

**Kearney, Nebraska**  
**March 12, 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 March 12, 2013, in the Council Chambers at City Hall. Present were: Stanley A. Clouse, President of the Council; Michaëlle 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; Suzanne Brodine, Assistant City Manager/Development Services Director; Kirk Stocker, Director of Utilities; Rod Wiederspan, Director of Public Works; Dan Lynch, Chief of Police; and Shawna Erbsen, Administrative Services Director were also present. Some of the citizens present in the audience included: Mitch Humphrey, Luke Dutcher, Marvion Reichert, Mitchel Greenwall, Chris Riha, Tamdan Ngo, Steve Altmaier from KGFW, Adam Konruff from Kearney Hub.

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**

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**

There was no Oral Communications.

## **II. UNFINISHED BUSINESS**

There was no Unfinished Business.

## **III. PUBLIC HEARINGS**

### **REZONING AT 202, 206, 208, 210 WEST 29TH STREET AND 2824 2ND AVENUE**

Mayor Clouse stated the applicant has requested to postpone the public hearing on the Application submitted by Buffalo Surveying Corp. (Applicant) for Nancy Norwood (Owner) to rezone from District R-2, Urban Residential Mixed-Density District to District UC, Mixed Use Urban Corridor District property described as Lots 1, 2, 3, 4 of Block 29, Perkins & Harfords Addition to the City of Kearney, Buffalo County, Nebraska, excepting that part of said Lot 1 deeded to the State of Nebraska Department of Roads (202, 206, 208, 210 West 29th Street and 2824 2nd Avenue).

Moved by Lammers seconded by Nikkila to postpone until March 26, 2013 the public hearing on the Application submitted by Buffalo Surveying Corp. (Applicant) for Nancy Norwood (Owner) to rezone from District R-2, Urban Residential Mixed-Density District to District UC, Mixed Use Urban Corridor District property described as Lots 1, 2, 3, 4 of Block 29, Perkins & Harfords Addition to the City of Kearney, Buffalo County, Nebraska, excepting that part of said Lot 1 deeded to the State of Nebraska Department of Roads (202, 206, 208, 210 West 29th Street and 2824 2nd Avenue). Roll call resulted as follows: Aye: Clouse, Lear, Nikkila, Lammers, Buschkoetter. Nay: None. Motion carried.

### **VACATE PORTION OF BEL AIR THIRD ADDITION AND THE FINAL PLAT FOR REMINGTON HEIGHTS ADDITION**

Mayor Clouse opened the public hearing on the Applications submitted by Buffalo Surveying Corp. (Applicant) for TWL, LLC (Owner) for (1) to vacate Lots 6 through 17 inclusive, Avenue L Place, a street in the City of Kearney, Nebraska located south of 67th Street In Block Three, Bel Air Third Addition to the City of Kearney, Buffalo County, Nebraska and consider Ordinance No. 7788; and (2) the Final Plat and Subdivision Agreement for Remington Heights Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as Lots 6 through 17 inclusive, Avenue L Place, a street in the City of Kearney, Nebraska located south of 67th Street (to be vacated) all in Block Three, Bel Air Third Addition to the City of Kearney, Buffalo County, Nebraska (south of 67th Street and Avenue L, west of Avenue N) and consider Resolution No. 2013-29. Planning Commission recommended approval subject to coordination of the street lighting with NPPD which has been addressed in the Subdivision Agreement.

The applicant is requesting approval to vacate a portion of an existing subdivision and replat the area into somewhat larger lots that will better accommodate the duplexes planned for construction on these lots. The land is already zoned R-2, which will allow for construction of single-family homes or duplexes.

Lots 6 through 17 inclusive, Block 3, of Bel Air Third Addition, along with Avenue L Place are to be vacated so that the land can be re-subdivided into larger lots. The

applicant intends to replat this area into a new subdivision to be known as Remington Heights Addition. Twelve existing lots will be reduced to 10 buildable lots plus one outlot for stormwater detention with the re-platting.

The final plat for this property is in substantial conformance with the Preliminary Plat, approved on April 21, 2006. As previously stated, the Final Plat for Remington Heights Addition will contain a total of 11 lots. Outlot A at the southwest corner between Lots 4 and 5 is reserved for stormwater management purposes. Lot 1 fronts on 67th Street and there are existing single-family homes constructed on the lots adjacent to the east. Therefore, the developer will construct a single-family home on Lot 1 while the other lots in proposed Remington Heights are planned for duplex development.

A Public Works Plan was previously submitted for the Bel Air subdivision that remains valid for this replat. However, at the time the Public Works Plan was prepared, street lighting was not a required element of the plan. Based on current code requirements, street lighting must be coordinated between the developer and the electric service provider (usually NPPD) and shown on the Public Works Plan. Instead of revising the Public Works Plan, staff is requesting the developer's engineer to account for street lighting on the pavement construction plans. Street lighting includes the location of the light poles, conduit routing, and any required easements.

Mitch Humphrey from Buffalo Surveying presented this matter to the Council. He stated this is a tract of land that is presently zoned R-2, south of 67th Street and on Avenue L Place. It is part of Bel Air Third Addition and is 5.28 acres. The request is to take the lots located along the City storm water detention cell there and reallocate the width. It changed from 11 buildable lots located within this portion of the Bel Air Third Addition to 10 buildable lots. One lot was designated as a lot number within the Bel Air Third, but in the Remington Heights Addition it is designated as Outlot A. At the present time, there is a detention cell for Bel Air Third Addition and for this development which is located there and will continue to be used for storm water management.

There have been no changes to the study portion of the project or the plat dedication of The Bel Air Third Addition. It still shows Avenue L Place, the sanitary sewer coming in from the north where the extension of the center line of Avenue M is located and makes an angle along the outlot into the large sewer line that makes its way on to the east in the old railroad right-of-way. The water lines will be connected into the 67th Street and Avenue L intersection location and existing lines. They will provide for the proper location of the multiple services that are required for lots that are zoned R-2.

There was no one present in opposition to this hearing.

Moved by Nikkila to close the public hearing and introduced Ordinance No. 7788 on the Application submitted by Buffalo Surveying Corp. (Applicant) for TWL, LLC (Owner) for to vacate Lots 6 through 17 inclusive, Avenue L Place, a street in the City of Kearney, Nebraska located south of 67th Street In Block Three, Bel Air Third Addition to the City of Kearney, Buffalo County, Nebraska and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of

the ordinance on its first reading and then upon its final passage. Council Member Lear seconded the motion to close the hearing and suspend the rules for Ordinance No. 7788. 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, Lammers, Buschkoetter, Lear, Nikkila. 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. 7788 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear, Nikkila. Nay: None. Motion carried. Ordinance was read by number.

Moved by Lear seconded by Buschkoetter that Ordinance No. 7788 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Nikkila, Lammers. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7788 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.

Moved by Buschkoetter seconded by Clouse to adopt **Resolution No. 2013-29** approving the Final Plat and Subdivision Agreement for Remington Heights Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as Lots 6 through 17 inclusive, Avenue L Place, a street in the City of Kearney, Nebraska located south of 67th Street (to be vacated) all in Block Three, Bel Air Third Addition to the City of Kearney, Buffalo County, Nebraska (south of 67th Street and Avenue L, west of Avenue N). Roll call resulted as follows: Aye: Clouse, Lear, Nikkila, Lammers, Buschkoetter. Nay: None. Motion carried.

### **RESOLUTION NO. 2013-29**

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of Remington Heights Addition, an addition to the City of Kearney, Buffalo County, Nebraska for a tract of land being Lots 6 through 17, inclusive, Avenue L Place, a street in the City of Kearney, Nebraska, located South of 67th Street (now vacated), in Block Three, Bel Air Third Addition, an addition to the City of Kearney, Buffalo County, Nebraska, with said Lots 6 through 17, inclusive and said Avenue L Place in Block Three being located in part of the East Half of the Northeast Quarter of Section 24, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, all more particularly described as follows: Referring to the Northeast Corner of the Southeast Quarter of the Northeast Quarter of Section 24, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, and assuming the East line of the Southeast Quarter of the Northeast Quarter of Section 24 as bearing SOUTH and all bearings contained herein are relative thereto; thence SOUTH and on the East line of the Southeast Quarter of the Northeast Quarter of said Section 24 a distance of 320.00 feet to the Southeast Corner of Bel Air Third Addition; thence leaving the East line of the Southeast Quarter of the Northeast Quarter of Section 24, S89°59'00"W and on the South line of said Bel Air Third Addition a distance of 50.00 feet to the ACTUAL PLACE OF BEGINNING, said place of beginning being the

Southeast Corner of Lot 9, Block Three of said Bel Air Third Addition; thence continuing S89°59'00"W on the South line of Block Three of said Bel Air Third Addition a distance of 146.00 feet; thence N51°03'37"W and continuing on the South line of Block Three of said Bel Air Third Addition, a distance of 723.58 feet to the Southwest Corner of Lot 17, Block Three of said Bel Air Third Addition; thence N40°53'52"E a distance of 216.67 feet to the Northwest Corner of Lot 17, Block Three of said Bel Air Third Addition, said point being on the South line of 67th Street, a street in the City of Kearney, Buffalo County, Nebraska; thence EAST and on the South line of said 67th Street a distance of 189.03 feet to the Northwest Corner of Lot 5, Block Three of said Bel Air Third Addition; thence leaving the South line of said 67th Street, SOUTH a distance of 120.00 feet to the Southwest Corner of Lot 5, Block Three of said Bel Air Third Addition; thence EAST and on the South line of Lots 1 through 5, Block Three of said Bel Air Third Addition a distance of 378.00 feet to the Southeast Corner of Lot 1, Block 3 of said Bel Air Third Addition; thence SOUTH a distance of 498.51 feet to the place of beginning, containing 5.82 acres, more or less, 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 12TH DAY OF MARCH, 2013.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**VACATE GARY ADDITION AND REZONE EAST OF THE INTERSECTION OF AVENUE N AND 65TH STREET**

Public Hearings 3, 4 and 5 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Applications submitted by Buffalo Surveying Corp. (Applicant) for The Gary Family Trust (Owner) for (1) to vacate Lot 1, Gary Addition and consider Ordinance No. 7789; and (2) rezone from District RR-1, Rural Residential District (Rural Standards) to District R-1, Urban Residential Single-Family District (Low Density) property described as Lot 1, Gary Addition, a subdivision being part of the Southwest Quarter of the Northwest Quarter of Section 19, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska (east of the intersection of Avenue N and 65th Street) and consider Ordinance No. 7790. Planning

Commission recommended approval subject to street lighting be included on the Public Works Plan, that the City purchase Outlot B and make that City property or to have it dedicated to the City before this moves forward so that the liability and tax burden on the owner of that lot will not continue, and finally that the City consider the more appropriate route for the hike/bike trail north of what is identified as Outlot B on the adjacent property to the north.

The applicant is requesting approval to vacate an existing subdivision and replat the area into single-family lots. The land is currently zoned for rural residential housing and contains one existing residence. This property will need to be rezoned to R-1 to construct single-family homes. The new subdivision will also be annexed into the corporate limits of the City.

Lot 1 of Gary Addition containing some 11.72 acres is the subject of the vacation request. This property has been used as one large lot for a single residence since the mid 1990's. The new owner would like to replat this property into a 24-lot subdivision. The existing home is located on one lot and 22 additional buildable lots are proposed. Outlot A at the southeast corner of the subdivision will be used for a storm water detention cell. The proposed subdivision will be known as Starostka Estates Addition.

