crossroads Ford \$777.51 smcs; Culligan \$245.00 smcs; Cummins Central Power \$302.06 smcs; Daydeal \$41.95 smcs; DHHS Drinking Water \$80.00 smcs; Diesel Power Equipment \$803.21 smcs; Dmilaco Sports \$712.00 ps; Driver's License Guide \$28.95 smcs; Eakes \$1,110.44 smcs; Ecentral Stores \$45.30 smcs; Ecolab \$428.88 smcs; Eirich,T \$50.00 smcs; Emed \$174.00 co; Expression Wear \$749.09 smcs; Eynetich,J \$29.86 smcs; Fairbanks Intl \$722.66 smcs; Farmers Union \$747.50 smcs; Fastenal \$632.75 smcs; Fiddelke \$110.00 smcs; Fireguard \$655.03 smcs; Firehouse Subscription \$19.95 smcs; Fisher Roofing \$175.00 smcs; Florida Micro \$904.59 co; Flynn,B \$10.99 smcs; French Café \$52.50 smcs; Fresh Water Systems \$322.24 smcs; Frontier \$183.76 smcs; Fuerst,D \$54.61 smcs; Gale \$278.56 smcs; Galeton Gloves \$1,332.65 smcs; Galls \$196.72 smcs; Garcia,R \$29.81 smcs; Garret Tires & Treads \$810.95 smcs; GCSAA \$300.00 smcs; General Traffic Controls \$642.05 smcs; Gleason,D \$173.00 smcs; Global Industrial \$63.10 co; Golden Thread \$150.00 ps; Gough,P \$300.00 smcs; Graham Tire \$41.75 smcs; Grainger \$3,576.64 smcs; Handhelditemscom \$23.82 smcs; Hastings \$12.71 smcs; Hawke Flooring \$425.00 smcs; Hobby-Lobby \$108.18 smcs,co; Holiday Inn \$5,453.10 smcs; Holmes Plbg \$124.93 smcs,co; Holtz Industries \$193.20 smcs; Hometown Leasing \$444.91 smcs,co; Honeywell First Responders \$20,104.92 smcs; ICMA RC \$4,572.07 ps; IRS \$102,161.68 ps; Jack Lederman \$587.72 smcs; Jacobi Carpet One \$5,464.72 co; Jigthings \$70.12 co; Johnstone Supply \$421.56 smcs; JRM \$410.01 smcs; K&K Parts \$810.29 smcs; KAGI \$180.00 co; Ky Glass \$48.60 smcs; Ky Hub \$695.00 smcs; Ky Humane Society \$6,500.00 smcs; Ky Implement \$557.37 smcs; Ky United Way \$640.50 ps; Ky Warehouse \$766.39 smcs; Ky Winlectric \$58.12 smcs,co; Ky Winnelson \$325.00 smcs; Kelly Supply \$34.85 smcs; Kennedy,S \$125.00

