

*Kearney, Nebraska
January 8, 2013
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 January 8, 2013 in the Council Chambers at City Hall. Present were: Stanley A. Clouse, President of the Council; Michaelle Trembly, City Clerk; Council Members Randy Buschkoetter, Bruce Lear, Bob Lammers and Jonathan Nikkila. Absent: None. Michael Morgan, City Manager; Michael Tye, City Attorney; Wendell Wessels, Director of Finance; Kirk Stocker, Director of Utilities; Dan Lynch, Chief of Police; and Shawna Erbsen, Administrative Services Director were also present. Some of the citizens present in the audience included: Lynn Thomas, MaryAnn Thomas, Dick Thomas, Monica Thomas, Mike Thomas, Lynda Thomas and her husband Mike, Casey Frye, Karen Frye, Tom Bokenkamp, Sue Bokenkamp, LeeAnn Thomas and her son, Dustin Frye, Jennifer Kotschwar, Carroll Sheldon, Gerry O'Rourke, Doug Stevenson, Eric Hellriegel, Wayne Olson, Terry Eirich, Ken Tracy, Jerry Thompson, Steve Altmaier from KGFW Radio, Mary Jane Skala from Kearney Hub, Nick Starling from NTV.

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

Pastor Marvin Valdois from the 56th Street Baptist Church provided the Invocation.

PLEDGE OF ALLEGIANCE

The Council members led the audience in the Pledge of Allegiance.

ANNOUNCEMENT

Mayor Clouse 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 on the wall of the Council Chambers.

ORAL COMMUNICATIONS

Mayor Clouse and Council members recognized Lynn Thomas for his contributions to the community. Mayor Clouse read and presented a Proclamation to Mr. Thomas. The Council members were given a copy of his book entitled "Pipe Dreams".

II. UNFINISHED BUSINESS

There was no Unfinished Business.

III. PUBLIC HEARINGS

REZONING PROPERTY LOCATED AT 2915 AVENUE N

Mayor Clouse opened the public hearing on the Application submitted by Mark Ablen (Applicant) and Great Western Properties, LLC (Owner) to rezone from District M-1, Limited Industrial District to District C-2, Community Commercial District property described as Lot 2, Great Western Second Addition to the City of Kearney, Buffalo County, Nebraska (2915 Avenue N) and to consider Ordinance No. 7780. Planning Commission recommended approval.

The applicant is requesting rezoning from District M-1, Limited Industrial District to District C-2, Community Commercial District for Lot 2, Great Western Addition located at 2915 Avenue N. This lot is one of the lots that was platted at the former drive-in theater site. It contains 0.87 acres and is the lot with Avenue N frontage located immediately north of the existing auto body repair shop. The subject property is surrounded on three sides by M-1 zoning with R-3 zoning to the west. The rezoning request is being made to accommodate a commercial retail use that is not allowed under the current zoning. The proposed use is a Dollar General Store which is considered "Medium Retail Services" in the ULDO Use Types based on the size of the proposed building. The Future Land Use Map of the Comprehensive Development Plan shows this area to be "Mixed-Use 2" which is compatible with the proposed rezoning.

Although the majority of the zoning in this area is industrial, C-2 zoning can be considered an upgrade with higher development standards than M-1, and should be very palatable to the neighborhood. Some type of commercial retail zoning is necessary to accommodate the Dollar Store. DRT Staff and the applicant agreed that C-2 is a logical choice. There is no need for a PD, Planned Development Overlay District for this project. All commercial development standards must be met before a building permit will be issued. Due to controlled access along the arterial street, a shared access point between this lot and the lot to the north is required from Avenue N.

Doug Stevenson from Olsson Associates presented this matter to the Council. They are the surveying group for Dollar General Store located adjacent to this site. The joint zoning request was made to accommodate Dollar General which is considered a medium retail service and is not allowed in M-1 zoning. The future land use map in the Comprehensive Development Plan shows a mixed used which is compatible with the proposed C-2 zone. Rezoning to C-2 allows higher development standards which is compatible with the existing zoning in the area.

There was no one present in opposition to this hearing.