The property is currently zoned RR-1, Rural Large Lot Residential District with Rural Standards. Many improvements have been made to this area of the City since the 1990's and all city services and paved streets are now available. The property must be rezoned from RR-1 to R-1, Urban Single-Family Dwelling District to take advantage of the urban amenities. This property is designated for "Low Density Residential" on the Future Land Use Map of the City of Kearney Comprehensive Development plan so no amendment is required.

The preliminary and final plat for this property consist of 23 residential lots and Outlot A reserved for storm water detention and Outlot B containing a portion of the Northeast Drainage Channel. The Preliminary Plat was approved by Planning Commission on February 15, 2013. Outlot A will outfall into Outlot B, the Northeast Kearney Drainage Channel, which was constructed in partnership between the City, Buffalo County and Central Platte NRD. This regional drainage project was initiated several years ago to address increased flooding and damages to agricultural fields in areas northeast of the City as well as storm water runoff created by pre-1993 development that were not required to provide on-site detention. A 40-acre detention cell was constructed just east of the property under discussion, and a drainage channel was routed to the east from the detention cell through the airport and eventually on to the Wood River. Crossing the drainage channel with a roadway would be an expensive proposition for a modestly sized development such as this. City staff is agreeable with allowing two cul-de-sacs on this property while avoiding a bridge crossing. As the area continues to develop, a more suitable east to west connection will be established to serve property east and north of the drainage channel. Staff has reviewed the Final Plat and offers the following comments:

a) A Public Works Plan has been submitted for this subdivision. Proposed street lighting is not accounted for on the PW Plan. With the recent revisions to subdivision code requirements, street lighting must be coordinated between the developer and the electric service provider (usually NPPD) and shown on the PW Plan. Street lighting

includes the location of the light poles, conduit routing, and any required easements.

b) A Subdivision Agreement has been prepared. In compliance with the City's storm water policies, the developer, or an association of owners, are responsible for perpetual maintenance of Outlot A and the storm water easement leading to Outlot A. Long-term maintenance responsibilities for the adjacent NE Kearney Drainage Channel were established when the NE Drainage Project was completed in 2007 by way of an agreement between the City, County and NRD. The City's sole responsibility is the 40-acre detention cell itself, while the NRD holds the easements to the drainage channel and Buffalo County is obligated to maintain the waterway and slopes of the channel for its entire length. The county mows the channel two times per year, so it is basically a native or natural type area. The City of Kearney has no ownership or obligations to the drainage channel that abuts this proposed subdivision. The drainage channel carries the 100-year floodplain, which has been channelized as a result of the project, reducing the "footprint" of the floodplain, which makes more land available for use by abutting owners that was formerly unusable floodplain – including the property under discussion.

c) An existing 20-foot wide sanitary sewer easement follows the drainage channel on the south side. The alignment of the channel and the easement follow the abandoned railroad right-of-way corridor. The City Parks and Recreation Department has been investigating possible park or recreational uses for the 40-acre detention cell to the west. It would be highly desirable to tie trail connections into this future park site and we have an opportunity to provide a hike-bike trail within the 20-foot wide sanitary sewer easement. An east-west trail corridor at this location would provide future residents to the east access to the future park and the trail that runs north-south on the west side of Avenue N. Therefore, Staff is requesting that the north twelve feet of the existing 20-foot wide sanitary sewer easement be dedicated on the plat as a "Future No-Build Access, Trail and Maintenance Easement – No Structures, including fences, shall be erected within this easement." In this manner homeowners will not build fences to the north side of the sewer easement and encumber the access for a future trail or the ability for Buffalo County to gain access for maintenance of the NE Drainage Channel. The 12-foot width is the minimum required for the hike-bike trail, as the trail itself is eight feet wide with two-foot shoulders on either side.

The applicant took exception to items b and c listed above. It is his opinion that the City of Kearney should take ownership and be responsible for the maintenance of the NE drainage channel as it abuts this development. His reasoning is that "communal" water from a large area of the drainage basin affecting multiple property owners is accommodated by the drainage channel so it should be owned by the City. City staff does not agree for the following reasons:

- There is an existing agreement in place that allocates responsibilities between the three participating parties; the City of Kearney, Buffalo County, and the Central Platte NRD. As previously stated, City obligations for ownership and maintenance are limited to the 40-acre detention cell by that agreement. The Development Services Director contacted Milt Moravek at Central Platte NRD and Mr. Moravek stated that the agreement is perfectly adequate as-is and there is no reason to modify it.
- The City Attorney contacted Ron Bishop, Director of Central Platte NRD and he also confirmed that the agreement in place is functioning well and there is no reason for the City to own or maintain the drainage channel.
- A few years ago, the Planning Commission was concerned about long-term maintenance of storm water detention facilities and instructed staff to research the

issues and propose a solution. After several months of study, including tabling and continuing the discussion through several Planning Commission meetings, an acceptable solution was presented, favorably accepted by the Commission, and adopted by City Council. Perpetual maintenance of storm water facilities is assigned to the Developer of the property or an association of owners, such as a Homeowners Association or group of businesses that benefit from the detention provided. The City Code was amended accordingly; all subdivision agreements now include these maintenance provisions, as well as the certification/dedication block on all Final Plats. In all three of these documents maintenance responsibilities are the responsibility of the developer or owners, and not the City. There are limited exceptions to this policy, but only due to special circumstances. For example, the City does have obligations to maintain the 40-acre cell that is part of the NE Drainage project. This cell was created because on-site storm water detention was not required prior to 1990 and the upstream watershed was fully developed with no opportunity to create detention. The 40-acre detention cell captures this water and provides downstream detention. It is "communal" water from the City, and the City maintains the cell. However, communal detention cells are no longer needed because every new development requires storm water detention. Therefore, the simple question is why would the City accept ownership and maintenance of any portion of a drainage channel that is several miles long when the decision was firmly made in the recent past that developers or owners are required to maintain storm water detention cells, not the City. Should the City own and maintain Turkey Creek and all of the 100-year floodplain throughout the community? This is, in essence, what is being promoted when a private developer suggests that the City own and maintain this floodway.

- If the City were to take ownership of this section of the drainage channel a precedent would be set and the Council would be hard pressed to deny ownership of every other section of this channel or other sections of 100-year floodplain that may be annexed with all future development projects. Impacts to the City budget, staffing and equipment requirements would grow continually as more and more sections of the channels are added.
- City staff did not force the developer to choose this particular property for development. If the drainage channel is a concern, perhaps the developer should consider another location.
- The drainage channel provides direct benefit to the developer of this property because it offers a readily available outfall for the storm water collected in the detention cell proposed on Outlot A.

The Planning Commission discussed at length the ownership, maintenance and liability concerns associated with the drainage channel. They were especially concerned with liability issues and made a motion recommending that the City take ownership of the drainage channel by purchasing it or having the Owner dedicate it to the City, such that the Owner would not be burdened with taxes or liability for Outlot B.

The applicant also does not want to dedicate the 12-foot wide easement for a future hike-bike trail along the south side of the drainage channel. He suggested the north side of the channel as a more appropriate location. Part of his reasoning is the relatively shallow depth of the proposed lots abutting the channel. The depth of the lots is a self-imposed limitation as he designed the lot layout himself and could conceivably increase the depth of the lots. In any case, the City already has a 20-foot wide easement on the

south side of the drainage channel for sanitary sewer and if need be, could use a portion of the existing easement for a hike-bike trail corridor. This easement also provides an access corridor for Buffalo County to maintain the channel.

All City services are available to the property and the property is contiguous to the city limits. Therefore, this subdivision shall be annexed as an addition to the City of Kearney.

Mitch Humphrey from Buffalo Surveying presented this matter to the Council. When this project was originally brought to Planning Commission, the Gary Family Trust was the sole owner of the property. Since the Planning Commission approved this project, they and the Starostka Group decided to commence with the sales transaction. He is officially representing the Starostka Group for the project as it stands.

This project is located south and east of the project he previously discussed. It is located on a large tract of land that contains about 11.72 acres. Harold Gary and his wife built a house on a triangular piece of the property. On the northerly side, which is along the angled side of the large triangle is the old railroad right-of-way that went through at the time. Mr. Gary had acquired that land and wanted to do some things with it. They platted the property into Lot 1 of Gary Addition, zoned to a rural large lot which was a zoning classification they had at the time a number of years ago. The request is to divide this property into essentially 23 lots, plus an outlot which will be located in the southeast corner of the property.

A large portion of the property which skirts the northerly boundary (about 2 acres in size) is being designated as Outlot B. Outlot B is a tract of land that was granted by easement as part of the Northeast Kearney Drainage project to the Central Platte NRD. There has been a lot of discussion about that, but at this time they are just requesting to create that as an outlot. The storm water that this project creates will essentially be directed to outlot A which is in the southeast corner of the property right behind Lots 9 and 10 as shown. The storm water generated from this property will then be let go into that stream as is the case with any project where they must have onsite detention. As far as the feasibility of the public works, the public sewer and water for this project will drain down the middle of the streets and go back into Avenue N. The site drainage is from the west to east then to the northeast. The storm sewers will be configured and placed such as the water ends up in Outlot A and on to the drainage ditch.

Recently, there seems to be a significant amount of emphasis on the placement of street lights in developments. The street lights will be or have been addressed with the design of the paving, water and sewer project that will be developed for this project.

City Attorney Michael Tye stated he wanted to comment on some of the questions about Outlot B and provide Council with some background information on what the ditch is, how it was created, and why City staff would not recommend that they would own the ditch that is Outlot B. The City does not have legal authority at this meeting to acquire the property. There would have to be a separate public hearing with all of the property owners involved before even acquiring that property. By law, the meeting would have to be published to hold a public hearing. The NRD owns a drain way easement across that area so they own that interest in the property. This is part of a larger drainage

project that drains all the way to the Wood River. It is subject to the 3-way interlocal agreement, including the City of Kearney, Buffalo County and the NRD that has been in place for a number of years. The City, County and the NRD contributed financially. The NRD went out and acquired the drainage easement and paid the then property owner for the right to run a ditch across their property, so that owner would have been compensated at the time it was built. As part of that interlocal agreement, the NRD acquired the easement, but Buffalo County provides maintenance so maintenance is included in that document. The property owner is not obligated to do any maintenance of the ditch or responsible if the maintenance is not completed. The ditch is something that has been there for a number of years of which the property owner was aware. This also makes the land in this area (not just this property) more usable because it reduces the floodplain footprint. It has benefited this property in some respects.

If the Council were to proceed, as has been proposed, that would violate a policy that has already been established by Planning Commission and City Council. The issue of acquiring detention cells, drain ways, etc. was discussed in a number of Planning Commission meetings. Ultimately, the Planning Commission decided those types of things should be owned by the developer or they should be owned by an association. This one is not quite the same in some respects in that it is not purely a detention cell but part of a larger project. The intent of the policy is that it not be owned by private property owners. In terms of the function of the easement today, it drains the property which is what it is supposed to do. He was not aware of any public need or purpose to acquire the property. The function of the NRD owning that property is to have a drain way there which is what it is currently doing.

After Planning Commission, Mr. Tye stated that he talked to Ron Bishop, the executive director of the NRD. He had worked with Mr. Bishop before when the City acquired the 40-acre cell that is farther upstream. Mr. Bishop stated that he did not see the need for the City to own that property or a need to change the interlocal agreement that is in place because it is functioning as intended. He stated the reason they acquired that 40-acre parcel was the potential to use that parcel for a park in the future. When that parcel was acquired from the NRD, there is a long list of things the City cannot do with that property such as permanent structures or anything that interfere with that drainage system which is why it was built in the first place.

