

Kearney, Nebraska
June 10, 2008
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 June 10, 2008 in the Council Chambers at City Hall. Present were: Stanley A. Clouse, President of the Council; Michaëlle Trembly, City Clerk; Council Members Randy Buschkoetter, Don Kearney and Bob Lammers. Absent: Bruce Lear. Michael Morgan, City Manager; Michael Tye, City Attorney; Wendell Wessels, Director of Finance and Administration; Kirk Stocker, Director of Utilities; Dan Lynch, Chief of Police; Suzanne Brodine, Grant and Marketing Coordinator; Bruce Grupe, City Engineer; and Luke Olson, Management Assistant were also present. Some of the citizens present in the audience included: Mitch Humphrey, Craig Bennett, Steve Craig, Cory Christians, Chris Riha, Andy Hoffmeister, Tim Novacek, Bruce Lefler, Greg Barney, Gerry O'Rourke, Jake Wazikowski from NTV, Steve Altmaier from KGFW Radio, Sara Giboney 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

Pastor Ness from St. Luke's Episcopal Church provided the Invocation.

PLEDGE OF ALLEGIANCE

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

ANNOUNCEMENT

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

ORAL COMMUNICATIONS

There was no Oral Communications.

II. UNFINISHED BUSINESS

There was no Unfinished Business.

III. PUBLIC HEARINGS

PROPOSED AMENDMENTS TO CHAPTERS 8, 9 AND 49 OF CITY CODE PERTAINING TO RECREATIONAL VEHICLE PARKING

Moved by Kearney seconded by Lammers to remove from the table Public Hearing 1. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

Mayor Clouse opened the public hearing on the Application submitted by the City of Kearney for the proposed amendments to the following sections of the Kearney City Code pertaining to parking of Recreational Vehicles: Section 8-301 "Definitions", Section 8-919 "Recreational Vehicles" all in Chapter 8 "Police"; to amend Section 9-901 "Definitions", Section 9-906 "Where Trailers Permitted; Camping Vehicles" and Section 9-907 "Where Trailers Permitted; Hauling Trailers" all in Chapter 9 "Public Works", and to amend Section 49-110 "Parking for Personal and Recreational Vehicles" all in Chapter 49 "Off-Street Parking".

City Planner Lance Lang presented this matter to the Council. The challenge they had was to balance the needs for public safety and the aesthetics of our neighborhoods while observing the personal property rights of the people who choose to have these kinds of vehicles and have a place to store them. They have gone through and cleaned up some conflicting language, etc. The definitions are now consistent throughout. There are two facets to these amendments. One is parking on the street which is a police issue. The police department is in charge of enforcement of parking. The second is the off-street aspect of where these vehicles can be parked on a residential lot.

On June 3, 2008 the City Council held a study session to obtain more information on recreational vehicles, hauling trailers, and commercial vehicles in residential settings. At that time several alternatives were presented by City Staff for the Council's consideration.

There were a couple of issues that were not discussed at the study session. To clarify these matters are mentioned here for the Councils' consideration.

1. The combined number of RV's, boats, and non-commercial hauling trailers is two per family in any combination.

2. Vacant adjacent lots under common ownership will be viewed as an extension of the primary lot and will not get double credit for number of units allowed. The front and rear planes of the house extended will form the basis for compliance and enforcement.

Staff recommends that the City Council approve a modified version of the Planning Commission's recommendation summarized as follows:

On-Street

- The current Code limits the parking to 24 hours for recreational vehicles for the purpose of loading and unloading. Some of these recreational vehicles are so large they will not fit in the driveway and people need to load and unload them; more time than the 24 hours had been requested by some owners. They believed it was important to keep them off the street as much as possible because they do cause a vision obstruction for pedestrians and motorists. Maintaining the 24 hour limit is the best proposal.

Off-Street

- Recreational vehicles, including boats and hauling trailers, may be parked in an enclosed building or garage, in the front, side, or rear yard of a residential lot subject to the following conditions:

1. Front Yard

- Vehicle may be parked on the driveway as long as the closest point of the vehicle is at least 10 feet from the street curb as measured to the back of curb for curbside sidewalks or, for setback sidewalks, no part of the vehicle shall impede into or over the sidewalk. Any parking area to the side of the existing driveway that is in the front yard shall be hardsurfaced with asphalt or concrete.

Council member Buschkoetter proposed a scenario asking if a house in the middle of the block could widen their driveway to the front of the house to the property line and park a camper on it abutting their property line. City Planner responded that they could as long as it did not block the sidewalk but on a corner lot there is a vision clearance provision. If it is in the front of the house, they propose that it be concrete or asphalt. There would have to be enough room for it to fit and not cross onto the neighbor's property.

2. Side Yard

- Vehicle may be parked on a parking pad consisting of concrete, asphalt, concrete pavers, crushed concrete, or rock aggregate if the vehicle is behind the front and side setbacks. The parking pad shall be sized such that the entire length and width of the vehicle is over the pad. If aggregate is used to surface the parking area, the minimum size of said aggregate shall be at least 1½ inch average size, the aggregate shall be contained within a physical boundary such as landscape timbers, bricks, retaining blocks, railroad ties, etc. and the aggregate shall be a minimum of 4 inch depth. Weeds and grass shall not be allowed to grow up through the aggregate.

3. Rear Yard

- Vehicle may be parked on a parking pad consisting of concrete, asphalt, concrete pavers, crushed concrete, or rock aggregate if the vehicle is behind the rear and side setbacks. The parking pad shall be sized such that the entire length and width of the vehicle is over the pad. If aggregate is used to surface the parking area, the minimum size of said aggregate shall be at least 1½ inch average size, the aggregate shall be contained within a physical boundary such as landscape timbers, bricks, retaining blocks, railroad ties, etc. and the aggregate shall be a minimum of 4 inch depth. Weeds and grass shall not be allowed to grow up through the aggregate. A paved driveway is not required.

- Commercial Vehicles are not allowed either on street or off street in residential districts with the exception of construction vehicles parked off street that are engaged in an active construction site, or vehicles associated with home based businesses approved by the city. Some discretion and judgment will be required as some vehicles that are passenger vehicles with commercial logos are appropriate while larger vehicles that are disruptive to the character of the neighborhood are not acceptable. Semi-tractors and trailers are not allowed in residential zones.

The above amendments reflect a significant relaxation of the current requirements. However, the changes meet the goal of balancing the rights of recreational vehicle owners and public safety concerns. If City Council approves the amendments, staff will conduct a public information campaign to ensure the public is aware of the changes.

City Planner stated they have made the Code more lenient in a couple of areas than what it is today. This is a complex issue and there has been a lot of input from people. They believe this is a good compromise to balance the public safety, aesthetics and the rights of those people to have those types of units. Some of those vehicles are so big; they are just not going to fit on a lot unless someone has an alley to access their backyard.

Council member Lammers asked if the aggregate prevents some of the drain off that concrete might create and the problems with the storm sewers, etc. Mr. Lang stated that the aggregate would allow some of the water to permeate down into the ground. If a resident decided to pour an elaborate concrete pad for a large recreational vehicle and it would exceed the maximum amount of impervious coverage for that zoning district for that lot, the City would not allow that. They must maintain the amount of green space required. There is good and bad points for the pavement and the crushed rock. One of the good points for the crushed rock is it does allow for water penetration and makes less of a demand on the storm drains.

Council Member Kearney pointed out that this on-street parking code has been in affect for many years. City Planner explained that with Access Kearney implementation two years ago, the City has received several contacts of concern from the citizens regarding this issue. There were around a 150 complaints received based on recreational vehicles, boats, trailers, etc. over a 12-14 month period. As City staff reviewed the way the Code was written, they found conflicting language. It made it difficult to enforce it in the way it was written. That is why it was very important to resolve this matter. One of the other goals from the enforcement standpoint was so citizens who own recreational vehicles and the citizens who live in the neighborhoods that have concerns, the City staff and police department could easily understand what the rules and make code enforcement more uniform.

Mayor Clouse stated that we had a task force that looked at this and then it went to Planning Commission a couple of different times. The deviation is the setback and asked if there were other things that have been modified from the recommendations that came from the Planning Commission. City Planner stated that one of the things is the setback from the driveway. The Planning Commission had recommended a 30-foot setback from back of curb which in effect renders the entire driveway unusable. The 10-foot setback is more user friendly to most, although some of the larger recreational

vehicles might not fit anyway. The Planning Commission also recommended going to 48 hours on street instead of 24 hours. Recreational vehicle owners had requested up to 72 hours which is entirely too much time. The other difference is at the Planning Commission there was a proposal to require concrete in the side yard and the front yard, but to allow them to be parked on dirt or grass. The compromise was to require the crushed rock, concrete or asphalt in front, but giving a choice in the side and back yard.

Mayor Clouse stated that in talking to the Planning Commission members, the basis for the 30-foot setback was not so much to be recreational vehicle friendly, but more for the public safety. As the ordinance exists, there is nothing that addresses that issue. City Planner stated that the current ordinance states they must be behind the front setback which would be the front plane of the garage. The 10-foot setback is about as lenient as it can be in order to be able to see around them. The 10-foot setback that is being proposed is more beneficial to the recreational vehicles than the 30-foot setback would be.

Mayor Clouse proposed that thirty feet might be too much, but ten feet might be too little. City Manager Michael Morgan stated that ten feet would allow the majority of these types of units to be located in the front. If you go much more than that, the front is rendered useless. The ultimate goal is to get these units off the street which is the number one public safety improvement. We can start compromising from that point.

Council Member Buschkoetter stated that it was discussed at the fact finding session if you are ten feet from the curb when you are backing out from the driver's seat you have about ten feet of car behind you more or less. So at that point, you can still see one direction or the other which still addresses the safety concerns and still allow the units to be parked there. City Manager added that in the case of a non curbside sidewalk, they are going to be 15+ feet back. Council Member Buschkoetter stated that ten feet is the minimum that we have which still meets the safety goal for the neighbors to back out of their driveway.

City Manager stated that if there is a decision to move forward, he proposed a 30-day grace period because it is important for the public to understand what the changes are and there will be flyers with a list of check off items if there is a violation why there is a violation. It is not their goal to rush out and issue tickets, but to educate the public. The City does press releases, but believed it would be more helpful to leave these check off sheets on the vehicle to give them information plus the ability to call staff if they have a question.