smcs; Killion Motors \$20.59 smcs; Konica Minolta \$54.68 smcs; L Com \$243.50 co; LaCour,K \$44.51 smcs; Laser Link Golf \$723.00 smcs; Lasertec of NE \$141.98 smcs; LCL Truck Equipment \$7,410.00 co; Leonard,L \$41.95 smcs; LESCO/John Deere \$2,100.00 smcs; Lewis,R \$27.43 smcs; Linda's Upholstery \$151.80 smcs; Linweld \$1,182.22 smcs; Little Caesars \$24.00 smcs; Lockmobile \$28.25 smcs; Luck,M \$34.91 smcs; LVNV Funding \$235.74 ps; Mac Tools \$219.99 smcs; Macrium Reflect \$385.09 co; Magic Cleaning \$1,710.00 smcs; Marlatt Machine Shop \$154.09 smcs; Marshall Cavendish \$107.82 smcs; Martin,D \$10.08 smcs; Martin,J \$13.00 smcs; Maverick Books \$267.86 smcs; McNeilus Truck \$2,101.62 smcs; Menards \$3,184.88 smcs,co; Meridian Library Systems \$25.00 smcs; Metlife \$6,389.33 ps; Microfilm Imaging \$780.00 smcs; Mid Amer Signal \$2,195.00 smcs; Midlands Contracting \$143,423.37 co; Mid-NE Garage Door \$149.00 smcs; Mid-State Engineering \$3,497.00 smcs; Midway Chevrolet \$86.94 smcs; Midway Chrysler \$128.82 smcs; Midwest Turf \$305.37 smcs; Miller Signs \$85.00 smcs; Minitex \$3,250.00 co; Moonlight Embroidery \$737.00 smcs; Morgan,M \$196.12 smcs; Moss & Barnett \$261.00 smcs; MPH Industries \$640.00 co; Naiman,J \$4.46 smcs; Napa \$1,561.84 smcs; Natl Alliance For Youth \$175.00 smcs; NCS Equipment \$842.23 smcs; NE Child Support \$2,950.20 ps; NE Dept of Economic \$1,000.00 smcs; NE Dept of Revenue \$31,563.70 ps; NE Forest Service \$30.00 smcs; NE Game and Parks \$65.76 smcs; NE Law Enforcement \$200.00 smcs; NE Machinery \$950.69 smcs; NE Professional Licensing \$90.00 smcs; NE Salt & Grain \$447.50 smcs; NE Truck Center \$227.49 smcs; Nelson's Furniture \$414.00 co; Nerds \$119.00 smcs; Newegg \$151.93 smcs,co; Nitrodesk \$53.47 smcs; Northgate Veterinary \$6.00 smcs; Northwestern Energy \$6,557.84 smcs; Office Depot \$943.15 smcs; Office Max \$1,659.96 smcs,co; Officenet \$1,088.67 smcs; On Site Mobile Sharpening \$33.00 smcs; O'Reilly Auto \$624.47 smcs; Oriental Trading \$360.56 smcs; Orscheln \$290.85 smcs; Paintball Online \$31.40 smcs; Paramount \$125.53 smcs; Park Seed \$54.54 smcs; Payflex Systems \$535.50 smcs,ps; Paypal \$125.00 smcs; Payton,D \$27.32 smcs; Pep Co \$51.10 smcs; Perkins \$161.03 smcs; Platte Valley Comm \$175.00 smcs; PLI Winundetele \$49.95 smcs; Power & Telephone \$656.23 smcs; Presto-X \$142.80 smcs; Protex Central \$204.50 smcs; Provantage \$832.47 smcs,co; Quill \$461.64 smcs; Radioshack \$19.57 smcs; Random House \$40.00 smcs; Recorded Books \$308.00 smcs; RKI Instruments \$432.72 smcs; Rudeen,D \$19.65 smcs; SA Foster Lumber \$101.43 smcs; Sanitation Products \$877.60 smcs; Sapp Brothers \$20,809.23 smcs; Sell,K \$21.50 smcs; Shea,S \$320.00 smcs; Snow,T \$50.00 smcs; Staples Direct \$85.54 smcs; State of NE/AS Central \$4,426.18 smcs,co; Sun Life Financial \$38,566.89 smcs; Sunmart \$19.61 smcs; Superior Signals \$745.80 smcs; Susteen \$26.21 smcs; Sydow,J \$40.00 smcs; Target \$54.48 co; Teledyne \$351.00 smcs; Tigerdirect \$48.97 co; Titan Machinery \$3,752.00 smcs; Titleist \$1,087.78 smcs; Tractor -Supply \$769.09 smcs,co; Trane Company \$1,047.26 smcs; Tri City Outdoor Power \$35.44 smcs; Tru Café \$47.25 smcs; Turfwerks \$75.00 smcs; Tye & Rademacher \$10,194.51 smcs; Underwriters Lab \$550.00 smcs; Unico Group \$2,007.62 smcs; UNL Center Applied Rural \$50.00 smcs; UPS Store \$17.98 smcs; US Golf Ass'n \$110.00 smcs; USPS \$248.71 smcs,co; Verizon Wireless \$1,106.11 smcs; Voss Lighting \$1,905.00 smcs; Wal-mart \$1,660.04 smcs,co; Ward Lab \$13.00 smcs; Water Environment \$106.00 smcs; Weis Equipment \$1,593.00 smcs; Welcoa \$97.20 ps; Whelen Engineering \$93.00 smcs; Wiederspan,R \$22.50 smcs; Wilde,L \$46.15 smcs; Wilke Donovans \$241.29 smcs,co; Williams,M \$60.36 smcs; Winter Equipment \$3,029.55 smcs; Xavus Software \$1,773.50 co; Yobitech \$77.50 co; Young,A \$3.07 smcs; Payroll Ending 2-27-2010 -- \$319,276.65. 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 the application for a Special Designated License submitted by JUAN LAZO, dba El Tropic in connection with their IBK-37623 catering liquor license to dispense beer and distilled spirits in the Exhibit Building located at the Buffalo County Fairgrounds, 3807 Avenue N, on April 3, 2010 from 6:00 p.m. until 1:00 a.m. for a Mexican dance.

4. Approve Change Order No. 16 showing an increase in the amount of \$1,147.13 submitted by Hausmann Construction and approved by Wilkins Hinrichs Stober Architects for the construction of the Peterson Senior Activity Center located at the E.K. and Mary Yanney Heritage Park and approve **Resolution No. 2010-47**.

