

*Kearney, Nebraska  
January 10, 2017  
5:30 p.m.*

A meeting of the City Council of Kearney, Nebraska, was convened in open and public session at 5:30 p.m. on January 10, 2017 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; Lauren Brandt, Deputy City Clerk; Wendell Wessels, Director of Finance; Paul Briseno, Assistant City Manager; Rod Wiederspan, Director of Public Works; Dan Lynch, Chief of Police; Shawna Erbsen, Administrative Services Director; Dan Lillis, Engineering Assistant were also present. Some of the citizens present in the audience included: Craig Bennett, Daniel Hoffman, Judy Hoffman, Kike Konz from Kearney Hub, NTV representative.

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/MOMENT OF SILENCE**

With the absence of a minister, the Council held a moment of silence.

### **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**

#### **DEVELOPMENT OF HILLTOP MALL SECOND**

Mayor Clouse stated the City received notification from the developer postponing until January 24, 2017 the public hearing on the Applications submitted by Miller & Associates for MFP Mid-America Shopping Centers, LLC to (1) vacate Lot 1, Hilltop Mall Subdivision, a subdivision to the City of Kearney, Buffalo County, Nebraska; and (2) the Final Plat for Hilltop Mall Second, an addition to the City of Kearney for a tract of land being Lot 1 (to be vacated), Hilltop Mall Subdivision, a subdivision to the City of Kearney in the Southwest Quarter of the Northwest Quarter of Section 25, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (4915 2nd Avenue).

Moved by Lammers seconded by Nikkila to postpone until January 24, 2017 the public hearing on the Applications submitted by Miller & Associates for MFP Mid-America Shopping Centers, LLC to (1) vacate Lot 1, Hilltop Mall Subdivision, a subdivision to the City of Kearney, Buffalo County, Nebraska; and (2) the Final Plat for Hilltop Mall Second, an addition to the City of Kearney for a tract of land being Lot 1 (to be vacated), Hilltop Mall Subdivision, a subdivision to the City of Kearney in the Southwest Quarter of the Northwest Quarter of Section 25, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska. Roll call resulted as follows: Aye: Clouse, Lear, Nikkila, Lammers, Buschkoetter. Nay: None. Motion carried.

#### **DEVELOPMENT PLANS FOR NORTHEAST OF 2ND AVENUE AND 48TH STREET, WEST OF HERBERGERS**

Mayor Clouse stated the City received notification from the developer postponing until January 24, 2017 the public hearing on the Application submitted by Miller & Associates for MFP Mid-America Shopping Centers, LLC for Planned District Development Plan Approval for the construction of a commercial building on property zoned District C-2/PD, Community Commercial/Planned Development Overlay District and described as a tract of land being proposed Lot 3, Hilltop Mall Second, an addition to the City of Kearney, Buffalo County, Nebraska (northeast of 2nd Avenue and 48th Street, west of Herbergers).

Moved by Lammers seconded by Nikkila to postpone until January 24, 2017 the public hearing on the Application submitted by Miller & Associates for MFP Mid-America Shopping Centers, LLC for Planned District Development Plan Approval for the construction of a commercial building on property zoned District C-2/PD, Community Commercial/Planned Development Overlay District and described as a tract of land being proposed Lot 3, Hilltop Mall Second, an addition to the City of Kearney, Buffalo County, Nebraska. Roll call resulted as follows: Aye: Clouse, Lear, Nikkila, Lammers, Buschkoetter. Nay: None. Motion carried.

#### **REZONING 8775 2ND AVENUE**

Mayor Clouse opened the public hearing on the Application submitted by Daniel and Judy Hoffman to rezone from District RR-1, Rural Residential District (Rural Standards) to District AG, Agricultural District property described as a tract of land being part of the

South Half of the Southwest Quarter of Section 12, and a tract of land being part of the Northeast Quarter of the Northwest Quarter of Section 13, all in Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (8775 2nd Avenue) and to consider Ordinance No. 8125.

Daniel and Judy Hoffman presented this matter to the Council. Mr. Hoffman stated that originally the land was zoned as agriculture. But in 2003 when building his home, since he did not have 40 acres, he had to rezone to build. Last summer, after a building was blown down and talking to the building inspector, it was discussed that the law changed the regulations from 40 acres to 20 acres, now qualifying his 20 acres which caused his request to go back to agriculture zoning.

There was no one present in opposition to this hearing.