Mayor Clouse stated that the point is that we are somewhat compromising the safety of a pedestrian on the sidewalk to get these units off the street. He believed that the issue of the safety of someone on the sidewalk has still not been resolved. City Manager stated that it is always difficult because you want to find the perfect solution. The City is improving public safety significantly because for several years there has not been the greatest enforcement, which has created more dangerous situations in the past than what will come out of this if it effectively enforces it. We must find some tool to enforce it and find the best balance.

Council member Lammers stated that the recreational vehicle owner would know what their liability is and would be consciences of backing and slowing out of the driveway. People on the sidewalks would also be aware of vehicles backing from driveways. Both parties should be aware there is a potential blind spot. City Planner stated there are other large vehicles such as extended cab pickups and suburbans that are difficult to see around when backing out of the driveways.

City Planner stated that the market reacts to the demand. We already have one citizen who is putting together an outdoor recreational vehicle storage place. He also has had a couple of other inquiries about something similar.

Jerry King, 4905 Avenue L Place, addressed the Council. He has a motor home and he had some insight about pulling out into the street with a motor home. He suggested that they can be backed into the driveway so when you pull out you can see the street. He was somewhat disappointed when he thought the City had adopted the 48-hour on-street parking and then he found out in the newspaper that the proposal is 24 hours. He and his wife spend time in Texas in the winter and they take 30 days just to plan to go. His motor home is in a storage building 95 percent of the time. It is never on the street. He stated that 24 hours to load is not enough time. By the time he gets the motor home out and they load "everything in the house" to take with them, it is just not enough time. They bring "everything in the house" back with them which must be unloaded.

A 24-hour time limit is a very short to get all of that done. He has observed vans, cars and pickups parked in the street that probably create about as much havoc as his motor home does in 48 hours setting there. He has gone to great pains to move his mailbox to make sure that he does not interfere with anybody. When he gets home everything has to be done in the reverse manner. He asked the Council to consider the 48 hours. He does not want to break the law and would not do it. He believed that the 72 hours was way too long, but 24 hours is too short. It is a 34 foot motor home and will not fit in his driveway so that is not an option. City Planner stated that the on-street safety must be considered and the less time they are allowed the better.

City Manager stated that 48 hours can become 60 hours or 72 hours. These concerns are complaint driven and unless an officer is sitting there marking time, you always have more than 24 hours. If you get to the point that 48 hours are allowed and they remain there for 60 hours, you have to ask is it important to remove them from the street at all. Mr. King is doing it for the correct purpose which is loading and unloading. He would agree there are numerous parking violations that are going on with other types of vehicles. The 24 hours starts when the officer shows up and marks the vehicle. Since Mr. King has never received a ticket so that show that his neighbors understand about what he does each year. If a neighbor were to make a complaint, it would most likely be less than 48 hours, but it probably would not be 24. It is always more than 24 hours; it is just like the downtown parking.

City Planner stated the process is they mark the tire and then have to wait 24 hours to make sure that according to due process, it is actually a violation. If a CSO were to see someone loading and unloading that would be fine. The situation that we are talking about here is recreational vehicles that are parked in the street for a week or more. There are some folks that just park them in the street. Mr. King's situation is not what

we are addressing, but it does potentially affect him with the time limit and that is what makes it difficult.

Chief of Police Dan Lynch strongly agrees with the recommendation of 24 hours. City Manager stated the first priority in enforcement of vehicles on the street is going to be safety violations. There are different situations – parked in a cul-de-sac does not pose the same safety risk that it would if parked on 35th Street or some other busy street. They would prioritize trailers, a number of trailers parked with objects protruding; many are not licensed nor have reflective tape.

There was no one present in opposition to this hearing.

Moved by Lammers seconded by Buschkoetter to close the hearing and approve the Application submitted by the City of Kearney for the proposed amendments to the following sections of the Kearney City Code pertaining to parking of Recreational Vehicles: Section 8-301 “Definitions”, Section 8-919 “Recreational Vehicles” all in Chapter 8 “Police”; to amend Section 9-901 “Definitions”, Section 9-906 “Where Trailers Permitted; Camping Vehicles”, and Section 9-907 “Where Trailers Permitted; Hauling Trailers” all in Chapter 9 “Public Works”, and to amend Section 49-110 “Parking for Personal and Recreational Vehicles” all in Chapter 49 “Off-Street Parking”. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

REZONING 1908, 1910, AND 1912 7TH AVENUE

Mayor Clouse opened the public hearing on the Application submitted by Kearney Area Habitat for Humanity (Applicant and Owner) and Mark and Christine Bonk (Owner) to rezone from “District M-1, Limited Industrial District” to “District R-3, Urban Residential Multi-Family District (Medium Density)” property described as Lots 4, 5 and 6 of Block 15, Ashland Addition to the City of Kearney, Buffalo County, Nebraska (1908, 1910 and 1912 7th Avenue).

Planning Commission recommended approval.

The applicant is requesting approval to rezone three existing lots from M-1, Limited Industrial District to R-3, Urban Residential Multi-Family District. The southerly lot contains a single-family home that will remain. The other two lots contain an existing house and garage that will be removed to allow redevelopment of the lots for two single-family homes for Habitat for Humanity. Adjacent property to the north is zoned R-3. The proposed zoning is in conformance with the Future Land Use Map of the City of Kearney Comprehensive Development Plan.

Cory Christians, 4007 Avenue F, presented this matter to the Council. He represents Kearney Area Habitat for Humanity and their request for rezoning of these lots. They have a permit to take down the existing home (1912) and two homes will be built on 1912 and 1914 and the Bonk’s primary residence will remain at 1908. This area was zoned M-1 because of the railroad tracks, but it is actually residential and a lot of this area has already been rezoned over time.

There was no one present in opposition to this hearing.

Moved by Buschkoetter seconded by Clouse to close the hearing and approve the Application submitted by Kearney Area Habitat for Humanity (Applicant and Owner) and Mark and Christine Bonk (Owner) to rezone from "District M-1, Limited Industrial District" to "District R-3, Urban Residential Multi-Family District (Medium Density)" property described as Lots 4, 5 and 6 of Block 15, Ashland Addition to the City of Kearney, Buffalo County, Nebraska (1908, 1910 and 1912 7th Avenue). Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lammers. Nay: None. Lear absent. Motion carried.

VIAERO WIRELESS CONDITIONAL USE PERMIT, 609 PLATTE ROAD

Mayor Clouse opened the public hearing on the Application submitted by NE Colorado Cellular, Inc., dba Viaero Wireless (Applicant) and FirstTier Capital Corporation, dba Kearney Event Center, Inc. (Owner) for a Conditional Use Permit to construct a 150-foot self-supporting telecommunications monopole with an aggregate building and supporting equipment on property zoned "District C-2/PD, Community Commercial/Planned Development Overlay District" and described as Lot 2, Broadfoot 3rd Addition to the City of Kearney, Buffalo County, Nebraska (609 Platte Road).

The Planning Commission reviewed this Conditional Use Permit (CUP) application in October 2007 and recommended approval. The application was placed on the City Council Agenda but some issues with occupation taxes and franchise fees caused the application to be tabled three times and ultimately withdrawn such that the Council never took action on the item. Now it is back to go through the process again. The following are the comments prepared for the October 2007 meeting of the Planning Commission.

The applicant is requesting a CUP to construct a 150-foot self-supporting telecommunications tower, a backup generator, a 1,000 gallon propane tank and two equipment buildings near the northwest corner of the existing arena building. The applicant has submitted a lengthy report in support of this CUP application for your review. All required documentation is present.

The main goals of the applicant appear to be:

- Improve service coverage to their client base by adding an additional tower to their system in Kearney.
- Provide better signal strength to the indoor environs at the arena.
- Build the tower using monopole construction to make it less noticeable.
- Provide telecommunications service to the community through line-of-sight technology during times of crisis when other types of communication systems may be compromised.

Viaero received approval from the City Council in March 2007 to locate their first new tower on Highway 30 just south of the UNK campus. The company has several co-location sites on towers owned by others in the Kearney community. If this tower is approved, they will be seeking suitable locations for a tower near Good Samaritan Hospital and one near the Hilltop Mall area.

Staff believes that the proposed location is well suited for a tower. It is fairly "removed" from the urbanized area in a more remote location. Most of the land around the location is open agricultural or industrial property. The subject site is zoned C-2/PD, Community Commercial with a Planned District Overlay. There are no residences or residential zoning anywhere near the tower site. The monopole construction will give the tower sleeker lines and make it less noticeable than a lattice style tower that requires a wider triangular base. The bulk of the arena building helps to hide the tower from view to the west while the existing mature trees north of the arena and tower site help to buffer views from Interstate 80. The arena is built on a substantial amount of fill due to floodplain regulations which makes the site higher than surrounding land and helps to decrease the overall height requirements for the tower. The equipment buildings are 9' x 15' x 8.5' each. They will be located at the base of the tower and enclosed with a security fence. A landscape plan is provided. Conifers trees, pines and firs will be planted to screen the tower site at ground level.

City Code requires that any new telecommunications tower provide co-location ability, meaning adequate space and structural integrity for antenna and equipment for two additional users on the tower. The proposed Viaero tower has co-location capacity for an additional user if they do not disrupt the services of Viaero and enough space in the equipment buildings to accommodate the additional user.

Code requires that all tower applicants perform analysis of co-location potential for any existing telecommunications towers to use the existing towers instead of constructing new towers. The required search ring in the code is $\frac{1}{4}$ mile from the proposed tower site. In this case, there are no existing towers located within these parameters.

Chris Riha, representative of Viareo, presented this matter to the Council. Their goal is to improve coverage on the south city limits of Kearney and on the southern part of Buffalo County and on the northern edge of Kearney County. The purpose is to cover the global systems for mobile communications, GSM Network coverage around the Kearney Event Center area. This will enable the frequency waves to better penetrate into the buildings; such as the motels, event center and future homes in that area of town. It will improve the speed for data transmissions which has been increasing each year over the past 5-10 years. Service is not just making phone calls; for example, people are now capable of forwarding a picture from your cell phone, text messaging, scanning the web, etc. They want to allow their technology to meet the demand in that area of town. The more people that use this GSM technology, the more antennas they are going to need to provide.

Another economic improvement for Kearney would be to improve the communications in that area of town. They currently have locations downtown, south of the railroad tracks; they have a monopoles by the Buffalo County Fairground, and they hope to have a location around the hospital and the mall. There will be room for other co-locations on this tower.