**RESOLUTION NO. 2010-47**

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. 16 showing an increase to the contract sum in the amount of \$1,147.13, 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)	- 7,226.00
Change Order No. 7 (4-14-2009)	+ 3,667.00
Change Order No. 8 (5-12-2009)	+ 3,072.00
Change Order Nos. 9 and 10 (9-8-2009)	+ 3,466.00
Change Order No. 11 (10-27-2009)	+ 10,220.00
Change Order No. 12 (11-10-2009)	+ 10,746.75
Change Order No. 13 (11-10-2009)	+ 1,660.00
Change Order No. 14 (12-22-2009)	+ 621.00
Change Order No. 15 (12-22-2009)	+ 1,711.00
Change Order No. 16 (3-9-2010)	+ <u>1,147.13</u>
Contract Sum to Date	\$2,824,944.88

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, and hereby find and determine that Change Order Nos. 16 and 17, as shown on Exhibit "A", be and is hereby accepted and approved.

PASSED AND APPROVED THIS 9TH DAY OF MARCH, 2010.

ATTEST:  
 MICHAELLE E. TREMBLY  
 CITY CLERK

RANDY BUSCHKOETTER  
 VICE-PRESIDENT OF THE COUNCIL

5. Approve the Application to Modify the Landfill Permit for the proposed construction of Cell 5A at the Kearney Area Solid Waste Landfill and approve **Resolution No. 2010-48.**

**RESOLUTION NO. 2010-48**

WHEREAS, the Kearney Area Solid Waste Agency Landfill received a landfill operating permit in 1994 from the State of Nebraska Department of Environmental Quality; and

WHEREAS, Cell 5A is proposed to be constructed in the open space between Phase I and Phase II of the landfill site; and

WHEREAS, before Cell 5A can be constructed an application to modify the existing landfill permit must be approved by the Nebraska Department of Environmental Quality.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the Mayor and the Director of Utilities be and are hereby authorized and directed to execute the Application for Municipal Solid Waste Disposal Area Permit with the Nebraska Department of Environmental Quality, a copy of said application, marked as Exhibit A, is attached hereto and made a part hereof.

PASSED AND APPROVED THIS 9TH DAY OF MARCH, 2010.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

RANDY BUSCHKOETTER  
VICE-PRESIDENT OF THE COUNCIL

6. Approve the Agreement between the City of Kearney and the Kearney Area Community Foundation to temporarily block off five parking stalls on Central Avenue at the northwest corner of the parking lot beginning at 6:00 a.m. on May 7, 2010 until 12:00 p.m. on May 9, 2010 AND to temporarily close the parking lot located north of the Museum of Nebraska Art from 6:00 a.m. on May 5, 2010 until 12:00 p.m. on May 11, 2010 for the 3rd Annual Nebraska Wine and Jazz Festival.

7. 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 27, 2010 from 4:00 p.m. until 12:00 a.m. for a fund raiser event.

8. Approve the application for a Special Designated License submitted JOYCE AND PAUL SEARS, dba Cedar Hills Vineyard & Gardens to dispense wine in connection with their Class CK-86796 catering liquor license inside an enclosed 60' x 180' fenced area located in the parking lot located north of the Museum of Nebraska Art, 2401 Central Avenue, on May 7, 2010 from 4:00 p.m. until 11:00 p.m. and on May 8, 2010 from 11:00 a.m. until 11:00 p.m. in connection with the Wine and Jazz Festival.

9. Approve **Resolution No. 2010-51** amending Resolution No. 2008-20 by designating and appointing the Human Resources Director as the ADA Coordinator for the City of Kearney.

**RESOLUTION NO. 2010-51**

WHEREAS, the Americans with Disabilities Act (ADA) was enacted on July 26, 1990 which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services and programs, and telecommunications; and

WHEREAS, Title II regulations of the ADA require that all public entities with 50 or more employees designate at least one employee to coordinate compliance with ADA; and

WHEREAS, the requirement for designation of a particular employee and dissemination of information about how to locate that employee helps to ensure that individuals dealing with large agencies are able to easily find a responsible person who is familiar with the requirements of the Act and to communicate those requirements to other individuals in the agency who may be unaware of their responsibilities.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the Human Resources Director under the supervision of the City Manager, be and is hereby designated and appointed as the ADA Coordinator for the City of Kearney.

PASSED AND APPROVED THIS 9TH DAY OF MARCH, 2010.

ATTEST:  
 MICHAELLE E. TREMBLY  
 CITY CLERK

RANDY BUSCHKOETTER  
 VICE-PRESIDENT OF THE COUNCIL

**10.** Approve Change Order No. 1 providing a provision for incentive payment for Phase I and extending the contract time for Phase I by 30 days, Phase II by 45 days, and 45 days for Phase III submitted by Midlands Contracting and approved by Miller & Associates for the 2009 Part 12 Improvements consisting of Water Connection District No. 2009-4 and Sanitary Sewer Connection District No. 2009-2 in 11th Street from the existing main in 11th Street and Kea West Avenue to 30th Avenue, 30th Avenue between North Railroad Street and 11th Street, and 16th Street from 30th Avenue east to its terminus and approve **Resolution No. 2010-52.**