Moved by Lammers to close the public hearing on the Application submitted by Mark Ablen (Applicant) and Great Western Properties, LLC (Owner) to rezone from District M-1, Limited Industrial District to District C-2, Community Commercial District property

described as Lot 2, Great Western Second Addition to the City of Kearney, Buffalo County, Nebraska (2915 Avenue N) and introduced Ordinance No. 7780 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 Nikkila seconded the motion to close the hearing and suspend the rules for Ordinance No. 7780. 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: Clouse, Lear, Nikkila, Lammers, Buschkoetter. Nay: None. 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. 7780 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Lear, Nikkila, Lammers, Buschkoetter. Nay: None. Motion carried. Ordinance was read by number.

Moved by Lear seconded by Buschkoetter that Ordinance No. 7780 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Nikkila, Lammers, Buschkoetter, Lear. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7780 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.

IV. CONSENT AGENDA

Moved by Buschkoetter seconded by Clouse that Subsections 1 through 7 of Consent Agenda Item IV be approved. Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear, Nikkila. Nay: None. Motion carried.

1. Approve Minutes of Regular Meeting held December 26, 2012.

2. Approve the following Claims:

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

Aflac \$2,929.22 ps; Alamar Uniforms \$4,316.73 smcs; Albrecht,H \$2,679.00 smcs; Alfred Benesch \$2,651.45 co; Analytical Services \$7,420.00 smcs; Anderson,M \$30,000.00 co; Applegarth,V \$121.09 smcs; Arctic Refrigeration \$499.57 smcs; Baker & Taylor Books \$2,694.16 smcs; Bamford \$652.02 smcs; Bert Gurney & Associates \$909.00 smcs; Blackstone Audiobooks \$612.95 smcs; Bluecross Blueshield \$87,229.49 smcs; Bosselman \$930.56 smcs; Buffalo Co Sheriff \$135,381.50 smcs; Builders \$10,333.62 co; Butler,B \$16.90 smcs; Carlson,B \$25.43 smcs; Cash-Wa \$797.05 smcs; Central Contracting \$27,300.00 co; City of Ky \$264,791.82 smcs,ps; Community Action

Partner \$139.50 smcs; COSUGI \$100.00 smcs; D&M Security \$64.50 smcs; Depository Trust \$3,066,422.69 ds; Dominic,F \$36.02 smcs; Eakes \$9.99 smcs; Eirich,T \$50.00 smcs; EMC Ins \$592.66 smcs; Expression Wear \$210.00 ps; Fiddelke Heating \$75.00 smcs; Fireguard \$218.80 smcs; Galls \$99.99 smcs; Golf Solutions \$744.00 smcs; HD Supply \$2,304.09 smcs; HOA Solutions \$25,238.60 smcs,co; Holiday Inn \$311.18 smcs; Hometown Leasing \$207.71 smcs; ICMA RC \$3,796.38 ps; IRS \$112,384.97 ps; JD Welding \$77.68 smcs; Jensen Publishing \$26.00 smcs; Johnson Controls \$4,040.96 smcs; Kart-Man \$994.28 smcs; Ky Clinic \$8,107.00 ps; Ky Glass \$72.48 smcs; Ky Storytelling \$300.00 smcs; Ky United Way \$605.74 ps; Ky Visitors Bureau \$31,626.89 smcs; Kowalek,G \$26.15 smcs; Lawless,W \$17.40 smcs; League of NE Municipalities \$363.00 smcs; Lowe Trust \$9,000.00 co; Magic Cleaning \$1,050.00 smcs; Markham,A \$23.27 smcs; Marlatt Machine Shop \$1,170.00 smcs; Matheson Tri-Gas \$19.85 smcs; Meier,B \$290.00 smcs; Metlife \$7,758.79 ps; Midwest Mailing \$295.00 smcs; Miller & Associates \$100,535.65 smcs,co; Miller,R \$877.50 smcs; Moonlight Embroidery \$446.75 smcs; NE Aviation Council \$160.00 smcs; NE Child Support \$2,504.35 ps; NE Dept of Revenue \$72,965.48 smcs,ps; NE Golf Assn \$666.00 smcs; NE State Library \$118.00 smcs; Netmotion Wireless \$3,318.75 smcs; New World Systems \$1,200.00 co; Northwest Electric \$1,282.76 smcs; Northwestern Energy \$2,310.95 smcs; Paramount \$33.08 smcs; Payflex Systems \$522.75 smcs,ps; Pep Co \$107.32 smcs; Ping \$503.88 smcs; Pitney Bowes \$52.48 smcs; Platte Valley Comm \$83.25 smcs; Presto-X \$35.63 smcs; Pulliam,R \$40.00 smcs; Quatred \$1,099.00 smcs; Reed,J \$11.60 smcs; S&B Heating \$560.15 smcs; Salter,J \$22.00 smcs; Scharff,M \$20.18 smcs; Sensus \$1,735.50 smcs; Siebert,P \$125.00 smcs; Snow,T \$50.00 smcs; St of NE/AS Central \$4,561.91 smcs,co; Straus,B \$99.47 smcs; Thompson,B \$7.87 smcs; Turfwerks \$1,434.95 smcs; Union Bank & Trust \$58,894.82 ps; United Rentals \$1,561.78 smcs; Village Uniform \$445.10 smcs; VonAschwege,S \$11,260.00 co; Weinand,M \$1,800.00 smcs; Wellness Council \$97.20 ps; Wibbels,B \$61.58 smcs; Yant Equipment \$345.06 smcs; Young,J \$13.73 smcs; Zayas,R \$13.98 smcs; Payroll Ending 12-29-2012 -- \$357,813.30. The foregoing schedule of claims is published in accordance with Section 19-1102 of the Revised Statutes of Nebraska, and is published at an expense of \$_____ to the City of Kearney.