Council member Lammers asked if they had investigated locating on an existing tower. Mr. Riha stated they have an agreement with the Event Center that allowed them to construct a monopole right in that area. He was uncertain of the exact radius ($\frac{1}{2}$ – 1

mile) and extended the range a little further out. They did not want to overlap the other towers out there to the north (inside the City limits) and to the east that abut I-80 were a little too far out of the range. If they would have co-located on any of those towers, they would have had a big empty space in the west.

City Manager Morgan stated that one of the concerns that the City needs to address in the near future is the telecommunications ordinance. Mr. Riha had just mentioned 2-3 more towers which are sufficient to provide cell service without locating at this location which is what the telecommunication ordinance envisioned. Under the current ordinance, we could restrict several of these tower sites, but the problem is with the service demands, communication companies have to deal with more than cell phone coverage. He believed that the City's telecommunication ordinance is not very well suited to what we are facing today. He suggested that they need to take a look at it because clearly with the data transmission questions, the towers need to be a lot closer. They have met all the requirements including the billing issues.

There was no one present in opposition to this hearing.

Moved by Clouse seconded by Kearney to close the hearing and approve the Application submitted by NE Colorado Cellular, Inc., dba Viaero Wireless (Applicant) and FirstTier Capital Corporation, dba Kearney Event Center, Inc. (Owner) for a Conditional Use Permit to construct a 150-foot self-supporting telecommunications monopole with an aggregate building and supporting equipment on property zoned "District C-2/PD, Community Commercial/Planned Development Overlay District" and described as Lot 2, Broadfoot 3rd Addition to the City of Kearney, Buffalo County, Nebraska (609 Platte Road) subject to the City receiving the executed Acknowledgment from the Applicant and Owner. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion carried.

FINAL PLAT FOR ANDERSON PARK 5TH SUBDIVISION

Mayor Clouse opened the public hearing on the Application submitted by Richard Stacy from Miller & Associates (Applicant) for Lorin and Kay Downing (Owner) for the Final Plat for "Anderson Park 5th Subdivision", an addition to the City of Kearney, Buffalo County, Nebraska for property described as part of the South Half of the Southwest Quarter of Section 31, Township 9 North, Range 15 West of the 6th P.M., containing 0.86 acres, more or less, Buffalo County, Nebraska (northeast corner of 25th Street and Avenue Q) and to consider approval of Resolution No. 2008-87.

Planning Commission recommended approval.

The applicant is requesting approval to plat a tract of land that is approximately 0.86 acres at the northeast corner of Highway 30 East and Avenue Q as a single lot subdivision. The proposed use is a westward expansion of University Self Storage; although this phase will be designed for storage of larger items such as RV's and boats. This property is zoned M-1, Limited Industrial District. This property was formerly known as Lot 64 of Midway Land and Investment Company East Lawn Addition, but was vacated sometime in the past and never replatted until now. The Preliminary Plat for this

property was approved by Planning Commission on May 16, 2008. A Subdivision Agreement is not required, nor is a Public Works Plan.

Craig Bennett from Miller & Associates was present to answer any questions.

There was no one present in opposition to this hearing.

Moved by Kearney seconded by Lammers to close the hearing and approve the Application submitted by Richard Stacy from Miller & Associates (Applicant) for Lorin and Kay Downing (Owner) for the Final Plat for "Anderson Park 5th Subdivision", an addition to the City of Kearney, Buffalo County, Nebraska for property described as part of the South Half of the Southwest Quarter of Section 31, Township 9 North, Range 15 West of the 6th P.M., containing 0.86 acres, more or less, Buffalo County, Nebraska (northeast corner of 25th Street and Avenue Q) and approve **Resolution No. 2008-87**. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

RESOLUTION NO. 2008-87

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of "ANDERSON PARK 5TH SUBDIVISION", an addition to the City of Kearney, Buffalo County, Nebraska for a tract of land being part of the South Half of the Southwest Quarter of Section 31, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: commencing at a point on the east line of Avenue Q in the City of Kearney, Nebraska 66 feet east of the southeast corner of Block 63, Midway Land Company's East Lawn Addition to the City of Kearney, Buffalo County, Nebraska, said point being the southwest corner of what was formerly Block 64 in said addition; running thence north along the east line of said Avenue Q to the southwest corner of Block 55 of said addition; running thence east along the south line of said Block 55, 100 feet; running thence south at right angles (to the aforescribed course) to the north line of 25th Street in the City of Kearney, Buffalo County, Nebraska, and running thence west on the north line of 25th Street to the place of beginning, except that part of the above tract declared condemned by the State of Nebraska Department of roads in the condemnation proceedings in the County Court of Buffalo County, Nebraska, Docket 32A, Page 145, Case 27078, containing 0.87 acres, more or less, with that part of said referenced condemnation filed in Book 76, Page 3591 of the Buffalo County Register of Deeds office, and described as follows: that part of the South Half of the Southwest Quarter of Section 31, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska, described as follows: commencing at a point on the east line of Avenue Q in the City of Kearney, Buffalo County, Nebraska, 66 feet east of the southeast corner of Block 63, Midway Land Company's East Lawn Addition to the City of Kearney, Buffalo County, Nebraska, said point being the southwest corner of what was formerly Block 64 in said addition; running thence east on the south line of the above described tract a distance of 100 feet to the southeast corner of the above described tract; thence northerly on the east line of the above described tract a distance of 4.43 feet; thence westerly deflecting 093°16' left a distance of 77.59 feet to a point on the northerly Highway 30 right-of-way line and the south line of the above described tract; thence westerly deflecting 003°16' right a distance of 22.54 feet to the point of termination;

except, over one unrestricted drive not to exceed 40 feet in width, the centerline of which is located 4326.3 feet from the east line of Section 31 as measured along the centerline of the highway, all in Buffalo County, Nebraska, duly made out, acknowledged and certified, and the same hereby is approved in accordance with the provisions and requirements of Section 19-916 of the Nebraska Revised Statutes, be accepted and ordered filed and recorded in the Office of the Register of Deeds of Buffalo County, Nebraska; said addition is hereby included within the corporate limits of said City and shall be and become a part of said City for all purposes whatsoever, and the inhabitants of such addition shall be entitled to all the rights and privileges and shall be subject to all laws, ordinances, rules and regulations of said City.

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

PASSED AND APPROVED THIS 10TH DAY OF JUNE, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

FINAL PLAT FOR E.K. AND MARY YANNEY HERITAGE PARK SECOND

Mayor Clouse opened the public hearing on the Application submitted by Mitch Humphrey from Buffalo Surveying (Applicant) for Yanney Heritage Park Foundation, Inc. (Owner) for the Final Plat for "E.K. and Mary Yanney Heritage Park Second", an addition to the City of Kearney, Buffalo County, Nebraska for property described as Lot 2 (to be vacated), E.K. and Mary Yanney Heritage Park, an addition to the City of Kearney, Buffalo County, Nebraska with said tract of land being part of the Northeast Quarter of the Northeast Quarter and part of Government Lot 4 and accretion land located in Section 10, Township 8 North, Range 16 West of the 6th P.M., containing 79.07 acres, more or less, Buffalo County, Nebraska (south of 11th Street and east of Kea West Avenue) and to consider approval of Resolution No. 2008-88.

Planning Commission recommended approval.

The applicant is requesting approval to replat Yanney Park, splitting it into three parcels. The existing subdivision, known as E.K. and Mary Yanney Heritage Park must be vacated so that the property can be replatted. Lot 1, the largest of the three lots, contains 46.2 acres and all of the physical improvements at the park including the proposed site for the Peterson Senior Center. Lot 2 contains 13.2 acres at the northwest corner of the park. Lot 3 at the south end of the property contains 18.4 acres. The property is zoned Agricultural. A Subdivision Agreement is not required. A Public Works Plan has been submitted to show location and feasibility of proposed infrastructure and location of required easements. Additional right-of-way is dedicated on the south side of 11th Street such that a total of fifty feet from the centerline is dedicated for this arterial street.

This subdivision will make it easier to transfer Lot 1 from the Yanney Park Foundation to the City of Kearney when the time comes as all improvements are contained in Lot 1.

Mitch Humphrey from Buffalo Surveying was present to answer any questions.

There was no one present in opposition to this hearing.

Moved by Lammers seconded by Buschkoetter to close the hearing and approve the Application submitted by Mitch Humphrey from Buffalo Surveying (Applicant) for Yanney Heritage Park Foundation, Inc. (Owner) for the Final Plat for "E.K. and Mary Yanney Heritage Park Second", an addition to the City of Kearney, Buffalo County, Nebraska for property described as Lot 2 (to be vacated), E.K. and Mary Yanney Heritage Park, an addition to the City of Kearney, Buffalo County, Nebraska with said tract of land being part of the Northeast Quarter of the Northeast Quarter and part of Government Lot 4 and accretion land located in Section 10, Township 8 North, Range 16 West of the 6th P.M., containing 79.07 acres, more or less, Buffalo County, Nebraska (south of 11th Street and east of Kea West Avenue) and approve **Resolution No. 2008-88**. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

RESOLUTION NO. 2008-88

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of "E.K. AND MARY YANNEY HERITAGE PARK SECOND", an addition to the City of Kearney, Buffalo County, Nebraska for a tract of land being *a tract of land being Lot 2 (now vacated), E.K. and Mary Yanney Heritage Park, an addition to the City of Kearney, Buffalo County, Nebraska, with said tract of land being part of the Northeast Quarter of the Northeast Quarter and part of Government Lot 4 and accretion land located in Section 10, Township 8 north, Range 16 west of the Sixth Principal Meridian, Buffalo County, Nebraska, more particularly described as follows: Referring to the northeast corner of the Northeast Quarter of Section 10 and assuming the north line of the Northeast Quarter of the Northeast Quarter of Section 10 as bearing N89°04'43"W and all bearings contained herein are relative thereto; thence N89°04'43"W on the north line of the Northeast Quarter of said Section 10 and on the north line of E.K. and Mary Yanney Heritage Park an addition to the City of Kearney, Buffalo County, Nebraska, a distance of 85.0 feet to the northwest corner of Lot 1 of said E.K. and Mary Yanney Heritage Park; thence leaving the north line of the Northeast Quarter of said Section 10 and the north line of said Lot 1, E.K. and Mary Yanney Heritage Park, S05°04'45"W and on the west line of said Lot 1, E.K. and Mary Yanney Heritage Park a distance of 40.10 feet to the ACTUAL PLACE OF BEGINNING said point being on the south line of 11th Street as shown and dedicated on the plat of said E.K. and Mary Yanney Heritage Park; thence leaving the south line of said 11th Street and continuing S05°04'45"W and on the west line of said Lot 1, E.K. and Mary Yanney Heritage Park a distance of 359.83 feet; thence continuing on the west line of said Lot 1, E.K. and Mary Yanney Heritage Park the following courses and distances respectively: S01°29'40"W a distance of 200.0 feet; thence S01°56'21"E a distance of 100.18 feet; thence S01°29'40"W a distance of 1415.0 feet; thence S02°35'49"E a distance of 686.75 feet; thence S03°14'12"E a distance of 47.68 feet to a point on the existing thread of the stream of the North Channel of the Platte River, said point also being the southwest corner of said Lot 1, E.K. and Mary Yanney Heritage Park; thence leaving west line of said Lot 1, E.K. and Mary Yanney Heritage Park, S86°45'48"W upstream on the existing thread of the stream of the North Channel of the