City Attorney further stated his understanding is that the property owner wants to pass this property on to the City, to possibly alleviate liability or some other reason unknown to him. The ditch was there when the property was purchased so the purchaser was aware that it was part of the property. The property owner has the options to provide it to the homeowners association, continue to own it or divide up the lots and a person could own property adjacent to the ditch which would be no different than owning property adjacent to a stream, lake or some other waterway. There are all kinds of situations where that occurs, but people do not come to the City and say I want to give you this property because I do not want to be sued. He was not aware of any public purpose that would be served in transferring that property to the City of Kearney.

Mayor Clouse asked if we had encountered a situation like this in Eastbrooke where outlot B ties into that subdivision. There has not been any outlot or acquisition of any of the ditch on any other parcels that he was aware of. There has not been any outlot that

has been created for the ditch as it flows down through Eastbrooke or any request to transfer that to the City of Kearney. Mayor Clouse stated he did not understand why the City would want to entertain ownership of this little triangle that does not fit with anything else the City has done along the whole system. City Attorney stated this is just a separate triangular parcel that was owned by one owner (not sure if he was the owner when the NRD came through and acquired a drainage easement for this property) but there was money paid for that easement. The agreement has been in place ever since. The City has not acquired the ditch anywhere else as it flows.

Council member Lammers stated he did not see it difference from any of the housing associations that have small lakes under their control and have not asked the City to take care of them. He believed there were numerous examples of that throughout the community.

Mitch Humphrey stated that the drainage project was created as a man-made solution to a drainage issue where the citizens of Kearney took a part in generating that storm water runoff. The ditch was put in place by agreement primarily by owners of large pieces of property to protect their farm land as the City grew. This parcel is a short strip of property in the eyes of some. He believed this strip across this land that was zoned RR-1 perhaps should have been incorporated into the detention cell. That was the thought process they used with the request to the Planning Commission. Regarding the comment that this is the same as other detention cells, he respectfully disagreed. He stated the owner and many others look at this as a communal conduit where it is taking public storm water from the northeast part of town and funneling it through this property. This is not just taking care of the local or regional bit of storm water. It is taking care of northeast Kearney. That is what prompted those discussions at Planning Commission. Mr. Humphrey stated they will abide by whatever decision is made.

He stated he helped Camron Inc. (Tim Norwood) with the Eastbrooke project a number of years ago when there were some discussions as they went through the process regarding who should own that, etc. At the present time, the association owns that drain (called The Brooke). There is some water that comes from the south that drains into it, but there is a lot of water that comes in off the subdivision and ultimately makes its way up to a large detention cell that detains the water before it goes on into this NRD ditch. He just wanted to clarify they are different because the NRD ditch does not go through Eastbrooke. City Attorney asked as it develops east should it be owned by the City. Mr. Humphrey stated that there are some who believe it should. City Attorney asked if he believed it should also be owned going west back into the City. Mr. Humphrey stated at least up to the communal detention cell. City Attorney stated that would include Lost Lake, Stoneridge Lake, Imperial Lake, etc. which are in the same drainage base, but are smaller.

Mr. Humphrey stated that although those are privately owned, they were developed many years ago before the City had a real handle on storm water management as a community. He stated this issue is not unusual as many communities have had to address this issue over time. City Attorney stated this is the reason why the codes were changed so that the City requires on site storm water detention today so they do not have these issues. Under prior code sections, that requirement did not exist. The reason these detention cells are now part of development is to avoid issues if someone

does not take care of their storm water runoff which can then become a larger issue.

Mayor Clouse asked if the Council could proceed on these three hearings without addressing this issue. He wanted to know if this issue affects the rezoning and the replat. Mitch Humphrey stated that he believed they could plat it as an outlot and proceed. If the City should want to come back to the owner and say they want to study the issue in the future that would be fine with him. Mayor Clouse believed this is a very significant issue and he would want the City Manager and his staff to assess the cost to tax payers before setting this kind of precedent.

City Manager Michael Morgan stated it is challenging when the property owner knew what they were getting into, the previous property owner was compensated and this property benefits from it. He stated if they did not have this drainage channel, this property owner would have to do something greater and better than what they are doing on their own today which would be to build a bigger cell. As a result the owner is saving money. The Planning Commission and the Council have discussed this extensively and the citizens as a whole do not benefit from this and should not see costs associated with it. He did not see it as a City issue or how it got decided to be a City issue when there is already a policy and an interlocal agreement that covers it.

The question was raised about having to pay taxes on easements. City Manager stated that most citizens pay taxes on easements because they have to be maintained. He believed that the liability question was a fair question. He suggested to Mr. Humphrey that he or the property owner could call the NRD or Buffalo County if the maintenance is not being done in accordance with the agreement. They would have the right to raise that issue. As a City, it is neither prepared to take these, nor does it want these. These are development related expenses and that is part of doing development.

Council member Buschkoetter stated he agreed with the City Manager. Every time it rains, there is water that flows through one of two things; a conduit that was created by man or conduit that was developed by nature. In either case, when this property was purchased that conduit was already there and purchased with the knowledge that it was there. Storm water has to be managed in the best way possible and we have dramatically improved the ways to do it. He recalled before he became a Council member, there was tremendous flooding in that area, especially around the fairgrounds area. They have since changed some policies to insure things like that do not happen again. It is possible that along the way some engineers or the City have made some mistakes in terms of how we flow water through there, but those decisions were made before that property was purchased. It makes sense to work with what is there. If that devalued the property, it should have been reflected when it was purchased. In a sense, this property owner has been compensated by purchasing at a lower rate. However, that should be on the owner, not on the City. Although he is sympathetic, he does not know why the City would want to set a new precedent and go against the policy it has already set.

Council member Nikkila stated that it was not clear to him in reading the Planning Commission notes about the liability issue versus the property owner or the NRD if something happens. Although not a City issue, the City does have a trail easement in the northeast area of that property. He asked what is the City's liability if someone is on

the trail and slips on the ice and falls into the ditch. City Attorney stated if there is something related to the City's use of the property there it could potentially be a liability to the City. There are differences in liability between a municipality and a private citizen. There are some statutory restrictions on how much the City can be liable and for what depending on the activity. If it is use of the trail and it has not been properly maintained by the City, then there is potential liability. If it something that has to do with the property owner who was negligent on their part, they could potentially be liable as well. Most people would have a home owner's insurance policy to deal with liability questions. When a person purchases a piece of property and knows that ditch is there, that is something that is covered by their insurance as part of their property. The one thing that the maintenance by a public entity does do is it takes away the liability as a result of maintenance or upkeep because that is the responsibility of somebody else. If there is a failure to maintain, that is on the County in this situation because they have agreed to provide the service. The trail agreements transfer the liability along the entire trail to the City and to provide the maintenance.

City Attorney further stated that in answer to the Mayor's question, the Council may proceed based on what the applicant wants to do with their plat as it was presented. It is their choice to leave that Outlot B or rework their plat and bring it back and include that in lots. City Manager added that it would have to be platted with the condition if Council so chose not to transfer the property on the record. That is what the Planning Commission had recommended. City Attorney stated if the City is not interested in acquiring that property the Council needs to indicate without that recommendation from Planning Commission on suggesting acquiring Outlot B.

Mitch Humphrey stated that City staff requested that they place a trail easement along the backsides of the lots and Outlot A along the northeasterly portion of the subdivision which is outside of Outlot B. The owner does not want to do this. Some of those lots are not very deep. In this case, the trail would really encroach on the back/rear yards of those lots. Although there is a sanitary sewer easement for the large interceptor sewer that cuts through there, it still cuts through the backsides of those lots. If someone were to put up a fence for privacy, that could take out 20+ feet of rear yard. The connection to the trail (if it were built) would be on the southerly side of the Remington Heights or the Bel Air Third Addition which would line up with the ground that would be on the northerly side of the ditch. City Manager asked if there was discussion of placing the trail on Avenue N. Mr. Humphrey stated the concept would be to make a link with that trail that is in Eastbrooke. The trail ends because of the detention cell, but it is set up so there could be a bridge or a walkway across there. At that time, Mr. Norwood and the City did not really know what direction to go with the trail.

City Manager stated he believed there is a balancing act from a property owner's standpoint on a narrow lot with the drainage channel given the fact that some folks would prefer to fence in their yard for their own piece of mind. He had some reservations about the trail placement. His thought was that it is wonderful to get these trails, but at the same time there should be a balancing act. If he were the property owner, he would be considering a fence just to keep people out. He believed that Planning Commission had a legitimate concern and Council could forgo the trail. There is a trail on the west side of Avenue N. Since Avenue N is very busy, they do not want to cross it in very many places.

Council member Nikkila suggested using the sidewalk along 63rd Street and Avenue N. There is not a strong need for someone from that part of Eastbrooke to go that way because they could go south. Council agreed that some compromises need to be made regarding connecting the trail as in this case for developers. City Manager stated they need to be looking at the cost of these trails and having one available across the street in the same area. He also said that from a Park & Recreation standpoint, it is fairly challenging to maintain what we already have. This is a unique piece of property and not easy to develop just because of its shape and the outlot of the channel. It is difficult for a developer to be required to put the trail in immediately when it could possibly be ten years before it is ever connected. It would make more sense to do this one if this were the only missing link in the trail.

Mitch Humphrey stated that the owner was in no way trying to skirt the issue. The owner does want to continue without any delay. After talking to the NRD, they do not want to create any lots across that because the owners may assume a little more ownership than they really have and start collecting trees, trash, etc. which is what they want to avoid. That is why they elected to show it as an outlot.

There was no one present in opposition to this hearing.

Moved by Clouse to close the public hearing and introduced Ordinance No. 7789 on the Application submitted by Buffalo Surveying Corp. (Applicant) for The Gary Family Trust (Owner) to vacate Lot 1, Gary Addition; and Ordinance No. 7790 on the Application submitted by Buffalo Surveying Corp. (Applicant) for The Gary Family Trust (Owner) to rezone from District RR-1, Rural Residential District (Rural Standards) to District R-1, Urban Residential Single-Family District (Low Density) property described as Lot 1, Gary Addition, a subdivision being part of the Southwest Quarter of the Northwest Quarter of Section 19, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska (east of the intersection of Avenue N and 65th 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 close the hearing and suspend the rules for Ordinance Nos. 7789 and 7790. 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, Nikkila, Lammers, Buschkoetter, Lear. 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 Nos. 7789 and 7790 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Nikkila, Lammers, Buschkoetter, Lear. Nay: None. Motion carried. Ordinance was read by number.

Moved by Lammers seconded by Nikkila that Ordinance Nos. 7789 and 7790 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear, Nikkila. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance Nos. 7789 and 7790 are 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.

### **FINAL PLAT FOR STAROSTKA ESTATES ADDITION**

Public Hearings 3, 4 and 5 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Buffalo Surveying Corp. (Applicant) for The Gary Family Trust (Owner) for the Final Plat and Subdivision Agreement for Starostka Estates Addition to the City of Kearney, Buffalo County, Nebraska for property described as Lot 1, Gary Addition, a subdivision being part of the Southwest Quarter of the Northwest Quarter of Section 19, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska (east of the intersection of Avenue N and 65th Street) and consider Resolution No. 2013-30.

There was no one present in opposition to this hearing.

Moved by Nikkila seconded by Lear to close the hearing and adopted **Resolution No. 2013-30** approving the Application submitted by Buffalo Surveying Corp. (Applicant) for The Gary Family Trust (Owner) for the Final Plat and Subdivision Agreement for Starostka Estates Addition to the City of Kearney, Buffalo County, Nebraska for property described as Lot 1, Gary Addition, a subdivision being part of the Southwest Quarter of the Northwest Quarter of Section 19, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska (east of the intersection of Avenue N and 65th Street) noting the City will not purchase Outlot B and without the trail easement requirements. Roll call resulted as follows: Aye: Clouse, Nikkila, Lammers, Buschkoetter, Lear. Nay: None. Motion carried.