Moved by Nikkila to close the public hearing on the Application submitted by Daniel and Judy Hoffman to rezone from District RR-1, Rural Residential District (Rural Standards) to District AG, Agricultural District property described as a tract of land being part of the South Half of the Southwest Quarter of Section 12, and a tract of land being part of the Northeast Quarter of the Northwest Quarter of Section 13, all in Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska and introduced Ordinance No. 8125 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. 8125. 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. 8125 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 Lear seconded by Buschkoetter that Ordinance No. 8125 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. 8125 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.

### **TRAIL RIGHT-OF-WAY EASEMENTS**

Mayor Clouse opened the public hearing on the proposed acquisition of Temporary and Permanent Trail Right-of-Way Easements for the hike/bike trail extension located on a tract of land described as part of Government Lots 1, 2 and 3 of Section 10, Township 8

North, Range 15 West of the 6th P.M., Buffalo County, Nebraska and consider Resolution No. 2017-1.

City Attorney Michael Tye presented this matter to the Council. This matter involves acquiring hike/bike easements. The City has already entered into agreements with the property owners and in doing some survey work for this section of the trail, it was discovered that the fence along Interstate 80 was in the wrong location. There were some conversations with the State of Nebraska and they relocated that fence which was good as it gave a little more space for the trail. Because of that, legal descriptions had to be revised with easements being dedicated for trail purpose along that section. This would acquire a section as it connects to the trail to go to the Fort Kearny Recreation Area.

Council Member Lammers asked if there was any other fencing that was required. City Attorney stated that there will be fencing on the property side that was part of the agreement with those property owners to put fencing there but that will happen when the project is completed. So there will be a fence towards the interstate that is a state fence but also a fence towards the property owner along that area as well so that people cannot wander off the trail onto private property. That was part of the agreement to acquire the easement. City Manager confirmed that the trail, once completed, will go from Fort Kearny to Cottonmill Park.

There was no one present in opposition to this hearing.

Moved by Buschkoetter seconded by Clouse to close the hearing and adopt Resolution No. 2017-1 approving the proposed acquisition of Temporary and Permanent Trail Right-of-Way Easements for the hike/bike trail extension located on a tract of land described as part of Government Lots 1, 2 and 3 of Section 10, Township 8 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Nikkila, Lammers. Nay: None. Motion carried.

### **RESOLUTION NO. 2017-1**

WHEREAS, Section 18-1755, R.R.S., authorizes a city acquiring an interest in real property by purchase or eminent domain to do so only after the City Council has authorized the acquisition by action taken in a public meeting after notice and public hearing; and

WHEREAS, the City Council has held a public hearing upon the proposed acquisition for a Temporary Trail Construction Encroachment Easement and a Permanent Trail Right-of-Way Easement granted by Richard A. Tschirren and Judith A. Tschirren Revocable Trust dated December 28, 2016 and voted in favor to proceed with the following acquisition:

#### Temporary Trail Construction Encroachment Easement

A 13 foot wide temporary construction easement being a part of Government Lots 2 and 3 of Section 10, Township 8 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska, and more particularly described as follows: Referring to a 2" iron pipe at the Northeast corner of Government Lot 3, also being the Northwest corner of Government Lot 2 of Section 10, and assuming the East line of said Government Lot 3, also being the West line of said Government Lot 2, as bearing S 00°57'33" E and all bearing

contained herein are relative thereto; thence S 00°57'33" E on said East line of Government Lot 3 and said West line of Government Lot 2 a distance of 266.06 feet to a 5/8" rebar; thence S 89°16'49" W a distance of 16.21 feet to a 5/8" rebar at the Northwest corner of property described in Quitclaim Deed, filed as Instrument 2008-5694 in the Office of the Buffalo County Register of Deeds; thence S 00°11'10" E on the West line of property described in said Quitclaim Deed a distance of 1007 feet, more or less, to a point that is 8.0 feet, measured at right angles, Northerly of the centerline of the concrete path as constructed and the ACTUAL POINT OF BEGINNING; thence Northeasterly parallel with and 8.0 feet Northerly, as measured at right angles, of the centerline of said concrete path as constructed through a part of said Government Lot 3 and a part of said Government Lot 2 to the Northerly line of Fox Tract as Surveyed and shown on Record of Survey by Chad Dixon, dated September 2nd, 2016; thence Southeasterly on said Northerly line to the North Right-of-Way line of Interstate Highway 80; thence Southwesterly on said North Right-of-Way line to the Southwest corner of property described in said Quitclaim Deed; thence Northerly on the West line of property described in said Quitclaim Deed to the Point of Beginning.