**RESOLUTION NO. 2010-52**

WHEREAS, Midlands Contracting of Kearney, Nebraska will perform services in connection with the 2009 Part 12 Improvements consisting of Water Connection District No. 2009-4 and Sanitary Sewer Connection District No. 2009-2 in 11th Street from the existing main in 11th Street and Kea West Avenue to 30th Avenue, 30th Avenue between North Railroad Street and 11th Street, and 16th Street from 30th Avenue east to its terminus, and the City's engineer, Miller & Associates, have filed with the City Clerk Change Order No. 1 providing a provision for incentive payment for Phase I and extending the contract time for Phase I by 30 days, Phase II by 45 days, and 45 days for Phase III, as shown on Exhibit "A", attached hereto and made a part hereof by reference as follows:

Original Contract Sum	\$2,269,439.00
Change Order No. 1 (3-9-2010)	<u>.00</u>
Contract Sum to Date	\$2,269,439.00

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. 1, as shown on Exhibit "A", be and is hereby accepted and approved.

PASSED AND APPROVED THIS 9TH DAY OF MARCH, 2010.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

RANDY BUSCHKOETTER  
VICE-PRESIDENT OF THE COUNCIL

## **V. CONSENT AGENDA ORDINANCES**

### **ORDINANCE NO. 7575 – AMEND SECTION 8-912 OF THE CITY CODE**

The City Manager asked that City staff evaluate City Code as it applies to people who may be parking in a properly designated handicapped parking spot in a privately owned parking lot. As you might recall, in 2007, there was an effort by City staff to review all City owned and operated parking facilities to make sure that all of them have appropriate handicapped parking and are appropriately identified with a handicapped parking sign that complies with the uniform traffic code. However, Section 8-912 N(2) of the City Code indicates that the handicapped parking provisions apply to all off-street parking facilities owned and operated by the City. In order to allow for enforcement of a parking violation in private lots, this provision would need to be changed so that the Kearney Police Department may enforce the handicapped parking rules in private parking lots. In order for enforcement to be effective, the handicapped parking stall must have an appropriate sign which is posted so that it can be viewed by the driver entering the parking stall in question.

Council Member Lear introduced Ordinance No. 7575, being Subsection 1 of Agenda Item V to amend Section 8-912 "Parking Rules", Article 9 "Stopping, Standing and Parking" of Chapter 8 "Police" of the City Code to eliminate the language "owned or operated by the City" in Subparagraph N(2) of Section 8-912, 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, 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. 7575 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 Buschkoetter seconded by Kearney that Ordinance No. 7575 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. 7575 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. 7576 – REPEAL ORDINANCE NO. 7385 CREATING PAVING DISTRICT NO. 2007-919**

Back in September of 2007 the City received a letter from the developer requesting paving, water and sanitary sewer improvements for the development of 10th Street and 9th Avenue in Jean Michel of Chateau Marteau. On October 9, 2007 the Council approved the creation of paving, water and sanitary sewer districts for 10th Street from the east line of Lot 1 of Block 2, Jean Michael of Chateau Marteau, thence west to the east line of 9th Avenue, AND together with 9th Avenue from the north line of Lot 6 of Block 2, Hammer-McCarty Addition, south to the south line of said Jean Michel of Chateau Marteau.

In accordance with Section 57-102 of the Unified Land Development Ordinance, being part of the Kearney City Code requires the developer to deposit fifty percent of the total estimated costs of the districts. The remaining unpaid costs of the improvements shall be assessed against the property in said districts on a basis of special benefit to the property, if any, as provided by law. The City approved the Plans and Specifications for this project on July 22, 2008 with a bid opening date of August 19, 2008. When the City received the bids, the developer decided not to proceed because of the costs. Therefore, these districts need to be repealed.

Council Member Lear introduced Ordinance No. 7576, being Subsection 2 of Agenda Item V to repeal Ordinance No. 7385 creating Paving Improvement District No. 2007-919 for 10th Street from the east line of Lot 1 of Block 2, Jean Michel of Chateau Marteau, thence west to the east line of 9th Avenue, AND together with 9th Avenue from the north line of Lot 6 of Block 2, Hammer-McCarty Addition, south to the south line of said Jean Michel of Chateau Marteau, 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, 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. 7576 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 Buschkoetter seconded by Kearney that Ordinance No. 7576 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. 7576 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. 7577 – REPEAL ORDINANCE NO. 7386 CREATING WATER DISTRICT NO. 2007-548**

Back in September of 2007 the City received a letter from the developer requesting paving, water and sanitary sewer improvements for the development of 10th Street and 9th Avenue in Jean Michel of Chateau Marteau. On October 9, 2007 the Council approved the creation of paving, water and sanitary sewer districts for 10th Street from the east line of Lot 1 of Block 2, Jean Michael of Chateau Marteau, thence west to the east line of 9th Avenue, AND together with 9th Avenue from the north line of Lot 6 of Block 2, Hammer-McCarty Addition, south to the south line of said Jean Michel of Chateau Marteau.