### **RESOLUTION NO. 2013-30**

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of Starostka Estates Addition, an addition to the City of Kearney, Buffalo County, Nebraska for a tract of land being Lot 1, Gary Addition (now vacated), a subdivision being part of the Southwest Quarter of the Northwest Quarter of Section 19, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska, with said Lot 1, Gary Addition being more particularly described as follows: Referring to the Southwest Corner of the Northwest Quarter of Section 19, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska, said point also being the Southwest Corner of said Gary Addition, and assuming the West line of the Northwest Quarter of said Section 19 as bearing NORTH and all bearings contained herein are relative thereto: thence S89°58'12"E on the South line said Northwest Quarter of Section 19 and the South line of said Gary Addition a distance of 40.0 feet to the ACTUAL PLACE OF BEGINNING, said point being the Southwest Corner of Lot 1, Gary Addition and said point being on the East line of Avenue N, a street in the City of Kearney, Buffalo County, Nebraska as shown on the plat and dedication of said Gary Addition filed at Instrument No. 1995-2063, recorded on November 29, 1995 in the Office of the Buffalo County Register of Deeds; thence continuing S89°58'12"E on the

South line of the Northwest Quarter and on the South line of said Gary Addition a distance of 1124.26 feet to the Southeast Corner of said Lot 1, Gary Addition; thence N51°03'37"W on the Northeasterly line of said Lot 1, Gary Addition a distance of 1445.42 feet to the Northwest Corner of said Lot 1, Gary Addition, said point also being on the East line of said Avenue N; thence SOUTH parallel with and 40.0 feet Easterly of the West line of said Northwest Quarter of Section 19 and on the West line of said Gary Addition and on the East line of said Avenue N a distance of 907.86 feet to the place of beginning, containing 11.72 acres, more or less, 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 12TH DAY OF MARCH, 2013.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**ANNEXATION EAST OF THE INTERSECTION OF AVENUE N AND 65TH STREET**

Public Hearings 3, 4 and 5 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Buffalo Surveying Corp. (Applicant) for The Gary Family Trust (Owner) for the annexation of Starostka Estates Addition to the City of Kearney, Buffalo County, Nebraska for property described as Lot 1, Gary Addition, a subdivision being part of the Southwest Quarter of the Northwest Quarter of Section 19, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska (east of the intersection of Avenue N and 65th Street) and consider Resolution No. 2013-31.

There was no one present in opposition to this hearing.

Moved by Lear seconded by Buschkoetter to close the hearing and adopt **Resolution No. 2013-31** approving the Application submitted by Buffalo Surveying Corp. (Applicant) for The Gary Family Trust (Owner) for the annexation of Starostka Estates Addition to the City of Kearney, Buffalo County, Nebraska for property described as Lot 1, Gary Addition, a subdivision being part of the Southwest Quarter of the Northwest Quarter of Section 19, Township 9 North, Range 15 West of the 6th P.M., Buffalo County,

Nebraska (east of the intersection of Avenue N and 65th Street). Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear, Nikkila. Nay: None. Motion carried.

### **RESOLUTION NO. 2013-31**

WHEREAS, an Application has been submitted by Buffalo Surveying Corp. (Applicant) for The Gary Family Trust (Owner) for the inclusion of Starostka Estates Addition, an addition within the corporate boundaries of the City of Kearney said property described as a tract of land being Lot 1, Gary Addition, a subdivision being part of the Southwest Quarter of the Northwest Quarter of Section 19, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska, with said Lot 1, Gary Addition being more particularly described as follows: Referring to the Southwest Corner of the Northwest Quarter of Section 19, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska, said point also being the Southwest Corner of said Gary Addition, and assuming the West line of the Northwest Quarter of said Section 19 as bearing NORTH and all bearings contained herein are relative thereto: thence S89°58'12"E on the South line said Northwest Quarter of Section 19 and the South line of said Gary Addition a distance of 40.0 feet to the ACTUAL PLACE OF BEGINNING, said point being the Southwest Corner of Lot 1, Gary Addition and said point being on the East line of Avenue N, a street in the City of Kearney, Buffalo County, Nebraska as shown on the plat and dedication of said Gary Addition filed at Instrument No. 1995-2063, recorded on November 29, 1995 in the Office of the Buffalo County Register of Deeds; thence continuing S89°58'12"E on the South line of the Northwest Quarter and on the South line of said Gary Addition a distance of 1124.26 feet to the Southeast Corner of said Lot 1, Gary Addition; thence N51°03'37"W on the Northeasterly line of said Lot 1, Gary Addition a distance of 1445.42 feet to the Northwest Corner of said Lot 1, Gary Addition, said point also being on the East line of said Avenue N; thence SOUTH parallel with and 40.0 feet Easterly of the West line of said Northwest Quarter of Section 19 and on the West line of said Gary Addition and on the East line of said Avenue N a distance of 907.86 feet to the place of beginning, containing 11.72 acres, more or less, Buffalo County, Nebraska; and

WHEREAS, the Kearney City Planning Commission has received and held a public hearing on February 15, 2013 on the inclusion of Starostka Estates 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 Starostka Estates Addition, an addition to the City of Kearney, Buffalo County, Nebraska; and

WHEREAS, a public hearing was held by the Kearney City Council relating to said application on March 12, 2013 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 Starostka Estates 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 Starostka Estates 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 12TH DAY OF MARCH, 2013.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**REZONING NORTH OF 66TH STREET AND WEST OF 2ND AVENUE**

Public Hearings 6 and 7 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Miller & Associates (Applicant) for Aaron and Austin Broadfoot (Owner) to rezone from District AG, Agricultural District to District RR-1, Rural Residential District (Rural Standards) property described as a tract of land being in part of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (north of 66th Street and west of 2nd Avenue) and consider Ordinance No. 7791. Planning Commission recommended approval.

The applicant is requesting approval to rezone and subdivide a two-lot subdivision for rural residential housing. The property is located on the north side of 66th Street approximately 1,000 feet west of 2nd Avenue. A portion of the property is already suitably zoned, but additional land needs to be rezoned to meet the developer's intent.

Approximately 5.13 acres contained within the two proposed lots is currently zoned RR-1, Rural Residential District with Rural Standards. An additional 1.69 acres needs to be rezoned from AG to RR-1 to encompass all of the land area as RR-1 in the two proposed lots (total 6.82 acres). The Future Land Use Map of the City of Kearney Comprehensive Development Plan depicts the land use category for this property as "Low Density Residential." Therefore, no amendments are required to the land use map.

The Preliminary and Final Plats for this property consist of two lots, the southerly Lot 1 comprising 3.62 acres, and the north Lot 2 containing 3.20 acres. The Preliminary Plat was approved by Planning Commission on February 15, 2013. The two lots take access from a 50-foot wide ingress-egress easement off of 66th Street that terminates in a cul-de-sac bulb. Rural residences served by individual well and septic systems with gravel road surfacing will be constructed here. There is a significant amount of stormwater drainage through this area and the 100-year floodplain is adjacent to these lots on the west side. The floodplain encroaches some 30 to 40 feet into Lot 1 but will not affect the ability to build a home on the lot. No Public Works Plan is required. A Subdivision Agreement has been prepared by the City stating that the Owners will not protest annexation or improvement districts in the future. Previous phases of the Austin Estates development have provided easements to construct sanitary sewer along the floodplain in the future. A 25-foot permanent sanitary sewer easement and a 25-foot temporary construction easement for the installation of the sewer west of these two lots will be needed in the future.

Luke Dutcher from Miller & Associates presented this matter to the Council. Austin Estates Fifth is located west of 2nd Avenue and north of 66th Street. The existing land use for this area is for low density residential, consisting of 5.13 acres. There is a parcel on the north that is zoned AG and that is being requested to be rezoned to RR-1. There is a floodplain and a floodway that is adjacent to this property on the west border. The floodplain does encroach on the parcel, but the vast majority of the land that remains is buildable even with the floodplain in place. The preliminary plat shows two rural residential lots. Lot 1 is 3.62 acres and Lot 2 is 3.02 acres. There are no existing City utilities in this area, so both of these lots would be served by wells and septic systems. Drainage is generally from east to west down to the floodplain. The proposed final plat development shows access off of 66th Street. There is a platted ingress/egress easement which will be graveled that goes across there which is 50 feet wide and culminates in a 100 foot diameter cul-de-sac at the north end.

There was no one present in opposition to this hearing.

Moved by Buschkoetter to close the public hearing on the Application submitted by Miller & Associates (Applicant) for Aaron and Austin Broadfoot (Owner) to rezone from District AG, Agricultural District to District RR-1, Rural Residential District (Rural Standards) property described as a tract of land being in part of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (north of 66th Street and west of 2nd Avenue) and introduced Ordinance No. 7791 and placed on first reading. Council Member Clouse seconded the motion to close the hearing for Ordinance No. 7791. 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, Buschkoetter, Lear, Nikkila, Lammers. Nay: None. City Clerk read Ordinance No. 7791 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lear, Nikkila, Lammers. Nay: None. Motion carried. Ordinance was read by number.

Moved by Clouse seconded by Lammers that Ordinance No. 7791 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lear, Nikkila, Lammers, Buschkoetter. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7791 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.

It was noted that the motion was not made correctly; therefore, the following is the correct motion.

Moved by Lear to close the public hearing on the Application submitted by Miller & Associates (Applicant) for Aaron and Austin Broadfoot (Owner) to rezone from District AG, Agricultural District to District RR-1, Rural Residential District (Rural Standards) property described as a tract of land being in part of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (north of 66th Street and west of 2nd Avenue) and introduced Ordinance No. 7791 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 close the hearing and suspend the rules for Ordinance No. 7791. 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, Buschkoetter, Lear, Nikkila, Lammers. 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. 7791 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lear, Nikkila, Lammers. Nay: None. Motion carried. Ordinance was read by number.

Moved by Buschkoetter seconded by Clouse that Ordinance No. 7791 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lear, Nikkila, Lammers, Buschkoetter. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7791 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.

### **FINAL PLAT FOR AUSTIN ESTATES FIFTH SUBDIVISION**

Public Hearings 6 and 7 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Miller & Associates (Applicant) for Aaron and Austin Broadfoot (Owner) for the Final Plat and Subdivision Agreement for Austin Estates Fifth Subdivision, Buffalo County, Nebraska for property described as a tract of land being in part of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (north of 66th Street and west of 2nd Avenue) and consider Resolution No. 2013-32.

There was no one present in opposition to this hearing.

Moved by Lammers seconded by Nikkila to close the hearing and adopt **Resolution No. 2013-32** approving the Application submitted by Miller & Associates (Applicant) for Aaron and Austin Broadfoot (Owner) for the Final Plat and Subdivision Agreement for Austin Estates Fifth Subdivision, Buffalo County, Nebraska for property described as a tract of land being in part of the Northeast Quarter of Section 23, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (north of 66th Street and west of 2nd Avenue). Roll call resulted as follows: Aye: Clouse, Nikkila, Lammers, Buschkoetter, Lear. Nay: None. Motion carried.