#### Permanent Trail Right-of-Way Easement

A 10 foot wide permanent easement for Trail purposes being a part of Government Lots 2 and 3 of Section 10, Township 8 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska, and more particularly described as follows: Referring to a 2" iron pipe at the Northeast corner of Government Lot 3, also being the Northwest corner of Government Lot 2 of Section 10, and assuming the East line of said Government Lot 3, also being the West line of said Government Lot 2, as bearing S 00°57'33" E and all bearing contained herein are relative thereto; thence S 00°57'33" E on said East line of Government Lot 3 and said West line of Government Lot 2 a distance of 266.06 feet to a 5/8" rebar; thence S 89°16'49" W a distance of 16.21 feet to a 5/8" rebar at the Northwest corner of property described in Quitclaim Deed, filed as Instrument 2008-5694 in the Office of the Buffalo County Register of Deeds; thence S 00°11'10" E on the West line of property described in said Quitclaim Deed a distance of 1011 feet, more or less, to a point that is 5.0 feet, measured at right angles, Northerly of the centerline of the concrete path as constructed and the ACTUAL POINT OF BEGINNING; thence Northeasterly parallel with and 5.0 feet Northerly, as measured at right angles, of the centerline of said concrete path as constructed through a part of said Government Lot 3 and a part of said Government Lot 2 to the Northerly line of Fox Tract as Surveyed and shown on Record of Survey by Chad Dixon, dated September 2nd, 2016; thence Southeasterly on said Northerly line to the North Right-of-Way line of Interstate Highway 80; thence Southwesterly on said North Right-of-Way line to the Southwest corner of property described in said Quitclaim Deed; thence Northerly on the West line of property described in said Quitclaim Deed to the Point of Beginning. ; and

WHEREAS, the City Council has held a public hearing upon the proposed acquisition for a Temporary Trail Construction Encroachment Easement and a Permanent Trail Right-of-Way Easement granted by Janet K. Fox Revocable Trust dated December 21, 2016 and voted in favor to proceed with the following acquisition:

#### Temporary Trail Construction Encroachment Easement

A 13 foot wide temporary construction easement being a part of Government Lots 1 and 2 of Section 10, Township 8 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska, and more particularly described as follows: Referring to a 2" iron pipe at the Northeast corner of Government Lot 3, also being the Northwest corner of Government Lot 2 of Section 10, and assuming the East line of said Government Lot 3, also being

the West line of said Government Lot 2, as bearing S 00°57'33" E and all bearings contained herein are relative thereto; thence S 00°57'33" E on said East line of Government Lot 3 and said West line of Government Lot 2 a distance of 266.06 feet to a 5/8" rebar; thence S 89°16'49" W a distance of 16.21 feet to a 5/8" rebar at the Northwest corner of property described in Quitclaim Deed, filed as Instrument 2008-5694 in the Office of the Buffalo County Register of Deeds; thence S 00°11'10" E on the West line of property described in said Quitclaim Deed a distance of 238.00 feet to a 5/8" rebar at the Southwest corner of Tschirren Tract as Surveyed and shown on Record of Survey by Chad Dixon, dated September 2, 2016; thence N 89°02'17" E on the South line of said Tschirren Tract a distance of 175.00 feet to a 5/8" rebar; thence S 80°53'57" E on the Southwesterly line of said Tschirren Tract a distance of 1103 feet, more or less, to a point that is 8.0 feet, measured at right angles, Northerly of the centerline of the concrete path as constructed and the ACTUAL POINT OF BEGINNING; thence Northeasterly parallel with and 8.0 feet Northerly, as measured at right angles, of the centerline of said concrete path as constructed through a part of said Government Lot 2 and a part of said Government Lot 1 to the East line of said Tschirren Tract; thence Southerly on the East line of said Tschirren Tract to the North Right-of-Way line of Interstate Highway 80; thence Southwesterly on said North Right-of-Way line to the most Southerly corner of said Tschirren Tract; thence Westerly on the Southwesterly line of said Tschirren Tract to the Point of Beginning.