In accordance with Section 57-102 of the Unified Land Development Ordinance, being part of the Kearney City Code requires the developer to deposit fifty percent of the total estimated costs of the districts. The remaining unpaid costs of the improvements shall be assessed against the property in said districts on a basis of special benefit to the property, if any, as provided by law. The City approved the Plans and Specifications for this project on July 22, 2008 with a bid opening date of August 19, 2008. When the City received the bids, the developer decided not to proceed because of the costs. Therefore, these districts need to be repealed.

Council Member Lear introduced Ordinance No. 7577, being Subsection 3 of Agenda Item V to repeal Ordinance No. 7386 creating Water District No. 2007-548 for 10th Street from the east line of Lot 1 of Block 2, Jean Michel of Chateau Marteau, thence west to the east line of 9th Avenue, AND together with 9th Avenue from the north line of Lot 6 of Block 2, Hammer-McCarty Addition, south to the south line of said Jean Michel of Chateau Marteau, 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, 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. 7577 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 Buschkoetter seconded by Kearney that Ordinance No. 7577 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. 7577 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. 7578 – REPEAL ORDINANCE NO. 7387 CREATING SEWER DISTRICT NO. 2007-490**

Back in September of 2007 the City received a letter from the developer requesting paving, water and sanitary sewer improvements for the development of 10th Street and 9th Avenue in Jean Michel of Chateau Marteau. On October 9, 2007 the Council approved the creation of paving, water and sanitary sewer districts for 10th Street from the east line of Lot 1 of Block 2, Jean Michael of Chateau Marteau, thence west to the east line of 9th Avenue, AND together with 9th Avenue from the north line of Lot 6 of Block 2, Hammer-McCarty Addition, south to the south line of said Jean Michel of Chateau Marteau.

In accordance with Section 57-102 of the Unified Land Development Ordinance, being part of the Kearney City Code requires the developer to deposit fifty percent of the total estimated costs of the districts. The remaining unpaid costs of the improvements shall be assessed against the property in said districts on a basis of special benefit to the property, if any, as provided by law. The City approved the Plans and Specifications for this project on July 22, 2008 with a bid opening date of August 19, 2008. When the City received the bids, the developer decided not to proceed because of the costs. Therefore, these districts need to be repealed.

Council Member Lear introduced Ordinance No. 7578, being Subsection 4 of Agenda Item V to repeal Ordinance No. 7387 creating Sanitary Sewer District No. 2007-490 for 10th Street from the east line of Lot 1 of Block 2, Jean Michel of Chateau Marteau, thence west to the east line of 9th Avenue, AND together with 9th Avenue from the north line of Lot 6 of Block 2, Hammer-McCarty Addition, south to the south line of said Jean Michel of Chateau Marteau, 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, 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. 7578 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 Buschkoetter seconded by Kearney that Ordinance No. 7578 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. 7578 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. 7579 – SELL 6.5 FOOT STRIP OF LAND ADJACENT TO CEMETERY**

The City of Kearney has recently received a request from Raymond and Elvena Hervert to purchase a 6.5 foot strip of property along their backyard and adjacent to the Kearney Cemetery. The cemetery recently removed some trees in this area and the Herverts would like to build a fence along their backyard. In order for that fence to line up with their neighbors on each side, it will be necessary for them to purchase a 6.5 foot strip of property.

The cemetery supervisor does not have any objection to selling this strip of property to the Herverts and it is not needed for ongoing operations. The Herverts have paid for a survey of the area and have agreed to pay \$1,000.00 for this small strip of property.

Council Member Lear introduced Ordinance No. 7579, being Subsection 5 of Agenda Item V to sell a 6.5 foot strip of land located on a tract of land in Tax Lot 6, said Tax Lot 6 being located in the Northeast Quarter of the Northwest Quarter of the Southeast Quarter of Section 25, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska to Raymond and Elvena Hervert, 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, 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. 7579 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 Buschkoetter seconded by Kearney that Ordinance No. 7579 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. 7579 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.