Platte River a distance of 202.98 feet; thence continuing upstream on the existing thread of the stream of the North Channel of the Platte River the following courses and distances respectively; S55°44'05"W a distance of 32.53 feet; thence S00°50'08"E a distance of 71.43 feet; thence S52°48'05"W a distance of 29.13 feet; thence S84°23'31"W a distance of 291.66 feet; thence N53°33'12"W a distance of 36.26 feet; thence N36°34'36"W a distance of 250.33 feet; thence N79°34'47"W A DISTANCE OF 51.64 feet; thence S66°45'54"W a distance of 158.66 feet; thence N88°42'18"W a distance of 22.61 feet; thence N58°40'14"W a distance of 73.44 feet; thence 87°39'48"W a distance of 55.34 feet; thence S55°46'03"W a distance of 95.77 feet; thence S66°39'10"W a distance of 21.67 feet; thence N76°44'41"W a distance of 123.20 feet; thence leaving the existing thread of the stream of the North Channel of the Platte River, N13°15'19"E a distance of 23.08 feet to a point on the west line of the Northeast Quarter of the Northeast Quarter and the west line of Government Lot 4 (if extended southerly) of said Section 10; thence leaving the west line of the Northeast Quarter of the Northeast Quarter and the west line of Government Lot 4 (if extended southerly) of said Section 10, S87°07'15"E a distance of 16.51 feet to a point on the east line of Kea West Avenue as shown and dedicated on the plat of said E.K. and Mary Yanney Heritage Park; thence N01°23'18"E and on the east line of said Kea West Avenue and a distance of 2776.77 feet to a point on the south line of said 11th Street as shown and dedicated on the plat of E.K. and Mary Heritage Park; thence S89°04'43"E and on the south line of said 11th Street as shown and dedicated on the plat of E.K. and Mary Yanney Heritage Park a distance of 1224.4 feet to the place of beginning containing 79.07 acres, more or less, all in Buffalo County, Nebraska, duly made out, acknowledged and certified, and the same hereby is approved in accordance with the provisions and requirements of Section 19-916 of the Nebraska Revised Statutes, be accepted and ordered filed and recorded in the Office of the Register of Deeds of Buffalo County, Nebraska; said addition is hereby included within the corporate limits of said City and shall be and become a part of said City for all purposes whatsoever, and the inhabitants of such addition shall be entitled to all the rights and privileges and shall be subject to all laws, ordinances, rules and regulations of said City.

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

PASSED AND APPROVED THIS 10TH DAY OF JUNE, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

AMEND LAND USE MAP – NORTH AND SOUTH OF 48TH STREET, EAST OF 11TH AVENUE AND 48TH STREET

Public Hearings 6, 7, 8, 9 and 10 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Grand West, LLC (Owner) for an amendment to the Land Use Map of the City of Kearney Comprehensive Development Plan from "Park/Conservation Open Space" to "Medium Density Residential" for a tract of land being part of the Northeast Quarter of the Southwest Quarter and part of the Southeast

Quarter of the Northwest Quarter of Section 26, Township 9 North, Range 16 West of 6th P.M., containing 19.88 acres, more or less, Buffalo County, Nebraska (north and south of 48th Street, east of 11th Avenue and 48th Street) and to consider approval of Resolution No. 2008-89.

Planning Commission recommended approval of the Land Use Map Amendment, Rezoning, and Annexation as presented. Conditions were added to the Final Plat approval as follows:

1) Upon approval from City Council for Fountain Hills Third Addition the applicant will vacate that portion of Fountain Hills Second Addition that is zoned R-3/PD.

2) A Homeowners Association and covenant will be filed at the Register of Deeds Office with the Final Plat.

A condition was added to the development plan approval requiring brick veneer on all four sides of the buildings as shown on the plans in lieu of requiring a 5-foot offset for every 100 feet of building length.

There was one dissenting vote against each of the motions at Planning Commission.

The applicant is requesting approval of a residential subdivision on 23.74 acres. There are 72 townhouse units proposed as six-plex buildings and 17 lots for duplex or single-family residential development. This property is located west of the water tower on both the north and south sides of 48th Street. This development project requires an amendment to the future land use map of the comprehensive development plan, rezoning, platting, annexation and development plan approval for the town home units. This land was previously shown on the Fountain Hills Preliminary Plat as a potential school site.

The applicant was before the Planning Commission in 2007 for approval of Fountain Hills Second Addition and development plan approval for a townhome development, which is located south of 56th Street and is not contiguous to the City limits; therefore it could not be annexed. The developer had started through the design process for this development and it became a challenge for the developer to make this layout and plan work in terms of economic feasibility. In the very near future, the developer would like to vacate the townhome portion of the Fountain Hills Second Addition development, retaining the streets and roads that have been previously platted, which is 11th Avenue along the west and 55th Street that goes along the south side of the commercial zoning. Planning Commission was adamant that the developer agree to vacate the R-3/PD zoning that was previously approved because they do not feel that two townhouse developments would be appropriate for this area. Planning Commission discussed the location of the original townhome development and the fact that the location, layout and density of this proposed townhome development is better than the original development.

The current Land Use Map designation is "Park Conservation/Open Space" and the proposed designation is "Medium Density Residential."

The overall tract of land proposed for this development is 23.74 acres and is currently zoned Agricultural. 3.86 acres is included in the preliminary plat as seven single-family lots on the south side of 51st Street, but will not be rezoned or final platted at this time.

Of the remaining 19.88 acres, the proposed townhouse development comprises 15.06 acres to be rezoned to R-3/PD, Urban Residential Multi-Family District (Medium Density) and 4.82 acres is to be zoned R-2, Urban Residential Mixed-Density for 10 duplex lots.

The preliminary plat was approved by the Planning Commission on May 16, 2008 and consists of 91 lots as follows:

- 10 duplex lots south of 48th Street.
- 72 townhouse lots on 12 blocks. Each block contains six townhouse lots. The townhouse lots are approximately 22 feet wide and 93 feet deep.
- Two outlots labeled on the plat as Outlots A and B. These outlots contain the common parking areas and the common space between and around the buildings that are not part of the fee simple townhouse lots. A Homeowners Association will be responsible for maintenance of these areas.
- Seven future R-1 lots on the south side of 51st Street. These lots are shown on the Preliminary Plat, but not included on the Final Plat.

A Public Works Plan has been submitted for this Development.

A Subdivision Agreement is attached that addresses the following issues:

- Public Improvements – The water, sanitary sewer, storm sewer and paving will be installed through improvement districts.
- Off-Site Easements – The storm drainage and detention system to serve this development is off-site. Therefore, the agreement will require the Developer to make provisions for drainage and to grant appropriate easements for a detention cell at no cost to the City.
- Establishment of a Homeowner's Association to maintain the common areas.

This property can be served by municipal water and sanitary sewer and should therefore be annexed into the corporate limits of the City of Kearney.

Detailed development plans have been submitted for the townhouse development. You will recall that the zoning ordinance was recently amended to accommodate fee simple lots for townhouse development. In order to meet these requirements the plans address the issues as follows:

a) Since the townhouse development exceeds 36 units it must be a planned development district.

b) Each townhouse unit requires two parking stalls. The total number of townhouse units is 72 which will require 144 parking spaces and the developer is providing 250. The townhomes that are being proposed today will have two car garages which will be better than the proposed development in Fountain Hills Second, since that development was only going to have one car garages. 10th Avenue will be a public street and have 60 feet of right-of-way, but the developer is proposing a 28 foot paved road as opposed to a 36 foot road in order to prevent on street parking on 10th Avenue.

c) 20 feet of separation is required between any two adjacent structures housing townhouse units. This requirement has been met.

d) A complete landscape plan has been submitted. A 20-foot landscaped bufferyard is required along the north property line where the development abuts future R-1 zoning as required by Code. The sizes of plant materials are acceptable.

e) 35 percent brick is shown on most street facing facades as required by Code. Some of the buildings have partial walls that are street facing on the rear facades. The applicant requested a deviation from the 35% requirement for these units. The lots included in the requested deviation are Lots 29, 30, 35, 36, 41, 42, 42 of Block 1, and Lots 6, 10, 11, 12, 16, 17, 18, 24 of Block 2. At Planning Commission, the applicant agreed to put brick veneer on all four sides of each building as a compromise for number (j) below.

f) The lot line between townhouse living units will be on the common wall line. As such the construction of the common wall must meet all IRC and Fire Code requirements.

g) A Homeowners Association (HOA) is required to maintain the common areas contained in Outlots A and B. Proof of said HOA shall be filed at the Register of Deeds Office with the final plat prior to occupancy of any living units.

h) Stormwater detention is required. In this case the detention will be off-site; however, no building permits will be issued until the design and computations for the stormwater system have been reviewed and approved by the City Engineer.

i) Architectural building elevations are provided. Code requires that no two attached town homes share the same front setback -- in other words, they cannot be in a straight line with no projections or indentations. The proposed plans show covered front entries into the units that protrude four feet and upper story windows that protrude two feet.

j) Code requires a 5-foot offset for every 100 feet of building length. This means two offsets are required for the 132-foot long buildings. The front façade is taken care of as explained in (i) above. The rear façade of the garages is also a continuous building 132 feet long. The developer is requesting a deviation from the Code that requires the five foot offset. The front façade does have an offset, but the rear façade of the garages is a continuous building 132 feet long. The reason the developer is requesting a deviation is that the rear facades face each other and are not very noticeable from the public street. The developer looked at different options such as extending two of the false gables over the garage doors out five feet with columns or similar supports to produce a 5-foot overhang or adding brick veneer to the rear façade to achieve some diversity in materials as opposed to offsets. The applicant is willing to add brick veneer to the rear façade to achieve some diversity in materials as opposed to offsets. Brick veneer will be provided on all four sides of each building.

k) Each living unit will be separately connected to sanitary sewer and water main.