### **RESOLUTION NO. 2013-32**

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of Austin Estates Fifth Subdivision of Buffalo

County, Nebraska for a tract of land located in part of the Northeast Quarter Section 23, Township 9 North, Range 16 West of the 6th P.M, Buffalo County, Nebraska, more particularly described as follows: Beginning at the Southwest Corner of Lot 1, Block Two, Heiden Second Subdivision, City of Kearney, Buffalo County, Nebraska (said point also lying on the North Right-of-Way of 66th Street as platted on Austin Estates Third Addition to said City), and assuming the West line of said Lot 1 as bearing N00°21'25"W and all other bearings shown hereon relative thereto; thence Northwesterly on said Northerly right-of-Way along a non-tangent curve to the right having a central angle of 19°22'19", a radius of 600.00 feet, an arc length of 202.86 feet, and a chord bearing N69°49'41"W a distance of 201.90 feet; thence continuing on said North Right-of-Way tangent to said curve N60°08'31"W a distance of 118.05 feet to the beginning of a tangent curve to the left having a central angle of 33°06'56", a radius of 233.00 feet and an arc length of 134.67 feet to the Easterly Right-of-Way of 68th Street as platted Austin Estates Fourth Addition to said City; thence N11°24'00"W on said Easterly Right-of-Way a distance of 11.07 feet to the beginning of a tangent curve to the left having a central angle of 10°42'12", a radius of 233.00 feet, and an arc length of 43.53 feet; thence non-tangent to said curve and leaving said Right-of-Way N42°21'54"E a distance of 170.22 feet; thence N27°55'40"E a distance of 204.07 feet; thence N07°31'11"E a distance of 98.05 feet; thence N18°26'52"W a distance of 177.52 feet; thence N15°46'52"E a distance of 107.04 feet; thence N00°16'14"W a distance of 63.22 feet; thence N31°59'25"W a distance of 114.53 feet; thence N32°55'56"E a distance of 71.04 feet; thence S84°41'43"E a distance of 99.83 feet; thence N66°35'56"E a distance of 169.43 feet to a point on said West line of Lot 1, if extended; thence S00°21'25"E on said West line a distance of 1164.18 feet to the Point of Beginning, containing 6.82 acres, more or less, Buffalo County, Nebraska duly made out, acknowledged and certified, and the same hereby is approved in accordance with the terms and requirements of Sections 16-901 through 16-904 inclusive, R.R.S. 1943 (as amended) be accepted and ordered filed and recorded in the Office of the Register of Deeds, Buffalo County, Nebraska.

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 12TH DAY OF MARCH, 2013.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**CONDITIONAL USE PERMIT TO VIAERO WIRELESS AND GOOD SAMARITAN HOSPITAL TO CO-LOCATE TELECOMMUNICATIONS**

Mayor Clouse opened the public hearing on the Application submitted by Good Samaritan Hospital (Owner) and NE Colorado Cellular, Inc., dba Viaero Wireless (Applicant) for a Conditional Use Permit as provided in Paragraph H of Section 46-110

“Telecommunications Towers” of Chapter 46 “Supplemental Use Regulations” of the City Code to co-locate telecommunications equipment for wireless communications consisting of the Viaero equipment cabinet, a point to point antenna, three exterior sections, two interior sections and two repeaters at the Good Samaritan Hospital on property zoned District C-O/PD, Office/Planned Development Overlay District and described as Lot 1 of Block 1, Good Samaritan Fourth Subdivision, a subdivision to the City of Kearney, Buffalo County, Nebraska (10 East 31st Street, 111 and 123 West 31st Street, 104 West 33rd Street, 3320 Avenue A) and consider Ordinance No. 7792. Staff recommends approval subject to compliance with the conditions set forth in the ordinance.

The applicant is requesting approval of a Conditional Use Permit (CUP) to install telecommunications equipment for Viaero Wireless on the roof of the hospital building located at 10 East 31st Street. The property is zoned C-O/PD. Viaero has an agreement with Good Samaritan Hospital to install antennas and associated equipment to upgrade to 4G service which will basically be to serve the hospital campus.

Viaero would like to get the antennas up as soon as possible and asked DRT if there was a way they could skip the CUP process and just apply for a building permit? A CUP is required; however, Code does allow for expedited processing as an incentive to encourage co-location, so Viaero can skip presentation of the CUP to Planning Commission and take their application directly to City Council. DRT staff also had a question regarding the number of structures going on the building. The PowerPoint that was presented stated 12 antennas would be placed on the exterior of the facility; but it is unclear whether there will be 3 sets of 4 antennas or 12 separate antennas? This question needs to be clarified for the City Council.

A structural analysis report from a structural engineer licensed in the state of Nebraska will be required as part of the CUP application. Even though a tower is not being erected, staff has no idea of the weight or mounting requirements for the new equipment. Some of the equipment will be located inside the building. Staff has requested a letter from Good Samaritan Hospital acknowledging the right for Viaero to install their equipment on the hospital property. There are currently other telecommunications co-locators on the roof of the hospital. A CUP was granted to Alltel, which would now be Verizon, to co-locate on the hospital roof in 2003.

Chris Riha from Viaero Wireless presented this matter to the Council. This proposal is for a Conditional Use Permit for the cell site on top of Good Samaritan Hospital. They will also have interior antennas within the hospital which will be for use by employees, patients and their visitors. It will be 2G/4G which is where everything is going. It will serve the hospital and the immediate outside area. Viaero Wireless will be responsible for the installation and commissioning the campus with the 4G cellular data system. They will design it with Good Samaritan because when working with interior walls cooperation is the key in installation. They will eventually come to a formal written agreement with Good Samaritan after it is all fine-tuned. The guts of the hardware for the outside will be three exterior sectors and each sector can have from 3-4 antennas on it. Also, on the exterior will be a microwave dish to pipe in the phone calls and data to and from another cell tower with a microwave dish. There will be two interior sectors located within the older section of the hospital and the newer north front. There will also

be two repeater antennas on the west wing. He presented slides to show locations of all exterior equipment.

There was no one present in opposition to this hearing.

Moved by Nikkila to close the public hearing on the Application submitted by Good Samaritan Hospital (Owner) and NE Colorado Cellular, Inc., dba Viaero Wireless (Applicant) for a Conditional Use Permit as provided in Paragraph H of Section 46-110 "Telecommunications Towers" of Chapter 46 "Supplemental Use Regulations" of the City Code to co-locate telecommunications equipment for wireless communications consisting of the Viaero equipment cabinet, a point to point antenna, three exterior sections, two interior sections and two repeaters at the Good Samaritan Hospital on property zoned District C-O/PD, Office/Planned Development Overlay District and described as Lot 1 of Block 1, Good Samaritan Fourth Subdivision, a subdivision to the City of Kearney, Buffalo County, Nebraska (10 East 31st Street, 111 and 123 West 31st Street, 104 West 33rd Street, 3320 Avenue A) subject to compliance with the conditions set forth in the ordinance and introduced Ordinance No. 7792 and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Lear seconded the motion to close the hearing and suspend the rules for Ordinance No. 7792. 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, Lammers, Buschkoetter, Lear, Nikkila. 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. 7792 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear, Nikkila. Nay: None. Motion carried. Ordinance was read by number.

Moved by Lear seconded by Buschkoetter that Ordinance No. 7792 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Nikkila, Lammers. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7792 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.

### **PROPOSED AMENDMENTS TO CHAPTERS 8, 46 AND 47 OF THE CITY CODE**

Mayor Clouse opened the public hearing on the proposed amendments to Section 46-102 "Supplemental Use Regulations: Agricultural Uses" of Chapter 46 "Supplemental Use Regulations" to delete the language regulating Animal Production in the RR-1 and RR-2 Districts in Paragraph B and replace with regulating of Keeping Animals in Residential Zoning Districts; to delete the requirement of separation from residential uses for animal production use types in Paragraph C and to regulate the disposal of

waste for animal production to be conducted for premises outside the corporate limits of the City and to Section 47-105 "Accessory Buildings" of Chapter 47 "Supplement Development Regulations" to delete in its entirety the language entitled \*Animal Production in the RR-1 and RR-2 Districts and to reference the regulations set forth in Section 46-102; to amend Section 8-1301 "Definitions" of Article 13 "Animals Generally" of Chapter 8 "Police" to define domestic animals, fowl, household pets, large animal pets, and livestock; to amend Section 8-1302 "Enforcement" of Article 13 "Animals Generally" of Chapter 8 "Police" to provide regulations for the keeping of animals in residential zones as listed in Section 46-102; to amend Section 8-1309 "Horses, Cattle, etc. at Large or Tethered" of Article 13 "Animals Generally" of Chapter 8 "Police" to rename the section to "Wild Animals Prohibited Within the City Limits"; to amend Section 8-1310 "Hitching, etc. Animals Near Trees" of Article 13 "Animals Generally" of Chapter 8 "Police" to rename the section to "Large Animal Pets, Livestock, and Fowl Prohibited Within the City Limits" and to provide clarifications; to delete in its entirety Section 8-1311 "Fowl at Large" of Article 13 "Animals Generally" of Chapter 8 "Police"; to delete in its entirety Section 8-1435 "Keeping Wild Animals" of Article 14 "Pets" of Chapter 8 "Police"; to delete in its entirety Section 8-1436 "Minimum Areas for Enclosures" of Article 14 "Pets" of Chapter 8 "Police"; to delete in its entirety Section 8-1437 "Shelter Required; Permitted Locations" of Article 14 "Pets" of Chapter 8 "Police"; to amend Section 8-1438 "Sanitary Regulations" of Article 14 "Pets" of Chapter 8 "Police" to remove the reference animals or fowl and replace with household pets; and to rename Article 14 "Pets" to "Household Pets" of Chapter 8 "Police" all in the Code of the City of Kearney and consider Ordinance No. 7793. Planning Commission recommended approval of the amendments to Chapters 46 and 47.

City Planner Lance Lang presented this matter to the Council. The Kearney City Council recently took action on the issue of chickens in residential neighborhoods, banning them from neighborhoods within the City but continuing to allow them, as well as other animals, in the two-mile extraterritorial jurisdiction (ETJ). As a result, Staff has prepared proposed amendments to update the following sections of the zoning regulations that address the keeping of animals:

- Amend Section 46-102 "Supplemental Use Regulations: Agricultural Uses" of Chapter 46 "Supplemental Use Regulations".
- Amend Section 47-105 "Accessory Buildings" of Chapter 47 "Supplement Development Regulations".
- Amend Section 8-1301 "Definitions" of Article 13 "Animals Generally" of Chapter 8 "Police".
- Amend Section 8-1309 "Wild Animals Prohibited within the City Limits" of Article 13 "Animals Generally" of Chapter 8 "Police" of the Kearney City Code.
- Amend Section 8-1310 "Large Animal Pets, Livestock, and Fowl Prohibited within the City Limits" of Article 13 "Animals Generally" of Chapter 8 "Police".
- Delete in its entirety Section 8-1311 "Fowl at Large" of Article 13 "Animals Generally" of Chapter 8 "Police".
- Delete in its entirety Section 8-1435 "Keeping Wild Animals" of Article 14 being renamed to "Household Pets" of Chapter 8 "Police".
- Delete in its entirety Section 8-1436 "Minimum Areas for Enclosures" of Article 14 being renamed to "Household Pets" of Chapter 8 "Police".

- Delete in its entirety Section 8-1437 “Shelter Required; Permitted Locations” of Article 14 being renamed to “Household Pets” of Chapter 8 “Police”.
- Amend Section 8-1438 “Sanitary Regulations” of Article 14 being renamed to “Household Pets” of Chapter 8 “Police”.

The Planning Commission considered the proposed amendments to Chapters 46 and 47 only, since these chapters are part of the zoning ordinance. The City Council is responsible for the entire City Code, thus the additional amendments in Chapter 8 are included here.