## **VI. REGULAR AGENDA**

### **ORDINANCE NO. 7580 – GRANT CONDITIONAL USE PERMIT TO MT. CARMEL NURSING HOME-LITTLE SHEPHERD’S KIDZ PLACE (PERTAINS TO PUBLIC HEARING 1)**

Council Member Kearney introduced Ordinance No. 7580, being Subsection 1 of Agenda Item VI to grant a Conditional Use Permit to Mt. Carmel Nursing Home-Little Shepherd’s Kidz Place (Applicant) and Corpis Christi Carmelites (Owner) to locate a private child care center for nursing home staff on property zoned District R-3, Urban Residential Multi Family District (Medium Density) and described as Block 11, Kearney Land & Investment Company’s First Addition to the City of Kearney, Buffalo County, Nebraska (412 West 18th Street), 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 Lammers 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. 7580 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 Lammers seconded by Lear that Ordinance No. 7580 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. 7580 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. 7581 – REZONE 712 EAST 28TH STREET (PERTAINS TO PUBLIC HEARING 3)**

Council Member Lear introduced Ordinance No. 7581, being Subsection 2 of Agenda Item VI to rezone from District R-3, Urban Residential Multi Family District (Medium Density) to District R-4, Urban Residential Multi Family District (High Density) for property described as Lots 8, 9, 10, Lee’s Subdivision and Lot 1, Edgeworth Subdivision, all in the City of Kearney, Buffalo County, Nebraska (712 East 28th Street), 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, Lammers, Kearney, Lear. 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. 7581 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Buschkoetter, Lammers, Kearney, Lear. Nay: None. Clouse absent. Motion carried. Ordinance was read by number.

Moved by Buschkoetter seconded by Kearney that Ordinance No. 7581 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Buschkoetter, Kearney, Lear, Lammers. 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. 7581 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. 7582 – REZONE SOUTHWEST CORNER OF 11TH STREET AND KEA WEST AVENUE (PERTAINS TO PUBLIC HEARING 5)**

Council Member Kearney introduced Ordinance No. 7582, being Subsection 3 of Agenda Item VI to rezone from District AG, Agricultural District to District R-3/PD District, Urban Residential Multi Family (Medium Density)/Planned Development Overlay District and to District C-O/PD, Office/Planned Development Overlay District for property described as a tract of land being part of the Northwest Quarter of the Northeast Quarter and part of Government Lot 3 all in Section 10, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (southwest corner of 11th Street and Kea West 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 Lammers 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. 7582 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 Lammers seconded by Lear that Ordinance No. 7582 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. 7582 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.

### **JOHNSTONE SUPPLY TAX INCREMENT FINANCING PROJECT**

Vice-President Buschkoetter opened for discussion the redevelopment project for Johnstone Supply for Redevelopment Area #2 for an area described as Lot 1, Johnson Commercial Addition, an addition to the City of Kearney, Buffalo County, Nebraska (southeast corner of Central Avenue and 1st Street) and to consider Resolution No. 2010-49.

Jon Abegglen, CRA Chairman, presented this matter to the Council. On March 3, 2010 the Kearney Community Redevelopment Authority (CRA) approved a Tax Increment Financing (TIF) application submitted by Kim Cafferty, on behalf of CCL&B, INC. and KBC, INC. (Johnstone Supply) for a development project located in Redevelopment Area 2. The CRA recognized that significant blight and substandard factors exist in the area and that redevelopment in Area 2 would be beneficial to the City of Kearney. This TIF project ameliorates such factors on the project site and creates a substantial investment in site preparation and infrastructure which would not be possible without tax increment financing. Eligible project costs include significant site work, parking lot construction, landscaping and improvement to south Central Avenue. Eighty-five percent of the increased tax increment, approximately \$37,181.55 annually, will be used to pay for site preparation and infrastructure costs over the next 15 years.

Moved by Lear seconded by Buschkoetter to approve the redevelopment project submitted by Johnstone Supply for Redevelopment Area #2 for an area described as Lot 1, Johnson Commercial Addition, an addition to the City of Kearney, Buffalo County, Nebraska (southeast corner of Central Avenue and 1st Street) and approve **Resolution No. 2010-49**. Roll call resulted as follows: Aye: Buschkoetter, Kearney, Lear, Lammers. Nay: None. Clouse absent. Motion carried.

### **RESOLUTION NO. 2010-49**

WHEREAS, the City of Kearney, Nebraska, a municipal corporation and city of the first class, has determined it be desirable to undertake and carry out urban redevelopment projects in areas of the City which are determined to be substandard and blighted and in need of redevelopment; and

WHEREAS, the Nebraska Community Development Law, Chapter 18, Article 21, Nebraska Reissue Revised Statutes of 1991, as amended (the "Act"), prescribes the requirements and procedures for the planning and implementation of redevelopment projects; and

WHEREAS, the City has declared an area of the City to be substandard and blighted and in need of redevelopment pursuant to the Act; and

WHEREAS, the Community Redevelopment Authority of the City of Kearney, Nebraska (the "Authority"), has prepared a Redevelopment Plan for Area #2 pursuant to Section 18-2111 of the Act ("Redevelopment Plan"), and recommended the Redevelopment Plan to the Planning Commission of the City; and

WHEREAS, the Planning Commission of the City reviewed the Redevelopment Plan pursuant to the Act and submitted its recommendations, if any, to the Authority, pursuant to Section 18-2114 of the Act; and

WHEREAS, in accordance with Section 18-2114 of the Act, the Authority submitted its recommendation, along with the recommendation from the Planning Commission to the City Council; and