Craig Bennett from Miller & Associates presented this matter to the Council.

There was no one present in opposition to this hearing.

Moved by Buschkoetter seconded by Clouse to close the hearing and approve the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Grand West, LLC (Owner) for an amendment to the Land Use Map of the City of Kearney Comprehensive Development Plan from "Park/Conservation Open Space" to "Medium Density Residential" for a tract of land being part of the Northeast Quarter of the Southwest Quarter and part of the Southeast Quarter of the Northwest Quarter of Section 26, Township 9 North, Range 16 West of 6th P.M., containing 19.88 acres, more or less, Buffalo County, Nebraska (north and south of 48th Street, east of 11th Avenue and 48th Street) and approve **Resolution No. 2008-89**. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lammers. Nay: None. Lear absent. Motion carried.

RESOLUTION NO. 2008-89

WHEREAS, an application for a revision of the Land Use Map of the Comprehensive Plan has been filed in conjunction with and as a requisite part of its application for a change in the zoning for a tract of land being part of the Northeast Quarter of the Southwest Quarter and part of the Southeast Quarter of the Northwest Quarter of Section 26, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska more particularly described as follows: beginning at the northeast corner of the Southwest Quarter of said Section 26 and assuming the east line of said Southwest Quarter as bearing $S0^{\circ}21'57''E$ and all bearings contained herein are relative thereto; thence $S0^{\circ}21'57''E$ and on said east line a distance of 480.98 feet to the northeast corner of Lot 1, Block One, Fountain Hills Addition to the City of Kearney, Buffalo County, Nebraska; thence $N77^{\circ}42'53''W$ on the north line of said Addition a distance of 66.55 feet; thence $N58^{\circ}14'27''W$ and continuing on said north line a distance of 541.19 feet; thence $N84^{\circ}00'48''W$ and continuing on said north line a distance of 199.76 feet to the northwest corner of Lot 9, Block One of said Addition and the east line of Outlot 'A' of said Addition; thence $N05^{\circ}59'12''E$ on said east line a distance of 158.05 feet to the northeast corner of said Outlot 'A'; thence westerly and northwesterly along a non-tangent curve to the right having a central angle of $33^{\circ}05'33''$, a radius of 533.00 feet, an arc length of 307.85 feet and a chord bearing of $N65^{\circ}02'05''W$; thence $S41^{\circ}42'27''E$ a distance of 92.55 feet; thence southwesterly along a curve to the left having a central angle of $14^{\circ}29'23''$, a radius of 217.00 feet, and an arc length of 54.88 feet to the north line of said Fountain Hills Addition; thence northeasterly along a non-tangent curve to the right parallel and concentric to the previously described curve, having a central angle of $21^{\circ}08'18''$, a radius of 283.00 feet, and an arc length of 105.29 feet; thence $N41^{\circ}42'27''E$ a distance of 502.37 feet; thence northerly along a tangent curve to the left having a central angle of $67^{\circ}54'14''$, a radius of 267.00 feet, and an arc length of 316.43 feet; thence $N26^{\circ}11'46''W$ tangent to said curve a distance of 16.81 feet; thence $N66^{\circ}43'37''E$ a distance of 167.52 feet; thence $S89^{\circ}23'32''E$ a distance of 222.13 feet; thence $S72^{\circ}38'54''E$ a distance of 390.98 feet to the east line of said Northwest Quarter; thence $S0^{\circ}16'12''E$ on said east line a distance of 685.94 feet to the place of beginning, containing 19.89 acres, more or less, all in Buffalo County, Nebraska (north and south of 48th Street, east of 11th Avenue and 48th Street) from "Park/Conservation Open Space" to "Medium Density Residential", and

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

published and held, and

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

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the Comprehensive Land Use Plan be and is hereby amended to change from "Park/Conservation Open Space" to "Medium Density Residential" the use classification for the area described as a tract of land being part of the Northeast Quarter of the Southwest Quarter and part of the Southeast Quarter of the Northwest Quarter of Section 26, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska more particularly described as follows: beginning at the northeast corner of the Southwest Quarter of said Section 26 and assuming the east line of said Southwest Quarter as bearing S0°21'57"E and all bearings contained herein are relative thereto; thence S0°21'57"E and on said east line a distance of 480.98 feet to the northeast corner of Lot 1, Block One, Fountain Hills Addition to the City of Kearney, Buffalo County, Nebraska; thence N77°42'53"W on the north line of said Addition a distance of 66.55 feet; thence N58°14'27"W and continuing on said north line a distance of 541.19 feet; thence N84°00'48"W and continuing on said north line a distance of 199.76 feet to the northwest corner of Lot 9, Block One of said Addition and the east line of Outlot 'A' of said Addition; thence N05°59'12"E on said east line a distance of 158.05 feet to the northeast corner of said Outlot 'A'; thence westerly and northwesterly along a non-tangent curve to the right having a central angle of 33°05'33", a radius of 533.00 feet, an arc length of 307.85 feet and a chord bearing of N65°02'05"W; thence S41°42'27"E a distance of 92.55 feet; thence southwesterly along a curve to the left having a central angle of 14°29'23", a radius of 217.00 feet, and an arc length of 54.88 feet to the north line of said Fountain Hills Addition; thence northeasterly along a non-tangent curve to the right parallel and concentric to the previously described curve, having a central angle of 21°08'18", a radius of 283.00 feet, and an arc length of 105.29 feet; thence N41°42'27"E a distance of 502.37 feet; thence northerly along a tangent curve to the left having a central angle of 67°54'14", a radius of 267.00 feet, and an arc length of 316.43 feet; thence N26°11'46"W tangent to said curve a distance of 16.81 feet; thence N66°43'37"E a distance of 167.52 feet; thence S89°23'32"E a distance of 222.13 feet; thence S72°38'54"E a distance of 390.98 feet to the east line of said Northwest Quarter; thence S0°16'12"E on said east line a distance of 685.94 feet to the place of beginning, containing 19.89 acres, more or less, all in Buffalo County, Nebraska (north and south of 48th Street, east of 11th Avenue and 48th Street).

PASSED AND APPROVED THIS 10TH DAY OF JUNE, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

REZONE NORTH AND SOUTH OF 48TH STREET, EAST OF 11TH AVENUE AND 48TH STREET

Mayor Clouse opened the public hearing on the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Grand West, LLC (Owner) to rezone 4.82 acres, more or less, from "District AG, Agricultural District" to "District R-2, Urban Residential

Mixed-Density District”, and to rezone 15.06 acres, more or less, from “District AG, Agricultural District” to “District R-3/PD, Urban Residential Multi-Family (Medium Density)/Planned Development Overlay District”, property described as part of the Northeast Quarter of the Southwest Quarter and part of the Southeast Quarter of the Northwest Quarter of Section 26, Township 9 North, Range 16 West of 6th P.M., Buffalo County, Nebraska (north and south of 48th Street, east of 11th Avenue and 48th Street).

There was no one present in opposition to this hearing.

Moved by Clouse seconded by Kearney to close the hearing and approve the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Grand West, LLC (Owner) to rezone 4.82 acres, more or less, from “District AG, Agricultural District” to “District R-2, Urban Residential Mixed-Density District”, and to rezone 15.06 acres, more or less, from “District AG, Agricultural District” to “District R-3/PD, Urban Residential Multi-Family (Medium Density)/Planned Development Overlay District”, property described as part of the Northeast Quarter of the Southwest Quarter and part of the Southeast Quarter of the Northwest Quarter of Section 26, Township 9 North, Range 16 West of 6th P.M., Buffalo County, Nebraska (north and south of 48th Street, east of 11th Avenue and 48th Street). Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion carried.

FINAL PLAT FOR FOUNTAIN HILLS THIRD ADDITION

Mayor Clouse opened the public hearing on the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Grand West, LLC (Owner) for the final plat and Subdivision Agreement for “Fountain Hills Third Addition”, to the City of Kearney, Buffalo County, Nebraska for property described as part of the Northeast Quarter of the Southwest Quarter and part of the Southeast Quarter of the Northwest Quarter of Section 26, Township 9 North, Range 16 West of 6th P.M., containing 19.89 acres, more or less, Buffalo County, Nebraska (north and south of 48th Street, east of 11th Avenue and 48th Street) and to consider approval of Resolution No. 2008-90.

There was no one present in opposition to this hearing.