Permanent Trail Right-of-Way Easement

A 10 foot wide permanent easement for Trail purposes being a part of Government Lots 1 and 2 of Section 10, Township 8 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska, and more particularly described as follows: Referring to a 2" iron pipe at the Northeast corner of Government Lot 3, also being the Northwest corner of Government Lot 2 of Section 10, and assuming the East line of said Government Lot 3, also being the West line of said Government Lot 2, as bearing S 00°57'33" E and all bearing contained herein are relative thereto; thence S 00°57'33" E on said East line of Government Lot 3 and said West line of Government Lot 2 a distance of 266.06 feet to a 5/8" rebar; thence S 89°16'49" W a distance of 16.21 feet to a 5/8" rebar at the Northwest corner of property described in Quitclaim Deed, filed as Instrument 2008-5694 in the Office of the Buffalo County Register of Deeds; thence S 00°11'10" E on the West line of property described in said Quitclaim Deed a distance of 238.00 feet to a 5/8" rebar at the Southwest corner of Tschirren Tract as Surveyed and shown on Record of Survey by Chad Dixon, dated September 2, 2016; thence N 89°02'17" E on the South line of said Tschirren Tract a distance of 175.00 feet to a 5/8" rebar; thence S 80°53'57" E on the Southwesterly line of said Tschirren Tract a distance of 1108 feet, more or less, to a point that is 5.0 feet, measured at right angles, Northerly of the centerline of the concrete path as constructed and the ACTUAL POINT OF BEGINNING; thence Northeasterly parallel with and 5.0 feet Northerly, as measured at right angles, of the centerline of said concrete path as constructed through a part of said Government Lot 2 and a part of said Government Lot 1 to the East line of said Tschirren Tract; thence Southerly on the East line of said Tschirren Tract to the North Right-of-Way line of Interstate Highway 80; thence Southwesterly on said North Right-of-Way line to the most Southerly corner of said Tschirren Tract; thence Westerly on the Southwesterly line of said Tschirren Tract to the Point of Beginning.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska that the aforescribed Easements granted by Richard A. Tschirren and Judith A. Tschirren Revocable Trust dated December 28, 2016 and Janet

K. Fox Revocable Trust dated December 21, 2016 to the City of Kearney be and is hereby approved and accepted.

PASSED AND APPROVED THIS 10TH DAY OF JANUARY, 2017.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

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

Mayor Clouse stated the Consent Agenda was amended on Monday, January 9 by adding Subsection 14.

Moved by Clouse seconded by Lammers that Subsections 1 through 14 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 December 20, 2016.
2. Approve the following Claims:

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

1000 Plus \$150.00 smcs; 911 Custom \$1,310.00 co; A-1 Refrigeration \$231.33 smcs; Adams,C \$80.85 smcs; Adventure Enterprises \$1,791.00 smcs; Alfred Benesch \$5,959.16 co; All Makes Auto \$252.01 smcs; American First Aid \$139.41 smcs; American Planning Assn. \$272.00 smcs; American Red Cross \$560.28 smcs; Andersen Wrecking \$1,500.00 smcs; Arrow Stage Lines \$1,105.00 smcs; Ask Supply \$2,926.33 smcs; Aurora Coop \$51.68 smcs; Baird Holm \$3,000.00 smcs; Baker & Taylor \$2,606.54 smcs; Beehive Industries \$19,243.00 smcs; Blessing \$260,020.89 co; BlueCross/BlueShield \$276,637.28 smcs; Bosselman \$22,160.88 smcs; Broadfoot's \$2,614.00 smcs; Brown,D \$73.34 smcs; Brownells \$2,518.02 smcs; BSN Sports \$1,522.00 smcs; Buffalo Co Historical Soc. \$112.50 smcs; Buffalo Co. Sheriff \$159,280.75 smcs; Builders \$634.99 smcs; Calibre Press \$139.00 smcs; Capital Business \$453.22 smcs; Carquest \$594.58 smcs; Cash-Wa \$560.18 smcs; Center Point Publishing \$74.01 smcs; Charter \$259.18 smcs; Chesterman \$175.25 smcs; City of KY \$47,840.19 smcs,co; City of KY \$554,416.02 ps; Clark Enersen \$8,312.24 co; Cline,B \$175.32 smcs; CMH Interiors \$85.00 smcs; Community Health Charities \$6.00 ps; Control Yours \$610.30 smcs; Copy Cat \$39.35 smcs; Corky Creations \$300.00 smcs; Crawford,B \$200.66 smcs; Cummins \$2,769.93 smcs; Cutter & Buck \$1,044.45 smcs; D & M Security \$70.50 smcs; Dan Roeder Concrete \$23,342.76 co; DAS State Accounting \$5,703.14 smcs; Depository Trust Co. \$1,747,945.00 ds; Diamond Tours \$1,238.00 smcs; Dish \$201.06 smcs; Dugan \$582.33 smcs; Dutton Lainson \$3,438.02 smcs,co; Eakes \$2,090.25 smcs; Elliott Equipment \$8,190.20 smcs; EMC Insurance \$27,943.34 smcs; Enforcement Video \$478.00 smcs; ESRI \$6,900.00 smcs; Evers,B \$342.00 smcs; Farmers Union \$945.00 smcs; FBI National Academy \$336.00 smcs;