Generally, the proposed Code amendments seek to better define categories of animals for clarification and enforcement purposes. Categories are split into “domesticated” versus “wild” animals. Wild animals are not permitted anywhere within the jurisdiction of the City. The definitions of domestic animals are then further refined to as either “household pets”, “fowl”, “large domesticated animals”, or “livestock.”

“Household pets” are allowed in any zoning district anywhere within the jurisdiction of the City. “Fowl” are considered typical “barnyard” birds; “Large domesticated animals” and “livestock” consist of cows, bulls, horses, ponies, pigs, goats, sheep, llamas, alpacas, and the like. Livestock are free-range grazing animals in AG zones, while large domesticated animals may be the same types of species, but kept, more or less, as large pets, such as a pair of horses at a rural residence.

These types of barnyard birds and animals are not allowed within the City, but are allowed in AG and RR zones in the ETJ in accordance with the regulations in Chapters 46 and 47 of the City Code. The total number of birds and animals allowed in RR zones, and the regulations pertaining to them, are set forth in Chapters 46 and 47. In some cases, the total number allowed depends on the amount of property that can be dedicated to the keeping of said animals.

Regulations pertaining to sizes and locations of pens and enclosures within the City are being removed from Chapter 8.

Council member Lear stated when they discussed service dogs at the January meeting and questioned if they needed to consider animals other than dogs to serve as service animals. City Planner stated they did take note of that and he has discussed with Administration to bring a code amendment forward to address that issue. City Manager stated that is possible, but there is still a lot of debate about that issue to expand that under Americans with Disability Act accessibility guidelines. There has been a lot of debate and legal discussion about that issue.

Marvion Reichert, 18 Rolling Hills, stated he has a brother who lives in California whose neighbor has chickens. He said he is not for or against the chicken issue. He did not believe that chickens would cause any more noise than dogs that bark.

There was no one present in opposition to this hearing.

Moved by Buschkoetter to close the public hearing on the proposed amendments to Section 46-102 “Supplemental Use Regulations: Agricultural Uses” of Chapter 46

"Supplemental Use Regulations" to delete the language regulating Animal Production in the RR-1 and RR-2 Districts in Paragraph B and replace with regulating of Keeping Animals in Residential Zoning Districts; to delete the requirement of separation from residential uses for animal production use types in Paragraph C and to regulate the disposal of waste for animal production to be conducted for premises outside the corporate limits of the City and to Section 47-105 "Accessory Buildings" of Chapter 47 "Supplement Development Regulations" to delete in its entirety the language entitled \*Animal Production in the RR-1 and RR-2 Districts and to reference the regulations set forth in Section 46-102; to amend Section 8-1301 "Definitions" of Article 13 "Animals Generally" of Chapter 8 "Police" to define domestic animals, fowl, household pets, large animal pets, and livestock; to amend Section 8-1302 "Enforcement" of Article 13 "Animals Generally" of Chapter 8 "Police" to provide regulations for the keeping of animals in residential zones as listed in Section 46-102; to amend Section 8-1309 "Horses, Cattle, etc. at Large or Tethered" of Article 13 "Animals Generally" of Chapter 8 "Police" to rename the section to "Wild Animals Prohibited Within the City Limits"; to amend Section 8-1310 "Hitching, etc. Animals Near Trees" of Article 13 "Animals Generally" of Chapter 8 "Police" to rename the section to "Large Animal Pets, Livestock, and Fowl Prohibited Within the City Limits" and to provide clarifications; to delete in its entirety Section 8-1311 "Fowl at Large" of Article 13 "Animals Generally" of Chapter 8 "Police"; to delete in its entirety Section 8-1435 "Keeping Wild Animals" of Article 14 "Pets" of Chapter 8 "Police"; to delete in its entirety Section 8-1436 "Minimum Areas for Enclosures" of Article 14 "Pets" of Chapter 8 "Police"; to delete in its entirety Section 8-1437 "Shelter Required; Permitted Locations" of Article 14 "Pets" of Chapter 8 "Police"; to amend Section 8-1438 "Sanitary Regulations" of Article 14 "Pets" of Chapter 8 "Police" to remove the reference animals or fowl and replace with household pets; and to rename Article 14 "Pets" to "Household Pets" of Chapter 8 "Police" all in the Code of the City of Kearney and introduced Ordinance No. 7793 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 Clouse seconded the motion to close the hearing and suspend the rules for Ordinance No. 7793. 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. 7793 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 Clouse seconded by Lammers that Ordinance No. 7793 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. 7793 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.

**MONGOLIAN GRILL NON-COMPLIANCE OF LIQUOR LICENSE POLICY**

Mayor Clouse opened the public hearing on the automatic renewal of the liquor license held by Mongolian Grill of Omaha, LLC, dba Mongolian Grill located at 5012 23rd Avenue, Suite 178 and consider Resolution No. 2013-33.

The City Council directed City staff to develop a City Council Policy dealing with the consideration of liquor licenses given concerns that City Council has with reference to underage drinking and other liquor license violations within the City of Kearney. On March 22, 2011 the City Council adopted a nonbinding resolution that established general guidelines as to when the Council would consider not recommending approval of a liquor license application or denial of a special designated license. On March 23, 2011 letters were sent to all liquor license holders, with a copy of the resolution setting forth the Council's Policy, emphasizing the requirement of training and submitting Certificates of Training of their employees.

With the renewal process of Non-C Class liquor licenses, on January 29, 2013 a notice was sent to those Non-C Class license holders who had expired Certificates of Training and to notify the City no later than February 15 with either current Certificates or an update as to the status of those employees. The establishments that were in violation have complied with the exception of Mongolian Grill. A second notice was sent on February 22 notifying them that this matter has been set for hearing with regard to the automatic renewal of their liquor license. Then on March 4, I made a phone call to the manager explaining the process and she indicated that she would get the training and submit Certificates of Training. As of this date, nothing has been submitted.

In accordance with Section 53-134(6) of the Nebraska Revised Statutes, the local governing body of any city with respect to licenses within its corporate limits shall have the power with respect to retail licenses: to cancel or revoke on its own motion any license if, upon the same notice and hearing, it determines that the licensee has violated any of the provisions of the act or any valid and subsisting ordinance, resolution, rules or regulation duly enacted, adopted, and promulgated relating to alcoholic liquor.

Tamdan Ngo, presented this matter to the Council. She stated she had moved out of town and just moved back this month. She was behind on the mailboxes and that is the reason she has not had the chance to take the class for certificate for training for the liquor license. She stated she was not aware of the issue. She was planning to comply.

Council member Lear asked the City Clerk when the first letter was sent. She responded it was sent on January 29, 2013 and a second letter was sent on February 22. The City Clerk had also called and talked to Ms. Ngo on March 4. Council member Lear asked if she had completed the training as of this date. Ms. Ngo stated she had not, but she did sign up on line the day before this meeting. Council member Lear stated that is not acceptable. The Council has set forth a policy which they think is important to the community. She had received multiple notices and as a responsible business owner she must take responsibility for the requirements of a liquor license. He

stated that they expect every liquor license holder to comply with this requirement. He did not believe that she should be cut any slack due to the fact she has been given 2½ months of slack already to get to this point. He did state that it was probably an honest mistake on her part, but he was equally frustrated that it got to this point. She is the only liquor applicant who did not comply which is disappointing.

Ms. Ngo stated she was not part of the management in Kearney for the whole last year and the management did have some issues. She had to retake the position this year. She just moved back from Omaha last month. The previous manager had three mailboxes which she had to sort through. She only became aware of this issue last Monday when she got the call. She admitted it was a mistake, but not made intentionally and she was not trying to ignore it. The previous manager had left the three mailboxes for her to clean up after a whole year. She has been busy with other things, as well like taxes. Last year she had put her brother in charge of this restaurant. Council member Lear stated that since her name is on this liquor license, she could not leave it for someone else to do it for her. She stated that was her mistake. Council member Nikkila stated that he did not believe they can give leeway for this because then they would have to do it for all license holders and they cannot afford to do that.

Council member Lear asked the City Clerk when the recommendation to the Nebraska Liquor Control Commission needed to be forwarded according to the guidelines. City Clerk Michaelle Trembly stated their license will actually expire on April 30, 2013. They are currently in the renewal process; she has sent all the renewals out except for the one for Mongolian Grill. She had notified the Liquor Commission they have not complied with the City's policy and the Liquor Commission has put a note on their file that they cannot renew until the City gives the go ahead. One option the Council has is to postpone it until the next meeting to give them an additional two weeks to start the training and they would still have time to renew the license. The other option is to send in the recommendation to the Liquor Commission requesting that it be cancelled. The Commission would probably put it before a hearing and make them go long form and re-apply. The process of reapplying would probably put them past the May 1<sup>st</sup> deadline as to when their license would expire.

Mayor Clouse asked what their compliance record shows. City Clerk stated she did not believe they have not had any violations. City Manager stated what they have seen from the Liquor Commission regardless of what the Council does is if they go to the hearing and they have complied with the City's policy, they will be granted the liquor license. The Clerk stated this license is still in force until April 30. The timeline was discussed for compliance and ample time is allowed and in this case there is still time to comply. City Manager suggested that an exact timeline could be added to the policy in the future which would be more enforceable.

Council member Nikkila asked how long it normally takes for a business to sign up and take the test and get their employees certified. City Clerk stated there are different programs. If they take the TIPS training here in Kearney, they have to set up a scheduled meeting or they can go on line. The Liquor Commission has several programs of training that they can do on line. The Responsible Beverage training takes about four hours for an employee to do. Council member Nikkila stated that he believed that after Ms. Ngo got the phone call last week that the Council might recommend

cancelling their liquor license, that as a business manager she would do it right away the next day. That way, she would have been prepared to show that it was done by this Council meeting.

Council member Lammers stated he would be in favor of postponing this until the next meeting in two weeks. There is still time remaining to give them a chance to finish completing what they should have been doing. He totally understood where Council member Lear is coming from, but liked the fact that they have not had any violations. Council member Lear stated he still felt strongly about not meeting the requirement after notification.

Council member Buschkoetter stated he is struggling but also agrees with Council member Lammers. He believed that maybe having no violations is kind of a fluke. If they were that hands off by not getting the mail, not paying attention and not getting mail with her name on it about the liquor license then that is not the hands-on ownership they are looking for in this policy they created. The other thing is he did not want to put the Liquor Control Commission in a position to go against what the Council recommends to them. If the Council knows they are going to go against what they pass, he did not want to put the Commission in that position. He believed they would be right to make that decision. In that regard, he believed they should give Ms. Ngo the opportunity.

Mitchel Greenwall, 7 Wedgeway, stated he is vaguely familiar with the liquor process and his firm has represented businesses going through this. There does seem to be a fair amount of procedural hoops that need to be followed for the purpose to revoke offending licenses. In a situation like this where there no offenses and the sole issue is the failure of a small business to comply with what appears to be some bureaucratic red tape. It does not seem very friendly to small businesses and that concerned him particularly when the damage of waiting two weeks to see if they can comply is pretty minimal. He encouraged the Council to at least consider that aspect. If this were an establishment where there were several violations, then they should have to jump through every hoop possible. This is a small business that has been in compliance and there is some red tape that can be cleared up in a relatively short period of time. Mr. Greenwall stated it is fair, but seems unfriendly to small businesses to make them go through the process of traveling to Lincoln and appearing before the Liquor Commission when the issue may be addressed in the next two weeks.