WHEREAS, following consideration of the recommendations of the Planning Commission and the Authority, and following the public hearing with respect to the Redevelopment Plan, the City approved the Plan; and

WHEREAS, there has been presented to the City by the Authority for approval pursuant to and in accordance with Section 18-2119 of the Act a specific Redevelopment Project within the Redevelopment Plan and as authorized in the Redevelopment Plan, as legally described as Lot 1, Johnson Commercial Addition, an addition to the City of Kearney, Buffalo County, Nebraska; and

WHEREAS, the City Council has determined that the proposed Redevelopment Project would not be economically feasible without the use of tax increment financing; that the proposed Redevelopment Project would not occur in the community without the use of tax increment financing, and; that the costs and benefits of the proposed Redevelopment Project have been found to be in the long-term best interests of the community.

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

1. The Redevelopment Plan of the City previously approved for the area described on the attached Exhibit "A", including the Redevelopment Project legally described as Lot 1, Johnson Commercial Addition, an addition to the City of Kearney, Buffalo County, Nebraska, is hereby determined to be feasible and in conformity with the general plan for the development of the City of Kearney as a whole and the Redevelopment Plan, including the Redevelopment Project identified on the attached Exhibit "A", is in conformity with the legislative declarations and determinations set forth in the Act.

2. The City Council hereby determines that the proposed Redevelopment Project would not be economically feasible without the use of tax increment financing; that the proposed Redevelopment Project would not occur in the community without the use of tax increment financing, and; that the costs and benefits of the proposed Redevelopment Project are found to be in the long-term interests of the community.

3. Approval of the Redevelopment Plan is hereby ratified and reaffirmed, as amended by this Resolution, and the Authority is hereby directed to implement the Redevelopment Plan in accordance with the Act.

4. Pursuant to Section 18-2147 of the Act, ad valorem taxes levied upon real property in a redevelopment project for the benefit of any public body, included or authorized in the Plan which is legally described as Lot 1, Johnson Commercial Addition, an addition to the City of Kearney, Buffalo County, Nebraska, shall be divided, for a period not to exceed 15 years after the effective date of the provision, which effective date shall be March 9, 2010, as follows:

a. That proportion of the ad valorem tax which is produced by the levy at the rate fixed each year by or for each public body upon the redevelopment project valuation (as defined in the Act) shall be paid into the funds of each such public body in the same proportion as are all other taxes collected by or for the body; and

b. That proportion of the ad valorem tax on real property in the

redevelopment project in excess of such amount, if any, shall be allocated to and, when collected, paid into a special fund of the Authority to be used solely to pay the principal of, the interest on, and any premiums due in connection with the bonds, loans, notes or advances of money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such Authority for financing or refinancing, in whole or in part, the redevelopment project. When such bonds, loans, notes, advances of money, or indebtedness, including interest and premiums due, have been paid, the Authority shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon taxable real property in such a redevelopment project shall be paid into the funds of the respective public bodies.

c. Any interest and penalties due for delinquent taxes shall be paid into the funds of each public body in the same proportion as are all other taxes collected by or for the public body.

5. The Vice-President and City Clerk are authorized and directed to execute and file with the Treasurer and Assessor of Buffalo County, Nebraska, an Allocation Agreement and Notice of Pledge of Taxes with respect to the Redevelopment Project substantially in the form attached hereto as Exhibit "C" with appropriate insertions.

PASSED AND APPROVED THIS 9TH DAY OF MARCH, 2010.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

RANDY BUSCHKOETTER  
VICE-PRESIDENT OF THE COUNCIL

### **TRI CITY EVENTS CENTER MANAGER APPLICATION**

Vice-President Buschkoetter opened for discussion the manager application for Greg Shea submitted by EVENT CENTER OPERATIONS LLC, dba Tri City Events Center in connection with their Class CK-84864 catering liquor license located at 609 Platte Road.

Greg Shea, 1515 Sherwood Circle, presented this matter to the Council. He took over the management of the Event Center on August 1, 2009 and was asked to start the process of placing his name on the State liquor license. They have that application in process and did not foresee any problems.

Vice-President Buschkoetter asked about their proposal to change their wristband policy. Mr. Shea stated the policy has been that each person must have a wristband to purchase alcohol at the Event Center. There have been some grey areas about consumption of alcohol. They are making it very clear in the future that a person must have a wristband to purchase and a wristband to consume alcohol. Many of their regular patrons are already aware. The Event Center employs a number of off duty State Patrolmen who help them on game and event nights to police those purchasing and consuming alcohol. They cannot assume that everybody knows their protocol so they have two wristband stations as you enter the facility. If a concession stand employee cannot see the wristband, they will send that person back to a wristband station.

If a person is of age and has a wristband to purchase alcoholic beverage and gives it to another patron that does not have a wristband, employees will be looking for that as well. They are looking for those underage folks that might be trying to skirt the system.