Federal Signal Corp \$2,468.00 co; Flaherty,T \$424.00 smcs; Fort Bend Services \$5,653.44 smcs; Frontier \$9,238.82 smcs; Fry & Associates \$32,704.00 co; Galls \$1,223.47 smcs,ps; Gierhan,B \$75.00 smcs; Golden Rule Creations \$823.68 smcs; Grand West LLC \$107,558.92 co; Granicus \$1,236.00 smcs; Gray,C \$79.00 smcs; Grimes,J \$34.99 smcs; Griss,J \$56.95 smcs; Harders,J \$32.85 smcs; HD Supply \$8,204.78 smcs; HM Life Insurance \$44,383.51 smcs; HOA Solutions \$1,245.00 smcs; Hometown Leasing \$423.12 smcs; Hydraulic Equipment \$2,127.15 smcs; ICMA \$9,512.80 ps; IRS \$301,593.00 ps; J&D Construction \$172.00 smcs; Jack & Kitty \$125.00 smcs; Jack's Uniforms \$118.94 smcs; Johnson Controls \$677.60 smcs; KY Area Storytelling \$300.00 smcs; KY Area United Way \$858.75 ps; KY Crete & Block \$31.30 smcs; KY Hub \$1,036.35 smcs; KY Sister Cities \$500.00 smcs; Konica Minolta \$375.36 smcs; Kramer,S \$60.00 smcs; Larue Distributing \$50.79 smcs; LCL Truck Equipment \$126.57 smcs; Lillis,D \$51.20 smcs; Linkedin \$6,440.00 smcs; Magic Cleaning \$2,140.00 smcs; Martinez,J \$787.11 smcs; Matheson \$97.59 smcs; Menards \$126.95 smcs; Mid-NE Garage Doors \$389.04 smcs; Mid-State Engineering \$2,606.00 co; Midwest Breathing \$262.20 smcs; Midwest Connect \$7,014.16 smcs; Milco Environmental \$5,276.25 smcs,co; Miller & Associates \$49,260.25 smcs,co; Minitex \$1,245.00 smcs; Moonlight Embroidery \$366.00 smcs; Mostek Electric \$404.12 smcs; MPH Industries \$2,455.32 co; Municipal Supply \$4,975.41 smcs; NE Aviation Council \$95.00 smcs; NE Child Support \$4,376.40 ps; NE Dept of Revenue \$113,061.61 smcs,ps; NE Dept. Environmental \$14,335.03 smcs; NE Machinery \$181.24 smcs; NE Municipal Clerks \$35.00 smcs; NE Public Health \$4,166.20 smcs; NE Rural Assn. \$50.00 smcs; NE Safety \$95.00 smcs; NE State Fire Marshal \$480.00 smcs; NE Supreme Court \$137.50 smcs; Nielsen,B \$63.94 smcs; NMC Machinery \$2,710.00 smcs; Nolda,J \$120.00 smcs; Northwestern \$6,586.40 smcs; OCLC \$654.79 smcs; Office Depot \$74.53 smcs; One Call Concepts \$156.39 smcs; Outdoor Recreation \$11,495.00 co; Overhead Door \$261.64 smcs; Paramount \$160.16 smcs; Payflex \$573.75 smcs,ps; Penguin Random \$85.00 smcs; Penworthy \$155.80 smcs; Platte Valley Comm \$2,026.07 co; Platte Valley Laboratories \$230.00 smcs; Police Officer Association \$885.00 smcs; Pot O' Gold \$155.00 smcs; Prairie Land Construction \$153,497.88 smcs; Provantage \$1,218.45 smcs; Pulliam,R \$40.00 smcs; Qisoft \$1,562.00 smcs; Qwest Fuel \$15.00 smcs; Rasmussen Mechanical \$251.50 smcs; RCL Products \$244.00 smcs; Recorded Books \$272.68 smcs; Rich,T \$50.00 smcs; Sapp Brothers \$15,559.65 smcs; School District 7 \$2,575.85 smcs; See Clear Cleaning \$2,050.00 smcs; Shiha Ray,A \$32.53 smcs; Snap-On Tools \$708.00 smcs; SOS Portable Toilets \$145.00 smcs; Spain,J \$34.83 smcs; Staab,J \$384.00 smcs; Sunrise Middle School \$400.00 smcs; Tacha,J \$50.00 smcs; Taser International \$7,743.88 smcs; Titan Machinery \$89,400.00 co; Titleist \$357.85 smcs; Trejo,G \$149.00 smcs; Tri State Oil Reclaimers \$390.25 smcs; Tye Law Firm \$13,029.24 smcs; Union Bank & Trust \$153,415.53 co,ps; Union Bank & Trust \$40,055.67 ds; Unique Management \$366.95 smcs; Valk Manufacturing \$11,261.96 smcs; Verizon \$1,600.56 smcs; Vermont Systems \$1,250.00 smcs; Village Uniform \$308.65 smcs; Walters Electric \$9,261.75 co; Walters,R \$55.00 smcs; Walton,T \$40.00 smcs; Weis Fire \$520.00 smcs; Worley Monuments \$1,495.00 smcs; Payroll Ending 12/24/2016 -- \$426,385.66 and Payroll Ending 1/7/2017 -- \$638,831.73. 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.