Council member Buschkoetter asked for Mr. Greenwall's opinion about how the Council sends a message to liquor applicants that this is important to the small businesses and that they follow through with the policy that this Council has established. Mr. Greenwall stated that as a Council member, he believed there has to be balancing on a case by case basis. In his opinion this is a small business that is helping our economy in Kearney and might be a case where the scale might balance another way. He believed this way because there have been no violations and no complaints other than failure to follow the City's policy and maybe should be extended the two weeks this time. His partner handles most of the restaurants and bars for liquor license issues which are very fact and case specific. Mr. Greenwall stated that he is not involved in this particular issue at all, but this is his point of view.

Council member Lear commented that he agreed with Mr. Greenwall's point of view, but from his point of view the City has extended that leniency already. Everybody else has complied so they are not causing undue hardship for a number of small businesses because they would not want that either. This is a process and policy to ensure those serving alcohol are doing it correctly. City Attorney stated this is not red tape; this is a policy that requires people who serve liquor to have their people trained. This is not like filling out a form just because you have to. This is a policy that goes to them managing their liquor license knowing when and when not to serve customers. Mr. Greenwall stated he did not mean to say that it is unnecessary and it is a good policy. Since this could be taken care of in two weeks, it would avoid a lot of follow through. He just asked them to consider granting more time.

There were 72 liquor licenses that were up for renewal. City Manager stated that they spend a huge amount of time on this to implement the policies and the concerns expressed by the City Council in the past. He appreciates it when Council looks at this seriously because it is a lot of work. There is no requirement that we notify people 2-3 times and call them. Staff goes well beyond to help small business more than necessary. This individual indicated that she essentially gave it up and left. That is a violation of the liquor license and believed that is a concern in this case.

Chief of Police Dan Lynch stated that at one time, City Council was allowed to make the final decision on the issuance of liquor licenses. That was taken away based on consistency which was the whole issue of the fact. The Council has a policy which he believed is a reasonable policy. It speaks to being able to do the job well, not just a bureaucratic check off list. The Chief urged the Council to be consistent in the way they look at this. If the Council sets a timeline and are gracious in the number of notices and holds people to those timelines that is being consistent. In lieu of what the Commission might look at as some kind of a conflict, he thought they expect consistency and would appreciate that.

Marvion Reichert stated that he agreed with Mr. Greenwall. We have all made mistakes and he believed that if they looked at their hearts they would say they better do this.

There was no one present in opposition to this hearing.

Moved by Lear seconded by Buschkoetter to close the hearing and adopt **Resolution No. 2013-33** recommending to the Nebraska Liquor Control Commission to cancel the liquor license held by Mongolian Grill of Omaha, LLC, dba Mongolian Grill located at 5012 23rd Avenue, Suite 178 based on a failure to comply with the City Council's Liquor License Policy. Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear, Nikkila. Nay: None. Motion carried.

### **RESOLUTION NO. 2013-33**

WHEREAS, Mongolian Grill of Omaha, LLC, dba Mongolian Grill holds a Class A-85854 liquor license located at 5012 3rd Avenue, Suite 178, Kearney, Nebraska; and

WHEREAS, the Kearney City Council adopted Resolution No. 2011-28 establishing a Liquor License Policy for making recommendations to the Nebraska Liquor Control Commission on new licenses, renewal of licenses, and special designated licenses; and

WHEREAS, in accordance with Section 53-134(6) of the Nebraska Revised Statutes, the local governing body of any city with respect to licenses within its corporate limits shall have the power with respect to retail licenses: to cancel or revoke on its own motion any license if, upon the same notice and hearing, it determines that the licensee has violated any of the provisions of the act or any valid and subsisting ordinance, resolution, rules or regulation duly enacted, adopted, and promulgated relating to alcoholic liquor; and

WHEREAS, after giving the license holder, Mongolian Grill of Omaha, LLC, dba Mongolian Grill two separate notifications: January 29, 2013 and again February 22, 2013 and a phone call on March 4, 2013 to comply with the City Council Liquor License Policy, the license holder has refused to comply; and

WHEREAS, a hearing was held on March 12, 2013 to allow the license holder an opportunity to explain why they did not comply.

NOW, THEREFORE, BE IT RESOLVED that the President and City Council of the City of Kearney, Nebraska is recommending to the Nebraska Liquor Control Commission to cancel or revoke the liquor license held by Mongolian Grill of Omaha, LLC, dba Mongolian Grill in connection with their Class A-85854 liquor license located at 5012 3rd Avenue, Suite 178 for the reason they did not comply with Resolution No. 2011-28 by providing copies of the Certificates of Training for their employees.

BE IT FURTHER RESOLVED that the City Clerk is hereby instructed to record the Council action favoring the cancellation or revocation of said license in the Minute Record of the proceedings of the Council.

PASSED AND APPROVED THIS 12TH DAY OF MARCH, 2013.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

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

Moved by Buschkoetter seconded by Clouse that Subsections 1 through 12 of Consent Agenda Item IV be approved. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Nikkila, Lammers. Nay: None. Motion carried.

1. Approve Minutes of Regular Meeting held February 26, 2013.

2. Approve the following Claims:

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

Alfred Benesch \$2,430.85 co; Ally B Designs \$27.00 smcs; Amax Contracting \$39.60 smcs; Amer First Aid \$356.83 smcs; Ask Supply \$578.73 smcs; Audio Go \$331.68 smcs; Aurora Coop \$1,473.40 smcs; Baker & Taylor Books \$4,797.22 smcs; Bamford \$400.00 smcs; Barth,J \$34.00 smcs; Beacon Athletics \$9,871.00 smcs; Blessing \$6,690.00 smcs; Bluecross Blueshield \$79,629.22 smcs; Bonner,K \$17.00 smcs; Bosselman \$17,355.30 smcs; Breathing Air Systems \$105.00 smcs; Brill,K \$31.00

smcs; Broadfoot's \$1,685.00 smcs; Bruha,S \$150.00 smcs; Buffalo Co \$4,312.00 co; Builders \$993.70 smcs,co; Capital Business Systems \$181.82 smcs; Capstone Press \$46.87 smcs; Carman,A \$135.00 smcs; Cash-Wa \$909.57 smcs; CDW Govt \$16,207.80 co; CFA Software \$2,995.00 smcs; Charter \$189.99 smcs; CHS Agri Service \$1,484.59 smcs; City of Ky \$48,955.95 smcs,ps; Colony Visits \$50.00 smcs; Compasscom \$50.00 smcs; Conseco Life Ins \$19.00 ps; Construction Rental \$15.00 smcs; Crouch Recreational \$23,421.00 smcs,co; Culligan \$535.10 smcs; DBSP \$1,000.00 smcs; Dish \$147.98 smcs; Drake,F \$105.80 smcs; Dugan Business Forms \$538.83 smcs; Dulitz,D \$17.00 smcs; Dutton-Lainson \$1,016.64 smcs; Eakes \$1,863.47 smcs,co; Ecolab \$37.04 smcs; Eirich,T \$50.00 smcs; Elliott Equipment \$860.37 smcs; Ellmers,R \$31.00 smcs; Express Sharpening \$89.00 smcs; Fairbanks \$10,550.30 co; Frontier \$8,911.14 smcs; Gale \$358.25 smcs; Gangwish Turf \$70.00 smcs; Gear for Sports \$596.78 smcs; Geist,J \$34.00 smcs; GP GOA \$50.00 smcs; HD Supply \$1,752.77 smcs; Hofer,J \$17.00 smcs; Hometown Leasing \$207.71 smcs; Hydrite Chemical \$1,886.21 smcs; ICMA RC \$3,911.82 ps; Institute for Holocaust \$272.58 smcs; IRS \$125,242.14 ps; iPromoteu \$510.20 smcs; ISG Infrasy \$45.00 smcs; Jack Lederman \$978.06 smcs; James,D \$150.00 smcs; Johnson Service \$6,700.00 co; Johnston,S \$13.00 smcs; Jones Automotive \$1,639.57 co; Junker,L \$34.00 smcs; Ky Catholic \$708.42 smcs; Ky Concrete \$3,075.40 co; Ky Crete & Block \$23.25 co; Ky Hub \$32.00 smcs; Ky Humane Soc \$6,825.00 smcs; Ky Noon Rotary \$110.00 smcs; Ky Visitors Bureau \$26,154.94 smcs; Krull Ins \$1,950.00 smcs; Laursen,E \$20.00 smcs; Layne Christensen \$150.00 smcs; League of NE Municipalities \$1,378.00 smcs; Leslie,J \$35.00 smcs; Levanders \$500.00 smcs; Lincoln Library Press \$129.00 smcs; Linda's Upholstery \$143.90 smcs; Magic Cleaning \$1,000.00 smcs; Mail Express \$280.45 smcs; Marker,S \$16.00 smcs; Matheson Tri-Gas \$79.92 smcs; Maxson,K \$17.00 smcs; McDermott & Miller \$24,035.00 smcs; Meadowlark Hills Golf \$256.80 smcs; Menards \$55.12 smcs; Midlands Contracting \$15,350.00 smcs; Midwest Pump \$4,684.05 smcs; Miller & Associates \$6,362.31 co; Mitchell 1 \$795.60 smcs; Morgan,M \$64.00 smcs; Navigator Motorcoaches \$2,104.00 smcs; NE Child Support \$2,910.74 ps; NE Rural Water Assn \$675.00 smcs; Nevco \$3,562.74 smcs; New World Systems \$600.00 co; Newman Signs \$2,568.40 smcs; Northwest Electric \$21.97 smcs; Northwestern Energy \$12,394.38 smcs; Northwestern University \$10,183.00 smcs; Olson,E \$34.00 smcs; O'Neill Wood Resource \$9,472.50 smcs; O'Neill,S \$15.00 smcs; Oxford University Press \$1,125.00 smcs; Paramount \$84.79 smcs; Pat's Plbg \$2,186.65 smcs; Platte Valley Comm \$56.00 smcs; Platte Valley Labs \$505.00 smcs; Potts,S \$17.00 smcs; Precision Printing \$304.50 smcs; Presto-X \$127.63 smcs; Pro-Quest \$365.00 smcs; Pulliam,R \$40.00 smcs; Quill \$137.97 smcs; Random House \$210.00 smcs; Recorded Books \$793.16 smcs; Recovery Systems \$3,337.30 smcs; Ringlein,S \$29.00 smcs; Rycom \$290.70 smcs; Sapp Bros \$40,913.50 smcs; Scheer,K \$17.00 smcs; Scheurich,S \$40.66 smcs; Seim,B \$17.00 smcs; Sherwin-Williams \$51.79 smcs; Smith,R \$38.00 smcs; Snap-on Tools \$439.00 smcs; Snow,T \$50.00 smcs; Sorensen Group \$11,403.66 co; Spellman,L \$17.00 smcs; Spencer Turbine \$35,493.00 co; Squiers,K \$37.00 smcs; Staskal,N \$34.00 smcs; State of NE/AS Central \$3,671.23 smcs; State of NE/Elevator Safety \$100.00 smcs; Stava,A \$17.00 smcs; Stokebrand,A \$17.00 smcs; Strasburg,A \$17.00 smcs; Stratton,M \$17.00 smcs; Suburban Fire Protection \$1,470.36 co; Sun Life Financial \$62,306.22 smcs; Thome,B \$11.00 smcs; Tighe,C \$17.00 smcs; Titleist \$83.56 smcs; Tour Edge \$1,248.50 smcs; Travis,B \$17.00 smcs; Turner Body Shop \$900.00 smcs; Tye & Rademacher \$11,154.99 smcs; Union Bank \$58,945.41 ps; Verizon \$1,612.36 smcs; Village Uniform \$636.79 smcs; Warren-T

Plumbing \$246.50 smcs; Wastecorp Pumps \$418.99 smcs; Watchguard Video \$14,808.75 co; Wells Fargo \$110,002.00 smcs; West Villa Animal \$67.16 smcs; Wheeler,J \$31.00 smcs; Wilkins Hinrichs Stober \$14,125.00 co; Zimmerman Printers \$273.50 smcs; Payroll Ending 2-23-2013 -- \$352,529.19. 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. 2013-34** approving the recommendation submitted by the Fire Chief to include the following as members of the Kearney Volunteer Fire Department: Jon Blaha and Tim Nickerson.