They have a seasoned service staff with a certain amount of turn over year in and year out. There are a number of employees that have worked as long as the facility has been open. They do continually remind staff of the importance of always being on their toes regarding alcohol sales. He has been at the last couple of events talking to people to make sure that they understand looking for those wristbands. All of their employees since 2008 have been asked to participate in the TIPS program.

Moved by Buschkoetter seconded by Kearney to approve the manager application for Greg Shea submitted by EVENT CENTER OPERATIONS LLC, dba Tri City Events Center in connection with their Class CK-84864 catering liquor license located at 609 Platte Road. Roll call resulted as follows: Aye: Buschkoetter, Lear, Lammers, Kearney. Nay: None. Clouse absent. Motion carried.

### **AWARD BID FOR SOUTH PARKS MAINTENANCE BUILDING**

Vice-President Buschkoetter opened for discussion the bids received for the construction of the South Parks Maintenance Building located at E.K. and Mary Yanney Heritage Park and to consider Resolution No. 2010-50 awarding the bid to Chief Construction Co. in the amount of \$199,850.00.

Director of Park & Recreation Neal Lewis presented this matter to the Council. As you may be aware, the City advertised and on September 16, 2009 received bids for the construction of a maintenance building at the E.K. and Mary Yanney Heritage Park. The City received four bids which were all above the Engineer's Opinion of Probable Construction Cost as we as the City's budgeted amount. On September 22, 2009 the City Council rejected the bids and evaluated other construction alternatives.

The building has been downsized and some components removed. The Council approved the plans and specifications February 9 and received bids on March 3. The City received two bids: Chief Construction from Kearney in the amount of \$199,850 and from TL Sund Constructors from Lexington in the amount of \$212,660. The Engineer's Opinion of Probable Construction Cost was \$207,300. Miller & Associates recommended awarding the bid to Chief Construction.

Moved by Kearney seconded by Lammers to approve the bids received for the construction of the South Parks Maintenance Building located at E.K. and Mary Yanney Heritage Park and approve **Resolution No. 2010-50** awarding the bid to Chief Construction Co. in the amount of \$199,850.00. Roll call resulted as follows: Aye: Buschkoetter, Lammers, Kearney, Lear. Nay: None. Clouse absent. Motion carried.

### **RESOLUTION NO. 2010-50**

WHEREAS, Miller & Associates and the City of Kearney have reviewed the sealed bids which were opened on March 3, 2010 at 2:00 p.m. for the construction of the South Parks Maintenance Building located at E.K. and Mary Yanney Heritage Park; and

WHEREAS, the Engineer's Opinion of Probable Construction Cost was \$207,300.00; and

WHEREAS, the said engineers have recommended the bid offered by Chief Construction Co. of Kearney, Nebraska in the sum of \$199,850.00 be accepted as the

lowest responsible bid.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska that the Engineers recommendation is hereby accepted and approved, that Midlands Contracting, Inc. of Kearney, Nebraska be and is the lowest responsible bidder for the construction of the South Parks Maintenance Building located at E.K. and Mary Yanney Heritage Park to be constructed in accordance with the plans and specifications on file with the City Clerk and that the bid of Chief Construction Co. of Kearney, Nebraska in the sum of \$199,850.00 be and is hereby accepted.

BE IT FURTHER RESOLVED the Engineer's Opinion of Probable Construction Cost in the amount of \$207,300.00 be and is hereby accepted.

BE IT FURTHER RESOLVED that the President of the Council of the City of Kearney, Nebraska, be and is hereby authorized and directed to execute contracts for such improvements in accordance with the bid, plans, specifications, and general stipulations pertaining thereto.

PASSED AND APPROVED THIS 9TH DAY OF MARCH, 2010.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

RANDY BUSCHKOETTER  
VICE-PRESIDENT OF THE COUNCIL

**OPEN ACCOUNT CLAIMS: NPPD - \$8,468.04, PLATTE VALLEY STATE BANK - \$48,640.51**

Moved by Buschkoetter seconded by Kearney that Open Account Claims in the amount of \$48,640.51 payable to Platte Valley State Bank, and in the amount of \$8,468.04 payable to Nebraska Public Power District be allowed. Roll call resulted as follows: Aye: Buschkoetter, Kearney, Lammers. Nay: None. Lear abstained and Clouse absent. Motion carried.

**VII. REPORTS**

No reports.

**VIII. ADJOURN**

Moved by Kearney seconded by Lammers that Council adjourn at 8:16 p.m. Roll call resulted as follows: Aye: Buschkoetter, Lear, Lammers, Kearney. Nay: None. Clouse absent. Motion carried.

ATTEST:

\_\_\_\_\_  
RANDY BUSCHKOETTER  
VICE-PRESIDENT OF THE COUNCIL

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