3. Adopt Resolution No. 2013-1 approving the Certificate of Substantial Completion submitted by Central Contracting and approved by Wilkins Hinrichs Stober Architects for Fire Station #2 Truck Bay Expansion.

RESOLUTION NO. 2013-1

WHEREAS, Central Contracting Corporation of Kearney, Nebraska has performed services in connection with Fire Station #2 Truck Bay Expansion, and Wilkins Hinrichs Stober Architects and Central Contracting Corporation have now certified that the work is completed as of December 20, 2012, as shown by Exhibit "A" attached hereto and made a part hereof by reference.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, hereby accepts the Certificate of Substantial Completion as shown on Exhibit "A".

PASSED AND APPROVED THIS 8TH DAY OF JANUARY, 2013.

ATTEST:

STANLEY A. CLOUSE

MICHAELLE E. TREMBLY
CITY CLERK

PRESIDENT OF THE COUNCIL
AND EX-OFFICIO MAYOR

4. Adopt **Resolution No. 2013-2** approving the contract between the City of Kearney and Miller & Associates to perform the duties as Administrator of the CDBG Revolving Loan Fund.

RESOLUTION NO. 2013-2

WHEREAS, the City of Kearney has been notified of a pending State audit of the Community Development Block Grant Revolving Loan Fund which is administered by the Economic Development Council of Buffalo County on behalf of the City of Kearney; and

WHEREAS, the City of Kearney requested proposals from firms in Central Nebraska for a Project Administrator to oversee the audit and to ensure that the activities conducted with grant funding are in compliance with DED and Federal regulations; and

WHEREAS, City staff received one proposal and recommends pursuing a contract with Miller & Associates of Kearney to provide said services.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the City Manager be and is hereby authorized and directed to execute, on behalf of the City of Kearney, the Technical and Professional Services Contract for Community Development Block Grant Revolving Loan Fund to perform the duties as Administrator, as set forth in the Contract. The said Contract, marked Exhibit "A", is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 8TH DAY OF JANUARY, 2013.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

STANLEY A. CLOUSE
PRESIDENT OF THE COUNCIL
AND EX-OFFICIO MAYOR

5. Accept the bids received and approve the recommendation to award the bid to Nebraska Truck Center of Grand Island in the amount of \$142,620 for the purchase of a rear load refuse collection truck and to award the bid to Nebraska Peterbilt of Grand Island in the amount of \$215,000 for the purchase of a side load refuse collection truck.

6. Approve the selection of Miller & Associates as Housing Administrator for the Community Development Block Grant Neighborhood Stabilization 3 – Brigham Lofts.