Moved by Kearney seconded by Lammers to close the hearing and approve the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Grand West, LLC (Owner) for the final plat and Subdivision Agreement for “Fountain Hills Third Addition”, to the City of Kearney, Buffalo County, Nebraska for property described as part of the Northeast Quarter of the Southwest Quarter and part of the Southeast Quarter of the Northwest Quarter of Section 26, Township 9 North, Range 16 West of 6th P.M., containing 19.89 acres, more or less, Buffalo County, Nebraska (north and south of 48th Street, east of 11th Avenue and 48th Street) and approve **Resolution No. 2008-90**. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

RESOLUTION NO. 2008-90

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of "FOUNTAIN HILLS THIRD ADDITION" an addition to the City of Kearney, Buffalo County, Nebraska for a tract of land being part of the Northeast Quarter of the Southwest Quarter and part of the Southeast Quarter of the Northwest Quarter of Section 26, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska and more particularly described as follows: Beginning at the northeast corner of the Southwest Quarter of said Section 26 and assuming the east line of said Southwest Quarter as bearing $S0^{\circ}21'57''E$ and all bearings contained herein are relative thereto; thence $S0^{\circ}21'57''E$ and on said east line a distance of 480.98 feet to the northeast corner of Lot 1, Block One, Fountain Hills First Addition to the City of Kearney, Buffalo County, Nebraska; thence $N77^{\circ}42'53''W$ on the north line of said Addition a distance of 66.55 feet; thence $N58^{\circ}14'27''W$ and continuing on said north line a distance of 541.19 feet; thence $N84^{\circ}00'48''W$ and continuing on said north line a distance of 199.76 feet to the northwest corner of Lot 9, Block One of said Addition and the east line of Outlot 'A' of said Addition; thence $N05^{\circ}59'12''E$ on said east line a distance of 158.05 feet to the northeast corner of said Outlot 'A'; thence westerly and northwesterly along a non-tangent curve to the right having a central angle of $36^{\circ}50'15''$, a radius of 533.00 feet, an arc length of 373.87 feet and a chord bearing of $N65^{\circ}02'05''W$; thence $N41^{\circ}42'27''E$ radially to said curve a distance of 376.82 feet; thence northerly along a tangent curve to the left having a central angle of $67^{\circ}54'14''$, a radius of 267.00 feet, and an arc length of 316.43 feet; thence $N26^{\circ}11'46''W$ tangent to said curve a distance of 16.81 feet; thence $N63^{\circ}48'14''E$ a distance of 167.52 feet; thence $S88^{\circ}23'32''E$ a distance of 222.13 feet; thence $S72^{\circ}38'54''E$ a distance of 390.98 feet to the east line of said Northwest Quarter; thence $S0^{\circ}16'12''E$ on said east line a distance of 896.25 feet to the place of beginning, containing 19.89 acres, more or less, all in Buffalo County, Nebraska, duly made out, acknowledged and certified, and the same hereby is approved in accordance with the provisions and requirements of Section 19-916 of the Nebraska Revised Statutes, be accepted and ordered filed and recorded in the Office of the Register of Deeds of Buffalo County, Nebraska; said addition is hereby included within the corporate limits of said City and shall be and become a part of said City for all purposes whatsoever, and the inhabitants of such addition shall be entitled to all the rights and privileges and shall be subject to all laws, ordinances, rules and regulations of said City.

BE IT FURTHER RESOLVED that the 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 10TH DAY OF JUNE, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

ANNEXATION OF FOUNTAIN HILLS THIRD ADDITION

Mayor Clouse opened the public hearing on the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Grand West, LLC (Owner) for the annexation of "Fountain Hills Third Addition", to the City of Kearney, Buffalo County, Nebraska for property described as part of the Northeast Quarter of the Southwest Quarter and part of the Southeast Quarter of the Northwest Quarter of Section 26, Township 9 North, Range 16 West of 6th P.M., containing 19.89 acres, more or less, Buffalo County, Nebraska (north and south of 48th Street, east of 11th Avenue and 48th Street) and to consider approval of Resolution No. 2008-91.

There was no one present in opposition to this hearing.

Moved by Lammers seconded by Buschkoetter to close the hearing and approve the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Grand West, LLC (Owner) for the annexation of "Fountain Hills Third Addition", to the City of Kearney, Buffalo County, Nebraska for property described as part of the Northeast Quarter of the Southwest Quarter and part of the Southeast Quarter of the Northwest Quarter of Section 26, Township 9 North, Range 16 West of 6th P.M., containing 19.89 acres, more or less, Buffalo County, Nebraska (north and south of 48th Street, east of 11th Avenue and 48th Street) and approve **Resolution No. 2008-91**. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

RESOLUTION NO. 2008-91

WHEREAS, an Application has been submitted by Craig Bennett from Miller & Associates (Applicant) for Grand West, LLC (Owner) for the inclusion of "Fountain Hills Third Addition" an addition within the corporate boundaries of the City of Kearney said property described as a tract of land being part of the Northeast Quarter of the Southwest Quarter and part of the Southeast Quarter of the Northwest Quarter of Section 26, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska and more particularly described as follows: Beginning at the northeast corner of the Southwest Quarter of said Section 26 and assuming the east line of said Southwest Quarter as bearing $S0^{\circ}21'57''E$ and all bearings contained herein are relative thereto; thence $S0^{\circ}21'57''E$ and on said east line a distance of 480.98 feet to the northeast corner of Lot 1, Block One, Fountain Hills First Addition to the City of Kearney, Buffalo County, Nebraska; thence $N77^{\circ}42'53''W$ on the north line of said Addition a distance of 66.55 feet; thence $N58^{\circ}14'27''W$ and continuing on said north line a distance of 541.19 feet; thence $N84^{\circ}00'48''W$ and continuing on said north line a distance of 199.76 feet to the northwest corner of Lot 9, Block One of said Addition and the east line of Outlot 'A' of said Addition; thence $N05^{\circ}59'12''E$ on said east line a distance of 158.05 feet to the northeast corner of said Outlot 'A'; thence westerly and northwesterly along a non-tangent curve to the right having a central angle of $36^{\circ}50'15''$, a radius of 533.00 feet, an arc length of 373.87 feet and a chord bearing of $N65^{\circ}02'05''W$; thence $N41^{\circ}42'27''E$ radially to said curve a distance of 376.82 feet; thence northerly along a tangent curve to the left having a central angle of $67^{\circ}54'14''$, a radius of 267.00 feet, and an arc length of 316.43 feet; thence $N26^{\circ}11'46''W$ tangent to said curve a distance of 16.81 feet; thence $N63^{\circ}48'14''E$ a distance of 167.52 feet; thence $S88^{\circ}23'32''E$ a distance of 222.13 feet; thence $S72^{\circ}38'54''E$ a distance of 390.98 feet to the east line of said Northwest Quarter; thence $S0^{\circ}16'12''E$ on said east line a distance of 896.25 feet

to the place of beginning, containing 19.89 acres, more or less, all in Buffalo County, Nebraska; and

WHEREAS, the Kearney City Planning Commission has received and held a public hearing on May 16, 2008 on the inclusion of "Fountain Hills Third 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 "Fountain Hills Third Addition" an addition to the City of Kearney, Buffalo County, Nebraska;

WHEREAS, a public hearing was held by the Kearney City Council relating to said application on June 10, 2008 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 "Fountain Hills Third 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 "Fountain Hills Third 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 10TH DAY OF JUNE, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

DEVELOPMENT PLANS FOR NORTH AND SOUTH OF 48TH STREET, EAST OF 11TH AVENUE AND 48TH STREET

Mayor Clouse opened the public hearing on the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Grand West, LLC (Owner) for Planned District Development Plan Approval for the construction of residential 6-plexes townhouses on property to be zoned "District R-3/PD, Urban Residential Multi-Family (Medium Density)/Planned Development Overlay District" and described as part of the Northeast Quarter of the Southwest Quarter and part of the Southeast Quarter of the Northwest Quarter of Section 26, Township 9 North, Range 16 West of 6th P.M., containing 15.06 acres, more or less, Buffalo County, Nebraska (north and south of 48th Street, east of 11th Avenue and 48th Street) and to consider approval of Resolution No. 2008-92.

There was no one present in opposition to this hearing.

Moved by Buschkoetter seconded by Clouse to close the hearing and approve the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Grand West, LLC (Owner) for Planned District Development Plan Approval for the construction of residential 6-plexes townhouses on property to be zoned "District R-3/PD, Urban Residential Multi-Family (Medium Density)/Planned Development Overlay District" and described as part of the Northeast Quarter of the Southwest Quarter and part of the

Southeast Quarter of the Northwest Quarter of Section 26, Township 9 North, Range 16 West of 6th P.M., containing 15.06 acres, more or less, Buffalo County, Nebraska (north and south of 48th Street, east of 11th Avenue and 48th Street) and approve **Resolution No. 2008-92**. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lammers. Nay: None. Lear absent. Motion carried.

RESOLUTION NO. 2008-92

WHEREAS, Craig Bennett from Miller & Associates (Applicant) for Grand West, LLC (Owner) have applied for Planned District Development Plan Approval for the construction of residential 6-plexes townhouses on property zoned "District R-3/PD, Urban Residential Multi-Family (Medium Density)/Planned Development Overlay District" and described as being part of the Southeast Quarter of the Northwest Quarter of Section 26, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska and more particularly described as follows: Beginning at the southeast corner of the Northwest Quarter of said Section 26 and assuming the south line of said Northwest Quarter as bearing $S89^{\circ}29'22''W$ and all bearings contained herein are relative thereto; thence $S89^{\circ}29'22''W$ on said south line a distance of 654.43 feet; thence westerly and northwesterly along a curve to the right having a central angle of $38^{\circ}28'01''$, a radius of 533.00 feet, and an arc length of 357.94 feet; thence $S41^{\circ}42'27''E$ a distance of 92.55 feet; thence southwesterly along a curve to the left having a central angle of $14^{\circ}29'23''$, a radius of 217.00 feet, and an arc length of 54.88 feet to the north line of said Fountain Hills Addition; thence northeasterly along a non-tangent curve to the right parallel and concentric to the previously described curve, having a central angle of $21^{\circ}08'18''$, a radius of 283.00 feet, and an arc length of 105.29 feet; thence $N41^{\circ}42'27''E$ a distance of 502.37 feet; thence northerly along a tangent curve to the left having a central angle of $67^{\circ}54'14''$, a radius of 267.00 feet, and an arc length of 316.43 feet; thence $N26^{\circ}11'46''W$ tangent to said curve a distance of 16.81 feet; thence $N63^{\circ}48'14''E$ a distance of 167.52 feet; thence $S88^{\circ}23'32''E$ a distance of 222.13 feet; thence $S72^{\circ}38'54''E$ a distance of 390.98 feet to the east line of said Northwest Quarter; thence $S0^{\circ}16'12''E$ on said east line a distance of 685.94 feet to the place of beginning, containing 15.06 acres, more or less, all in Buffalo County, Nebraska (north and south of 48th Street, east of 11th Avenue and 48th Street).