- 4. Adopt Resolution No. 2017-2 appointing the terms vacated by John Lowe and Jim Ganz Jr. on the Planning Commission.

**RESOLUTION NO. 2017-2**

WHEREAS, Resolution No. 2005-96 calls for Citizen Board/Commission member appointments to be made by resolution submitted by the Mayor to the City Council for final approval; and

WHEREAS, two vacancies currently exist on the Planning Commission.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the following person, as proposed by the Mayor of the City of Kearney, Nebraska, is hereby appointed to fulfill the vacated terms as indicated:

**PLANNING COMMISSION**

Dave Malone appointed to fulfill the term vacated by Jim Ganz, Jr. to July 31, 2020.

Richard McGinnis appointed to fulfill the term vacated by John Lowe to July 31, 2019.

BE IT FURTHER RESOLVED that this resolution shall be in full force and effect from and after its adoption.

PASSED AND APPROVED THIS 10TH DAY OF JANUARY, 2017.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

- 5. Adopt Resolution No. 2017-3 approving the Agreement for Funding between the City of Kearney and the Kearney Visitor’s Bureau for the purpose of providing funding for the management and operation of The Archway.

**RESOLUTION NO. 2017-3**

BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the Agreement for Funding between the City of Kearney and the Kearney Visitor’s Bureau for the purpose of providing funding for the management and operation of The Archway be and is hereby approved. The Agreement, marked as Exhibit ‘A’, is hereby attached hereto and made a part hereof by reference.

BE IT FURTHER RESOLVED that the Mayor be and is hereby authorized and directed to execute the Agreement for Funding on behalf of the City of Kearney.

PASSED AND APPROVED THIS 10TH DAY OF JANUARY, 2017.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

- 6. Adopt Resolution No. 2017-4 approving Application and Certificate for Payment No. 3 in the amount of \$3,920.58 submitted by IES Commercial Inc. and approved by Olsson Associates for the 2016 Part 1 Improvements; Traffic Signal at 30th Avenue and 39th Street.

**RESOLUTION NO. 2017-4**

WHEREAS, IES Commercial of Holdrege, Nebraska has performed services in connection with the 2016 Part 1 Improvements; 39th Street and 30th Avenue Traffic Signals, and the City’s engineer, Olsson Associates, have filed with the City Clerk Application and Certificate for Payment No. 3 in the amount of \$3,920.58 as shown on Exhibit “A” attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	<u>\$89,583.00</u>
Contract Sum To Date	89,583.00
Gross Amount Due	88,054.19
Retainage (10%)	- 8,805.42
Amount Due to Date	79,248.77
Less Previous Certificates for Payment	<u>-75,328.19</u>
Current Payment Due	\$ 3,920.58

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, and hereby find and determine that Application and Certificate for Payment No. 3, as shown on Exhibit “A”, be and is hereby accepted and approved.

PASSED AND APPROVED THIS 10TH DAY OF JANUARY, 2017.

ATTEST:  
 MICHAELLE E. TREMBLY  
 CITY CLERK

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

7. Approve the purchases of a Caterpillar 938M Series Wheel Loader in the amount of \$207,958.00 and a 120M2 Motor Grader in the amount of \$207,300.00 submitted by Nebraska Machinery under the National Joint Powers Alliance to be used in Public Works/Transportation.

8. Adopt Resolution No. 2017-5 accepting the public improvements constructed under a Developer Constructed Infrastructure Agreement for Lots 1, 2, 3, 4, and 5 of Block One, Eastbrooke Eleventh Addition; Lots 2, 3, 4, and 5 of Block Four and Lot 1 of Block Five, Eastbrooke Eighth Addition.