7. Approve the application for a Special Designated License submitted by Night Life Concepts, Inc., dba Cunningham's Journal in connection with their Class CK-59311 catering liquor license to dispense beer, wine and distilled spirits in the Ag Pavilion located at the Buffalo County Fairgrounds, 3807 Avenue N on February 2, 2013 from 4:00 p.m. until 12:00 a.m. for a reception.

V. CONSENT AGENDA ORDINANCES

None.

VI. REGULAR AGENDA

PROPOSED POLICY ON CHICKENS WITHIN CITY LIMITS

Mayor Clouse opened for discussion whether chickens be allowed within the corporate boundaries of the City in residential neighborhoods. The Planning Commission vote was split with five in favor of allowing chickens in the City and one dissenting vote. Planning Commission vote was split with five in favor of allowing chickens in the City and one dissenting vote.

City Planner Lance Lang presented this matter to the Council. This is a basic policy question for the Council. The question is whether chickens should be allowed within the City limits in residential areas. This came about a few months ago when staff began looking at the Code regarding regulations pertaining to citizens keeping chickens. They found in Chapter 8 which is the police code (which has been around forever) there is language about "not tethering your horse in public" and some other out dated laws. There was also language regarding chickens, fowl, etc. and sizes of enclosures. In the Zoning Code which was approved in 2002, chickens, fowl and any type of barnyard animals were clearly prohibited within the City limits although allowed in the 2-mile radius. In the rural areas (RR-1, RR-2 and AG zoning), barnyard animals are allowable because of the greater separation, larger lots and the agricultural nature of the area. Any time there is a conflicting provision in the Code, the more restrictive code always applies. The bottom line is that chickens are not allowed in the City limits by today's Code.

When this issue went to Planning Commission, the intent was to clean up the conflicting language and to provide better definitions and take out some of the antiquated language that was in there. At the Planning Commission meeting some of the people began the discussion about chickens. Some were for and some against having chickens in residential areas. That discussion was followed up with a listening session with people on both sides of the issue. The Kearney Hub did a straw poll and the majority of people who responded were against it or had issues with it. There also were those who were in favor of it. Both sides of the issue have been considered by staff.

So it was decided to back up and address the question of should chickens be allowed in the City in residential areas although they are not allowed according to the present Code. The discussion at the Planning Commission included how many chickens should be allowed, what kind of confinements and how tall the fence should be etc. The Planning Commission voted in favor of amending the Code with a split vote of 5 in favor to 1 opposed and 3 who were not present. The matter is now before the Council members to approve or deny.

City Planner presented Administration's concerns:

- 1) Chickens are presently not allowed in residential areas within the City limits, only in rural areas within the 2-mile jurisdiction.
- 2) Additional resources would have to be provided to enforce this regulation which might cause additional expenses for the City's personnel.
- 3) Allowing chickens would open the gate for the possibility of requests for ducks, turkeys and other fowl to be allowed.
- 4) By keeping the present Code, it would protect the urban characteristics of a City

neighborhood while still allowing people living in our community and our surrounding areas to have these kinds of animals if that is what they want to do.

Mayor Clouse asked if there are people who have chickens within the City limits and if they are in violation at this time. City Planner stated that after the discussion at the Planning Commission those having chickens at the time were advised to get rid of them. He was uncertain if there are others who still have them. There is no "grandfathering" of the original ordinance. The confusion has been caused by the conflicting provisions between the police chapter and zoning code. When staff started this journey, the intent was not to amend the Code to allow chickens, but to get rid of the discrepancies. They wanted to draw a line and say no barnyard animals in the City limits.

Council member Buschkoetter asked if there were any health concerns like disease being spread or just the noise, clutter and the fact that it does not seem to fit in an urban setting. City Planner stated there were none that he was aware of, but chickens are not the typical household pets, like cats or dogs. Administration believes that from an enforcement and resource standpoint it would be cleaner not to open the gate for a variety of barnyard animals. Administration prefers to leave it the way it is, but there are others in the community bringing this forward.