**RESOLUTION NO. 2013-34**

WHEREAS, Terry Eirich, Chief of the Kearney Volunteer Fire Department, has forwarded several names of individuals desiring to serve as volunteers in the Kearney Volunteer Fire Department; and

WHEREAS, based on the recommendation of Chief Eirich, the City Council of the City of Kearney, Nebraska hereby finds and determines that said persons listed are fully capable and qualified to serve a membership in the Kearney Volunteer Fire Department; and

WHEREAS, in order to be qualified for benefits in accordance with Sections 48-115, et seq. of the Nebraska Revised Statutes, said volunteer firefighters acting outside the corporate limits of the City must be officially directed to do so in order to be eligible.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Kearney, Nebraska, that those persons recommended by the Chief of the Kearney Volunteer Fire Department for membership in the Kearney Volunteer Fire Department as set forth on the attached letter of recommendation, marked Exhibit "A," attached hereto and made a part hereof by reference, are hereby confirmed as members of the Kearney Volunteer Fire Department for the purposes of and in accordance with Section 48-115 of the Nebraska Revised Statutes, and that said members are fully entitled to benefits under the Workers' Compensation Act.

BE IT FURTHER RESOLVED that all of said volunteer firefighters named on Exhibit "A" are hereby specifically authorized and directed to serve outside the corporate limits of the municipality under the direction, orders and authority of the Chief of the Kearney Volunteer Fire Department in accordance with Section 4-204 of the Kearney City Code.

PASSED AND APPROVED THIS 12TH DAY OF MARCH, 2013.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**4.** Approve the application for a Special Designated License submitted by Thunderhead Brewing Co. in connection with their Class LK-47920 catering liquor license to dispense beer and wine inside an enclosed 120' x 210' tent and fenced area located in the parking lot located north of the Museum of Nebraska Art, 2401 Central Avenue on May 17, 2013 from 5:00 p.m. until 11:00 p.m. and on May 18, 2013 from 3:00 p.m. until 11:00 p.m. for the Wine & Jazz Festival.

**5.** Approve the Plans and Specifications for the 2013 Part 6 Improvements;

Cemetery Paving and set the bid opening date for April 2, 2013 at 2:30 p.m.

6. Approve the Plans and Specifications for the 2012 Part 9 Improvements; Sidewalks/Ramps and set the bid opening date for April 2, 2013 at 2:30 p.m.

7. Adopt **Resolution No. 2013-35** accepting the bids received for the 2013 Part 5 Improvements; Interior Renovations at the City of Kearney/Buffalo County Law Enforcement Center and award the bid to RMV Construction from Kearney, Nebraska in the amount of \$301,200.00.

**RESOLUTION NO. 2013-35**

WHEREAS, Miller & Associates and the City of Kearney have reviewed the sealed bids which were opened on March 5, 2013 at 2:00 p.m. for the 2013 Part 5 Improvements; Interior Renovations at the City of Kearney/Buffalo County Law Enforcement Center; and

WHEREAS, the Engineer’s Opinion of Probable Construction Cost was \$525,000.00 for the said project; and

WHEREAS, the said engineers have recommended the bid offered by RMV Construction of Kearney, Nebraska in the sum of \$301,200.00 be accepted as the lowest responsible bid for 2013 Part 5 Improvements; Interior Renovations at the City of Kearney/Buffalo County Law Enforcement Center.

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 RMV Construction be and is the lowest responsible bidder for the 2013 Part 5 Improvements; Interior Renovations at the City of Kearney/Buffalo County Law Enforcement Center to be constructed in accordance with the plans and specifications on file with the City Clerk and that the bid of RMV Construction of Kearney, Nebraska in the sum of \$301,200.00 be and is hereby accepted.

BE IT FURTHER RESOLVED the Engineer’s Opinion of Probable Construction Cost in the amount of \$525,000.00 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 12TH DAY OF MARCH, 2013.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

8. Adopt **Resolution No. 2013-36** recognizing and certifying Residential Assistance to Families in Transition (RAFT) as an approved non-profit transitional housing organization.

**RESOLUTION NO. 2013-36**

WHEREAS, in compliance with new U.S. Department of Housing and Urban Development requirements, agencies receiving Emergency Solutions Grant funds from

State sub-recipients must be certified by the local government entity for the activities proposed for the funding; and

WHEREAS, Residential Assistance to Families in Transition (RAFT) offers temporary residence in its five-apartment facility so that families have a chance to turn their lives around; and

WHEREAS, families staying there are required to develop an individualized service plan which consists of goals and appropriate steps to attain self-sufficiency; and

WHEREAS, the plan includes a requirement for all adults to work and/or attend training for a total of 40 hours per week, receive mental health counseling, parenting classes, and involvement in various support groups available in the Kearney area.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the Residential Assistance to Families in Transition (RAFT) provides an essential service to the Kearney community; that it has been determined that RAFT be recognized and certified as an approved non-profit transitional housing organization.

PASSED AND APPROVED THIS 12TH DAY OF MARCH, 2012.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

9. Adopt **Resolution No. 2013-37** recognizing and certifying the SAFE Center as an approved non-profit emergency shelter organization.

**RESOLUTION NO. 2013-37**

WHEREAS, in compliance with new U.S. Department of Housing and Urban Development requirements, agencies receiving Emergency Solutions Grant funds from State sub-recipients must be certified by the local government entity for the activities proposed for the funding; and

WHEREAS, The SAFE Center has provided secure and confidential services, programs and advocacy since 1978 for individuals and families who have experienced dating, domestic or sexual violence.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that The SAFE Center provides an essential service to the Kearney community; that it has been determined that The SAFE Center be recognized and certified as an approved non-profit emergency shelter organization.

PASSED AND APPROVED THIS 12TH DAY OF MARCH, 2012.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

10. Adopt **Resolution No. 2013-38** approving Change Order No. 2 showing an increase in the amount of \$1,810.00 submitted by Sutphen Corporation in connection with the purchase of a custom fire aerial apparatus to be used by the Kearney Volunteer Fire Department.

**RESOLUTION NO. 2013-38**

WHEREAS, Sutphen Corporation of Dublin, Ohio has been selected to build a custom fire aerial apparatus to be used by the Kearney Volunteer Fire Department and they have filed with the City Clerk Change Order No. 2 showing an increase to the contract sum in the amount of \$4,310.00, as shown on Exhibit "A", attached hereto and made a part hereof by reference; and

WHEREAS, when the custom fire aerial apparatus was advertised, a contingency amount of \$2,500.00 was a part of the specifications to address anticipated change orders and will be applied towards this change order.

Original Contract Sum	\$980,452.00
Change Order No. 1 (1-22-2013)	- 2,150.00
Change Order No. 2 (3-12-2013)	+ 4,310.00
Minus Contingency Funds	<u>- 2,500.00</u>
 Contract Sum to Date	 \$980,112.00

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. 2, as shown on Exhibits "A", be and is hereby accepted and approved.

PASSED AND APPROVED THIS 12TH DAY OF MARCH, 2013.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

11. Approve the application for a Special Designated License submitted by Richard Kohmetscher, dba Dick's Place in connection with their Class CK-00528 catering liquor license to dispense beer, wine and distilled spirits in the Ag Pavilion located at the Buffalo County Fairgrounds, 3807 Avenue N on May 4, 2013 from 3:00 p.m. until 1:00 a.m. for a dance/reception.

12. Approve the application for a Special Designated License submitted by Kearney Shooters Inc., dba Shooters in connection with their Class CK-67029 catering liquor license to dispense beer, wine, and distilled spirits inside The Krave located at the Kaufmann Center, 2202 Central Avenue on March 30, 2013 from 6:00 p.m. to 1:00 a.m. for a dance subject to submitting a Certificate of Insurance.

**V. CONSENT AGENDA ORDINANCES**

**ORDINANCE NO. 7794 AMENDING CHAPTER 9 OF THE CITY CODE ADOPTING THE INTERNATIONAL BUILDING, PLUMBING, RESIDENTIAL, AND PROPERTY MAINTENANCE CODES**

The State of Nebraska has adopted the International Family of Codes as the recognized State building code and requires municipalities to adopt the latest additions of those codes. The family of codes has been presented to the West Central Home Builders Association and local contractors. The contracting community is in support of the adoption of the codes with the exception of including fire sprinklers in the construction of

new homes. All references to fire sprinkler system have been deleted from the Residential Code. In addition, the 2012 Uniform Plumbing Code has been reviewed and approved by the Kearney Plumbing Board.

Council Member Clouse introduced Ordinance No. 7794, being Subsection 2 of Agenda Item V amending Section 9-204 "Advisory Note" of Article 2 "Building Code Generally" of Chapter 9 "Public Works" of the Code of the City of Kearney, Nebraska to adopt the International Residential Code, 2012 Edition and the International Building Code, 2012 Edition; to amend Section 9-210 "International Building Code; Adoption" of Article 2 "Building Code Generally" of Chapter 9 "Public Works" of the Code of the City of Kearney, Nebraska to adopt the International Residential Code, 2012 Edition and the International Building Code, 2012 Edition; to amend Section 9-211 "International Property Maintenance Code; Adopted" of Article 2 "Building Code Generally" of Chapter 9 "Public Works" of the Code of the City of Kearney, Nebraska to adopt the International Property Maintenance Code, 2012 Edition; to amend Section 9-302 "International Residential Code; Amendments" of Article 3 "Amendments" of Chapter 9 "Public Works" of the Code of the City of Kearney, Nebraska to adopt and make amendments to the International Residential Code, 2012 Edition; to amend Section 9-1016 "Uniform Plumbing Code" of Article 10 "Plumbing Code" of Chapter 9 "Public Works" to adopt the Uniform Plumbing Code, 2012 Edition; to amend Section 9-1017 "Amendments to Uniform Plumbing Code" of Article 10 "Plumbing Code" of Chapter 9 "Public Works" to adopt and made amendments to the Uniform Plumbing Code, 2012 Edition; to amend Section 9-1018 "Septic Systems and Leach Fields" of Article 10 "Plumbing Code" of Chapter 9 "Public Works" to adopt the Uniform Plumbing Code, 2012 Edition, 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: Clouse, Nikkila, Lammers, Buschkoetter, Lear. 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. 7794 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Nikkila, Lammers, Buschkoetter, Lear. Nay: None. Motion carried. Ordinance was read by number.

Moved by Lammers seconded by Nikkila that Ordinance No. 7794 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear, Nikkila. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7794 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**

**OPEN ACCOUNT CLAIMS: NPPD - \$75,689.03 AND JONATHAN NIKKILA - \$167.38**

Moved by Lear seconded by Buschkoetter that the Open Account Claims in the amount of \$75,689.03 payable to Nebraska Public Power District and in the amount of \$167.38 payable to Jonathan Nikkila be allowed. Roll call resulted as follows: Aye: Buschkoetter, Lear, Lammers. Nay: None. Clouse and Nikkila abstained. Motion carried.

**VII. REPORTS**

City Manager Michael Morgan stated construction will begin on 2nd Avenue from 25th Street to 31st Street. Staff has met with property owners to discuss the project. The work will commence on the Cherry Avenue bypass as well.

**VIII. ADJOURN**

Moved by Lear seconded by Buschkoetter that Council adjourn at 8:44 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**