**RESOLUTION NO. 2017-5**

WHEREAS, on the 10th day of January, 2017 the President and Council of the City of Kearney, Nebraska passed and approved Resolution No. 2017-5 authorizing the President of the Council to execute the Developer Constructed Infrastructure Agreement between the City of Kearney and Randy Griffiths to construct paving, water, sanitary sewer, and storm sewer for Lots 1, 2, 3, 4, 5, of Block One, Eastbrooke Eleventh, an addition to the City of Kearney, Buffalo County, Nebraska; and Lots 2, 3, 4, 5 of Block Four; and Lot 1 of Block Five, Eastbrooke Eighth, an addition to the City of Kearney, Buffalo County, Nebraska; and

WHEREAS, the Developer has constructed the public improvements in accordance with the requirements and standards set forth in Article 13 “Developer Constructed Infrastructure” of Chapter 9 “Public Works” of the Code of the City of Kearney; and

WHEREAS, in accordance with Section 9-1318 “Acceptance of Article 13 “Developer Constructed Infrastructure” of Chapter 9 “Public Works” of the Code of the City of

Kearney the Developer has certified to the City that there are no liens or other encumbrances against the construction work; and

WHEREAS, the City's Engineers have determined that the work is in compliance with the design and is complete.

NOW THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the public improvements for paving, water, sanitary sewer and storm sewer to serve the property described as Lots 1, 2, 3, 4, 5, of Block One, Eastbrooke Eleventh, an addition to the City of Kearney, Buffalo County, Nebraska; and Lots 2, 3, 4, 5 of Block Four; and Lot 1 of Block Five, Eastbrooke Eighth, an addition to the City of Kearney, Buffalo County, Nebraska constructed under, and in accordance with, Article 13 "Developer Constructed Infrastructure" of Chapter 9 "Public Works" of the Code of the City of Kearney be and are hereby accepted.

PASSED AND APPROVED THIS 10TH DAY OF JANUARY, 2017.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**9.** Approve the Plans and Specifications for the 2016 Part 3 Improvements for 56th Street from 4th Avenue to 19th Avenue and 17th Avenue from 50th Street to west City limits; AND 2013 Part 10 Improvements for Talmadge Street from 2nd Avenue to 4th Avenue and set the bid opening date for February 7, 2017 at 2:00 p.m.

**10.** Approve the applications for Special Designated Licenses submitted by Night Life Concepts, Inc., dba Cunningham's Journal in connection with their Class CK-059311 liquor license to dispense alcoholic liquor in the Exposition Building and the Ag Pavilion located at the Buffalo County Fairgrounds, 3807 Avenue N on February 17, 18, 20, 21, 22, 23, 24, 25, 2017 from 10:00 a.m. until 12:00 a.m. and February 19 and 26 from 11:00 a.m. until 12:00 a.m. for the Cattlemen's Classic.

**11.** Approve the application for a Special Designated License submitted by Night Life Concepts, Inc., dba Cunningham's Journal in connection with their Class CK-059311 liquor license to dispense alcoholic liquor in the Exposition Building located at the Buffalo County Fairgrounds, 3807 Avenue N on Saturday, February 4, 2017 from 3:00 p.m. until 12:00 a.m. for a cage fighting event.

**12.** Approve the application for a Special Designated License submitted by Night Life Concepts, Inc., dba Cunningham's Journal in connection with their Class CK-059311 liquor license to dispense alcoholic liquor in the Exhibit Building located at the Buffalo County Fairgrounds, 3807 Avenue N on Saturday, February 18, 2017 from 3:00 p.m. until 12:00 a.m. for a banquet.

**13.** Approve the application for a Special Designated License submitted by Kearney Investment Corporation, dba Holiday Inn in connection with their Class CK-017964 liquor license to dispense alcoholic liquors in First National Bank, 2223 2nd Avenue on Thursday, January 26, 2017 from 4:30 p.m. until 8:30 p.m. for a retirement reception.

**14.** ADDENDUM ITEM. Approve the application for a Special Designated License submitted by Earn and Return Investments, dba The Cellar Bar & Grill in connection

with their Class IK-064728 liquor license to dispense alcoholic liquors in The Archway, 3060 East 1st Street on Monday, February 6, 2017 from 5:00 p.m. until 11:00 p.m. for a social.

## **V. CONSENT AGENDA ORDINANCES**

None.