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the application of Craig Bennett from Miller & Associates (Applicant) for Grand West, LLC (Owner) for Planned District Development Plan Approval for the construction of residential 6-plexes townhouses on property zoned "District R-3/PD, Urban Residential Multi-Family (Medium Density)/Planned Development Overlay District" and described as being part of the Southeast Quarter of the Northwest Quarter of Section 26, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska and more particularly described as follows: Beginning at the southeast corner of the Northwest Quarter of said Section 26 and assuming the south line of said Northwest Quarter as bearing $S89^{\circ}29'22''W$ and all bearings contained herein are relative thereto; thence $S89^{\circ}29'22''W$ on said south line a distance of 654.43 feet; thence westerly and northwesterly along a curve to the right having a central angle of $38^{\circ}28'01''$, a radius of 533.00 feet, and an arc length of 357.94 feet; thence $S41^{\circ}42'27''E$ a distance of 92.55 feet; thence southwesterly along a curve to the left having a central angle of $14^{\circ}29'23''$, a radius of 217.00 feet, and an arc length of 54.88 feet to the north line of said Fountain Hills Addition; thence northeasterly along a non-

tangent curve to the right parallel and concentric to the previously described curve, having a central angle of 21°08'18", a radius of 283.00 feet, and an arc length of 105.29 feet; thence N41°42'27"E a distance of 502.37 feet; thence northerly along a tangent curve to the left having a central angle of 67°54'14", a radius of 267.00 feet, and an arc length of 316.43 feet; thence N26°11'46" W tangent to said curve a distance of 16.81 feet; thence N63°48'14"E a distance of 167.52 feet; thence S88°23'32"E a distance of 222.13 feet; thence S72°38'54"E a distance of 390.98 feet to the east line of said Northwest Quarter; thence S0°16'12"E on said east line a distance of 685.94 feet to the place of beginning, containing 15.06 acres, more or less, all in Buffalo County, Nebraska (north and south of 48th Street, east of 11th Avenue and 48th Street).

PASSED AND APPROVED THIS 10TH DAY OF JUNE, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

AMENDMENTS TO CHAPTER 50 OF THE CITY CODE

Mayor Clouse opened the public hearing on the Application from City of Kearney Public Works Department to amend Chapter 50, "Sign Regulations" of the Unified Land Development Ordinance to; revise definitions contained in section 50-102 removing "Computer Message Posting Signs," removing reference to time and temperature display signs as exempt signs, and to add a new sign type "Numeric Display Signs"; to revise general regulations in section 50-103 to remove "Banners, Balloons, and Posters" from "Prohibited Signs" and move them to the "Temporary Sign" category, and to establish a time limit for the display of "Political Campaign Signs;" and to revise basic design elements in section 50-104 pertaining to "Electronic Information Signs" and "Numeric Display Signs" to limit the quantity, establish location requirements, to include required "hold" times for the message displayed, and to restrict the brightness of electronic signs as it relates to the ambient light level.

Planning Commission recommended that the proposed amendments be approved as presented. There was one dissenting vote at Planning Commission.

City Planner Lance Lang presented this matter to the Council. The amendment to the sign ordinance came about due to process of reviewing the billboard sign ordinances over the past several months. Concerns were raised by staff about other sections of Chapter 50 regarding "on premise" signage, more specifically the electronic information signs. Their concern was not with the big digital billboards that were recently approved, but with the smaller signs that continually blink, scroll or are animated in some way. These signs can be very distracting. The goal is to have them blink or scroll at a reasonable rate so they are not so distracting and will actually hold the image. When this was originally introduced with the electronic billboard issue to the Planning Commission, it seemed to be too much information for them at one time. It was decided to break it down and do the outdoor advertising first and now back with the on site aspects of what they propose to amend.

About the same time, Brandy Bosselman with Pump & Pantry requested to do some sign changes and a permit was denied for a numeric price index sign for gasoline that

were electronic. The way the Code is written, did not allow it. The applicant was before the Planning Commission in April with a request to amend Chapter 50 of the Unified Land Development Ordinance to allow electronic display gasoline pricing within 75 feet of an intersection. The applicant's reasoning is that "time and temperature display" signs are exempt from the 75 foot setback required for other electronic information signs. Numeric fuel price is very similar to time and temperature as all three examples consists of numbers only. The applicant requested that fuel display signs also be exempted. Staff was concerned that an exemption of the sign would exempt it from all regulations that would otherwise regulate electronic information signs. The request was continued for one month to allow Staff some time to research the issue and develop a proposal.

For a brief review of the history of this application, the applicant had previously applied for a sign permit, but the application was denied. An appeal was filed with the Board of Adjustment. The Board apparently did not feel comfortable with granting a variance for the sign since the Code is very specific regarding the exemption for "display of time and temperature" only. The Board advised the applicant to pursue a Code amendment to include fuel prices in the exemption.

Staff has developed a proposal that will hopefully meet the needs of the applicant while addressing some other broader objectives within Chapter 50. Staff is proposing a new category of signs to be known as "Numeric Display" signs that would include time, temperature, and fuel price display. These signs can thereby be regulated separately from the other electronic information signs. Although Staff does not wish to regulate the color of the sign display, Staff would like to insure that signs do not blink or flash excessively thereby posing a potential distraction to motorists. Staff has researched electronic signs with an eye towards regulation of the blinking aspects and the brightness of the lighting. In reviewing the Sign Code some additional changes are proposed for other types of signs as well. In summary the proposed Code amendment addresses the following issues:

- 1) Removes the definition for "Computerized Message Posting Sign" as such signs are obsolete given the computerized LED technology available today.
- 2) Definitions distinguish between "electronic information signs" and "electronic changeable message signs." (on-premise and off-premise)
- 3) Removes reference to exemption of time and temperature display from the electronic information sign definition.
- 4) Removes reference to electronic information signs from exclusion as "flashing signs" since the flashing aspects will now be regulated.
- 5) Creates a new sign category in definitions for a "Numeric Display Sign" that will include time, temperature, and fuel price display.
- 6) Moves "Banners, Balloons, and Posters" from "Prohibited Signs" to "Attached Temporary Signs" since there are occasions when specialty signs are used, such as the Duck Race using the giant inflatable duck. These signs are needed for special occasions and therefore are temporary in nature.

7) Under "Flashing Signs" specifies that ambient light levels and hold time for blinking lights shall conform to new standards in Section 50-104.

8) Under "Political Campaign Signs" establishes a time limit for placing such signs, no sooner than 45 days prior to Election Day (time limit to collect signs within 10 days after election date is already established).

9) Establishes additional regulations for on-premise electronic information signs limiting them to one per property, requiring specified hold time to regulate the degree of blinking or flashing allowed, requiring control of the brightness of the sign tied to ambient light levels, and a note recognizing that such signs shall be deducted from the total sign budget allowed for the premises.

10) Establishes a new sign type known as "Numeric Display Signs" and establishes regulations for this type of sign including setback requirements, maximum size requirements, hold times for image changes, conformance with the brightness/ ambient light requirements, and a note recognizing that such signs shall be deducted from the total sign budget allowed for the premises.

Mayor Clouse stated that he appreciated all the work on this as he watched the process as it went to the Board of Adjustments and back to the Planning Commission and all the public dialogue that went into this proposal. Council member Buschkoetter asked when the existing signs become non-conforming because of the rule changes, would they be "grandfathered in" until they need to be changed. Council member Lammers asked how they came up with the 80-foot sign determination and the 4-second being the standard.

City Planner responded that in working through the outdoor issues, they relied heavily on the Department of Roads research and what they do in Lincoln. Lincoln patterned their outdoor advertising for electronic billboards, ambient lighting and speed (although theirs might be less than 4 seconds) after the Department of Road model. The 80 square feet is based on Lincoln's research.

Mayor Clouse asked where the people who stand on the side of the street with signs and in costumes drawing attention to advertising fall under the Code. City Planner stated he was not sure how sandwich boards and people dressed up as different characters should be handled. He believed that the issuance of temporary signs was effectively dealt with a few years ago. City Manager stated they have received complaints about those people because it is very distracting.

Greg Barney, 704 West 25th Street, stated he had two comments that he wanted to place before the Council. The first is based on their position as owners of signs and second as citizens and taxpayers. Mr. Barney referred to Section 50-104-E Item 4, which has to do with the 80-square foot requirement. He suggested that the 80-square foot restriction is inappropriate. He believed that what is fair for one should be fair for all. If they, as business owners, are restricted and prevented from installing signs which have capabilities which are currently being utilized by other sign owners in the City and are restricted because of that square footage then that is not a fair situation.

He believed given the technology issues, those operators who are currently operating

those signs which do flash and scroll and show video have the technology to eliminate that process and use 10-second hold signs which are recommended by the staff for signs that are larger than 80 square feet. He found it interesting that the 80-square foot size conveniently covers those existing sign owners in Kearney who already have signs in place that are already using those particular technology processes. If the new ordinance would prevent new sign owners from utilizing that technology with signs 80 square feet that at might be considered to be a selective discrimination issue.

Mr. Barney suggested the following alternatives: 1) simply require all signs that have electronic technology to have the 10-second hold period and eliminate any scrolling, flashing or video, or 2) allow any sign owner who has the ability to invest in the technology to utilize that technology to its best advantage. In other sections of the Code, there is the ability to restrict any sign which interferes with traffic issues, either signal lights or other traffic issues. Eighty square feet is convenient to those existing sign owners in Kearney. He preferred either no limitation or a 128-square foot limitation which would reflect an 8' x 16' visual image size. He would like to see everyone affected by the 10-second restriction or no one affected by it or a larger square footage for people who would be willing to invest in that.

Mayor Clouse asked for a clarification of a 4-second hold versus a 10-second hold. Mr. Barney stated the 10-second hold is the hold requirement that the City has already imposed and which the State already requires with respect to billboard digital advertisements. When the picture comes up, it holds for ten seconds. A 4-second hold is where the original image stays up for four seconds, than another image comes up and can hold for four, or five or six seconds, whatever the advertiser determines to use. In addition, those signs that currently exist under the 80-square foot limitation are allowed to use scrolling, flashing and video. From the perspective of a sign person, he finds that video, scrolling and flashing can be utilized in a way which does not distract and improves the quality of the message that one provides to the public. It really depends on the intent of the provider and the intent of the advertiser as to how it is used.

City Planner stated that he discussed this issue with the City Attorney. There is a possibility that the City could make this retroactive and say if a sign is less than 80 square feet and there is a new law which has to be complied within so many days. He was concerned with that because usually there is the grandfather clause. They discussed since the technology is there it is not an overbearing request to have the sign owner or company to change the computer setting so the timing complies. If the sign can be set to do that would not be a big deal for the owner. If it causes the owner to junk the sign although it is operational in all other ways just so they can have a new sign with that technology that creates a burden. It was determined the best way to stay out of litigation would be to do the grandfathering type of approach.