Council member Lear asked if the chickens were to be allowed, what additional resources would he project might be necessary to support the staff in executing that enforcement. City Planner stated that Community Service Officers (CSO) calls would be complaint driven. City Manager Michael Morgan stated more complaints might be received since the law does not allow chickens and a neighbor probably would not have expected to live next door to someone with chickens.

Council member Nikkila asked what authority the City has, such as to take a dog from someone that has become a nuisance and they have received numerous complaints. City Manager stated that code enforcement receives a number of calls dealing with violations of those provisions about number of animals, leash laws, cleaning up after pets, etc. City Attorney Michael Tye stated there are provisions in the police sections with regard to pets and are enforced by the Police Department. Council member Lear stated those people can be issued a citation, fined or the animal can be taken away.

Council member Lammers stated he believed there is a place for all things and that it is inappropriate for those barnyard animals to be in town. In an urban setting, there are lots of people in a confined area as opposed to being out in the country in the 2-mile radius. He grew up on a farm and he appreciates wildlife and farm animals, but did not believe they should be in a City setting.

Mayor Clouse stated they did get some good arguments on the other side, but it still comes down to barnyard animals versus domestic pets. In his view, there is a difference.

Council member Nikkila stated that national trends are going in the direction of having chickens in the backyard for small egg collection and organic farming. He believes it comes down to private property and people want the right to do what they want on their property. In a City, they have to realize what they do affects their neighbor's property

also. That is where the Council must draw the line when considering zoning. He believed drawing a line at chickens is reasonable. If people ask for ducks and geese, his response would be they are not allowed because the line is drawn at chickens. He is sensitive to concerns from people in real estate, but also wants to be flexible with property owners.

City Planner stated they will be bringing an amendment forward to clean up the antiquated language with better definitions regardless of allowing chickens or not.

Council member Lear asked if additional subdivision or development restrictions in prohibiting chickens beyond what the City Code allows could be enforced by civil actions between parties in those cases for specific area of town. City Attorney stated that a developer could put that in a restrictive covenant, but it would be up to those neighbors to enforce. On occasion, neighborhood people have asked the City to enforce their restricted covenants but the City does not have the authority to do that.

Council member Lear stated that if he were to step past the standard pets of dogs and cats, he would have to allow a whole group of fowl, not just chickens because that would be unfair to others. So although they can draw the line anywhere, there is much to be considered in the decision.

Council member Buschkoetter stated his belief is that farmyard animals belong on a farm. He stated that zoning is about protecting a property owner and what he can do on his property, but it also protects them from their neighbor. He believed that should be upheld.

City Manager stated that drawing the line and limiting it to chickens only, legally would not prevail because there are certain classes of animals that are defined under national codes across the country as barnyard animals. Although he knows some have done that, he believed that would be difficult. Although there are individuals in this community that have chickens illegally, he stated they do not want to overreact because staff has learned they have had chickens for some time. Staff would ask to have those individuals identified and give them some time to deal with this issue, especially those that have done a good job with them. Staff is not overly interested in those without complaints to deal with the existing situation. In fairness to some citizens who asked law enforcement, the answer they received said they were allowable. They owe those individuals some courtesy and cooperation. City Attorney stated he was aware of one situation where he met with the folks and they agreed to move them outside of the City limits and were very nice about it.

Moved by Clouse seconded by Lammers to oppose allowing chickens in the city limits in residential neighborhoods. Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear. Nay: Nikkila. Motion carried.

OPEN ACCOUNT CLAIM

Moved by Lammers seconded by Nikkila that the Open Account Claim in the amount of \$79,780.09 payable to Nebraska Public Power District be allowed. Roll call resulted as follows: Aye: Nikkila, Lammers, Buschkoetter, Lear. Nay: None. Clouse abstained.

Motion carried.

VII. REPORTS

None.

VIII. ADJOURN

Moved by Nikkila seconded by Lear that Council adjourn at 7:37 p.m. Roll call resulted as follows: Aye: Clouse, Lear, Nikkila, Lammers, Buschkoetter. Nay: None. Motion carried.

ATTEST:

**STANLEY A. CLOUSE
PRESIDENT OF THE COUNCIL
AND EX-OFFICIO MAYOR**

**MICHAELLE E. TREMBLY
CITY CLERK**