## **VI. REGULAR AGENDA**

### **APPEAL OF THE REVIEW AND EVALUATION OF SITE DEVELOPMENT FEATURES ON PROPERTY LOCATED WEST OF 105 TALMADGE STREET**

Mayor Clouse opened for discussion the appeal submitted by Miller & Associates for Level 5, LLC on the review and evaluation of site development features by Administration as it pertains to maximum height requirements for property zoned District C-2, Community Commercial District and described as the west 300 feet of Lot 3, Spady's Addition, an Addition to the City of Kearney, Buffalo County, Nebraska (west of 105 Talmadge Street) and to consider Resolution No. 2017-4.

Craig Bennett from Miller & Associates presented this matter to the Council. He is asking for a height deviation on a property located west of the current Country Inn and Suites. This particular site already has concrete paving and is being proposed to put a Days Inn Motel. The current zoning is C-2 and the City Code allows under Sections 47-106 and 59-102 for a height deviation, which requires a site plan review. This is basically the asking for a deviation. Otherwise the only other process would be to come through and ask for a PD overlay on top of it. All of the greenspace, parking lot, impervious and pervious ratios were met or exceeded including landscaping components. Because this property is adjoining Talmadge Street, the owner has required more than the 35 percent of required brick façade. The top plate of this 4-story building is 41 feet. So the deviation is due to the pitched roof scenario that the owner wants to utilize for the same four stories, exceeds to a height of approximately 54.8 feet which would basically be almost 9.9 feet. If they were to use more of a parapet-style roof, that would be really the only way to accomplish that. There are other 4-story motels in this area which is why the deviation is requested, as opposed to coming back through with a PD since there is already another motel on this lot and all other zoning requirements were met.

Moved by Lammers seconded by Nikkila to adopt Resolution No. 2017-4 approving the appeal submitted by Miller & Associates for Level 5, LLC on the review and evaluation of site development features by Administration as it pertains to maximum height requirements for property zoned District C-2, Community Commercial District and described as the west 300 feet of Lot 3, Spady's Addition, an Addition to the City of Kearney, Buffalo County, Nebraska (west of 105 Talmadge Street). Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear, Nikkila. Nay: None. Motion carried.

**RESOLUTION NO. 2017-6**

WHEREAS, an appeal has been submitted by Miller & Associates for Level 5 L.L.C. on the review and evaluation of site development features by City Administration as it pertains to maximum height requirements for property zoned District C-2, Community Commercial District and described as the west 300 feet of Lot 3, Spady's Addition, an Addition to the City of Kearney, Buffalo County, Nebraska (west of 105 Talmadge Street); and

WHEREAS, said appeal has been reviewed by the Planning Commission on December 16, 2016 and voted in favor of the site plan appeal as presented; and

WHEREAS, the City Council reviewed this matter on January 10, 2017 and voted in favor of the site plan appeal as presented by the applicant and staff.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the proposed site development plan submitted by Miller & Associates for Level 5 L.L.C. for property zoned District C-2, Community Commercial District and described as the west 300 feet of Lot 3, Spady's Addition, an Addition to the City of Kearney, Buffalo County, Nebraska (west of 105 Talmadge Street) be approved.

PASSED AND APPROVED THIS 10TH DAY OF JANUARY, 2017.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**OPEN ACCOUNT CLAIM**

Moved by Nikkila seconded by Lear that the Open Account Claim in the amount of \$82,804.90 payable to Nebraska Public Power District be allowed. Roll call resulted as follows: Aye: Buschkoetter, Lear, Nikkila, Lammers. Nay: None. Clouse abstained. Motion carried.

**VII. REPORTS****CLOSED SESSION**

Moved by Lear seconded by Buschkoetter that Council adjourn into closed session at 5:42 p.m. for the protection of the public interest to discuss possible litigation and real estate matters. Roll call resulted as follows: Aye: Clouse, Lear, Nikkila, Lammers, Buschkoetter. Nay: None. Motion carried.

Mayor Clouse restated the purpose for the closed session is for the protection of the public interest to discuss possible litigation and real estate matters. According to law, the Council has the option to reconvene back into open session and may take any formal action it deems appropriate.

Mayor Clouse left the meeting at 6:15 p.m.

Moved by Lear seconded by Buschkoetter that Council reconvene in regular session at 6:23 p.m. Roll call resulted as follows: Aye: Clouse, Nikkila, Lammers, Buschkoetter, Lear. Nay: None. Motion carried.

**VIII. ADJOURN**

Moved by Buschkoetter seconded by Lammers that Council adjourn at 6:23 p.m. Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear, Nikkila. Nay: None. Motion carried.

**ATTEST:**

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

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