City Manager pointed out that many of those signs were illegally put up in the first place. It is not clear that those 80-foot signs are allowed to do what many of them are doing today. The Code has never been as clear in its interpretation, but he was not sure they could make the argument they had the legal right to do that in the first place. That is what his concern would be about that issue. The second issue by grandfathering; sometimes it works to the owners advantage and sometime it does not. It is not

selective enforcement when you are not individually choosing. When simply adopting a blanket situation of grandfathering, unless you are individually picking things out.

City Attorney Michael Tye stated that the concern is that if you make a code modification which might affect an existing owner that has a sign and you are going to affect their property interest, you do have a situation where you could in some way effectuate a taking. That is always a concern that is discussed when the City modifies a code that could affect something already existing. At times it is not an easy thing to define. If it would not require a large fix, it is not as much of a taking or father away from a taking than it would be to regulate something out of existence.

Mr. Barney stated that due to his interest in the billboard issue, he has studied the state regulations and has not found the 80-foot restriction regards to signs and the 4 and 10 second limitation. He did find the 10-second restriction for electronic changeable message signs, billboards or advertising signs which use changeable messages regardless of size. That is allowed when you have a Class 3 advertising permit required by the State of Nebraska. He thought that the state usually defers to the municipality with respect to premises signs.

Mr. Lang stated that is correct and he might have misrepresented unintentionally. He has worked with the state regulations and Lincoln regulations and Mr. Barney is correct that the state defers to the local municipality for off road signage. When they were working with the whole billboard issue, they piggybacked off Lincoln on the on-premises signs working with both agencies. The 80-foot and 4-second rule came from Lincoln and not the Department of Roads. The 10-second came from the Department of Roads and was also adopted by Lincoln.

Mr. Barney stated that he did not challenge Mr. Lang's statement. He stated that what is good for Lincoln might not necessarily be good for Kearney. He did not believe that Kearney needs to adopt codes that are based on Lincoln codes. He believed what is good for one is good for all.

City Attorney stated that from an enforcement standpoint, he thought that it is helpful to have clear rules so that everybody knows what that timing is and how are they to function rather than the City making an interpretation under another provision. In that way everyone knows the function, what is the timing, what are the requirements rather than to have to evaluate it from a traffic situation alone. City Manager suggested that the language could be adjusted with a middle ground that says "if possible, the 80-square foot and under must meet the requirements if technologically possible" would be another option for the Council to consider. City Attorney stated part of the question to be considered is there has not been an evaluation done on the existing technology that is out there and what it would take to comply with the new code.

Mayor Clouse stated if possible perhaps they should be held to that same standard. What about those who do not have the technology to comply at the present time. City Attorney stated that an analysis could be done of what it would take to bring those signs into compliance.

Council Member Kearney stated he has a conflict because the sign on the FirstTier Bank

where he is employed is less than 80 square feet and would not be in compliance so he must abstain from voting. He wanted a legal opinion on the "taking matter" because he does not want to subject the City to any law suits. City Attorney stated that the current proposal before the Council would not operate to do that. It has been presented so that would not be an issue. If the Council would modify the proposal, as Mr. Barney suggested, that the new code requirements to existing signs then the issue becomes something that needs to be discussed.

Mr. Barney stated that he is very supportive of the purpose of this code amendment in so far as it went for Bosselmans so they can go forward with what they wanted to do. City Planner asked the Council if they would consider passing the part that has to do with numeric price display so that Bosselmans can go forward with what they want to do. That falls under a separate category aside from the electronic information signs or the billboards. It was discussed and the consensus was to table until the next Council meeting.

Moved by Kearney seconded by Lammers to table until June 24, 2008 the hearing on the amendments to Chapter 50, "Sign Regulations" of the Unified Land Development Ordinance to; revise definitions contained in section 50-102 removing "Computer Message Posting Signs," removing reference to time and temperature display signs as exempt signs, and to add a new sign type "Numeric Display Signs"; to revise general regulations in section 50-103 to remove "Banners, Balloons, and Posters" from "Prohibited Signs" and move them to the "Temporary Sign" category, and to establish a time limit for the display of "Political Campaign Signs;" and to revise basic design elements in section 50-104 pertaining to "Electronic Information Signs" and "Numeric Display Signs" to limit the quantity, establish location requirements, to include required "hold" times for the message displayed, and to restrict the brightness of electronic signs as it relates to the ambient light level. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion carried.

Mr. Barney stated that regarding Section 50-104E which has to do with the illumination issues. As a taxpayer, he asked the Council to consider simplifying these illumination issues. In the table of ambient light levels versus maximum brightness, he suggested to simplify that table and say that a daytime maximum light level of 7500 nits and a nighttime ambient light level maximum brightness of 1250 nits would be required. His understand was that the City Planner took this table from Lincoln's code but from information from the Planning Commission the City does not own any equipment that is able to measure ambient light levels or nits. He believed that it would be more appropriate to have a daytime and a nighttime level.

AMENDMENTS TO CHAPTER 57 OF CITY CODE – WITHDRAWN

Mayor Clouse stated City Administration withdrew the public hearing on the Application submitted by the City of Kearney for the proposed amendments to Section 57-102 "Application and Procedure" and Section 57-103 "Rules for Distributing Improvement Costs for Districts" of Chapter 57 "Improvement Financing and Guarantees" of the Kearney City Code to amend the requirements pertaining to the fifty percent deposit. Therefore, no action was taken.

COMMUNITY REVITALIZATION CDBG GRANT PROJECT – PHASE III

Mayor Clouse opened the public hearing on the application to the Department of Economic Development for a Community Development Block Grant in the amount of \$149,513.00 for comprehensive revitalization activities and to consider approval of Resolution No. 2008-93.

Grant and Marketing Coordinator Suzanne Brodine presented this matter to the Council. The purpose of this public hearing is to receive community input on the activities as proposed in the application for Phase III improvements in the Comprehensive Revitalization program. The CR program is a funding category within the Community Development Block Grant program funded and developed by the Nebraska Department of Economic Development. The entire three-phase Comprehensive Revitalization plan was approved at the December 13, 2005 meeting.

The CR project has been phased out over the course of three years. During Phase I, residents benefited from a combination of improvements to sidewalks, streets, and accessible sidewalk ramps at intersections. Phase II of the project encompassed paving Avenue D from 11th Street to 13th Street; paving Avenue I from 14th Street to 15th Street; and paving 14th Street from Avenue I to Avenue K.

Phase III of the project includes the following activities:

- Construction of approximately 30 blocks of sidewalks
- Installation of approximately 75 handicap ramps

In the target area, 66.6% of the residents are considered to be low- to moderate-income, which meets the national objective of the CDBG program to benefit low- to moderate-income persons. Combining CR program funding with sales tax money provides the opportunity to serve the low- to moderate-income populations while improving accessibility to the parks, schools, and along major arterial streets, which are the responsibility of the community.

The City of Kearney is requesting \$149,513 for Phase III of the Comprehensive Revitalization project. The total request is delineated as follows: \$137,513 will be utilized for paving construction. The remainder, \$12,000, will be expended for general grant administration activities. The City of Kearney is required to match grant funds in the amount of \$137,513. The total project cost is \$287,026.

There was no one present in opposition to this hearing.

Moved by Clouse seconded by Kearney to close the hearing and approve submitting the application to the Department of Economic Development for a Community Development Block Grant in the amount of \$149,513.00 for comprehensive revitalization activities and approve **Resolution No. 2008-93**. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

RESOLUTION NO. 2008-93

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

WHEREAS, the City of Kearney, Nebraska, has obtained its citizens' comments on community development and housing needs; and has conducted public hearing(s) upon the proposed application and received favorable public comment respecting the application which for an amount of \$149,513 for comprehensive revitalization activities.

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

PASSED AND APPROVED THIS 10TH DAY OF JUNE, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

IV. CONSENT AGENDA

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

1. Approve Minutes of Regular Meeting held May 27, 2008.
2. Approve the following Claims: A-1 Cleaning \$150.00 Smcs; Ace Hardware \$137.45 Smcs; AFLAC \$2,783.88 Ps; Alamar Uniforms \$4,229.76 Smcs; Alltel \$1,485.27 Smcs; Amazing Arthur \$200.00 Smcs; Amazon \$48.52 Smcs; Amer Electric \$2,131.65 smcs,co; AWWA \$150.00 Smcs; Antigua Credit \$129.40 Smcs; Argo Int'l \$1,218.14 Smcs; Arrow Seed \$605.30 Smcs; Ask Supply \$390.48 Smcs; Aspen Dairy \$40.00 Smcs; Aurora Coop \$1,734.92 Smcs; Baker & Taylor Books \$2,555.28 Smcs; Bally's Hotel \$187.48 Smcs; Barney Ins \$570.00 Smcs; Basye,B \$25.75 Smcs; Baxter,M \$6.00 Smcs; BBC Audiobooks \$344.80 Smcs; Beacon Athletics \$756.70 Smcs; Benson,G \$45.00 Co; Blessing \$220,466.98 Co; Bluecross Blueshield \$265,854.69 Smcs; Borowski,R \$20.00 Smcs; Branstiter,M \$38.36 Smcs; Brilliance Audio \$593.31 Smcs; Broadfoot's \$715.08 Smcs; Buckle \$320.00 Smcs; Buffalo Co Community \$135.00 Smcs; Builders Warehouse \$2,589.10 smcs,co; Business Office Systems \$6.24 Smcs; Buttermore,S \$22.00 Smcs; Candlewood Suites \$438.40 Smcs; Carquest \$3,126.51 Smcs; Cash-Wa \$2,115.39 Smcs; CDW Gov't \$1,499.88 smcs,co; CED Enterprise \$114.13 Smcs; Centaur Enterprises \$54.01 Smcs; Central Contracting \$125.00 Smcs; Central Hydraulic \$2,971.82 smcs,co; Central NE Bobcat \$3,200.00 Co; Charlesworth & Associates \$1,440.00 Smcs; Charter \$385.62 Smcs; Chesterman \$93.50 Smcs; City of Ky \$275,923.70 smcs,ps; Cold Spring Granite \$257.90 Smcs; College Savings Plan of NE \$75.00 Ps; Computer Hardware \$30.00 Smcs; Computer Pros \$59.99 Smcs; Consec Life Ins \$24.00 Ps; Construction Rental \$526.08 smcs,co; Control Masters \$31.96 Smcs; Copycat Printing \$724.27 Smcs; Cornhusker Cleaning \$83.04 Smcs; Creative Teacher \$31.83 Smcs; Crossroads Ford \$248.14 Smcs;

Culligan \$534.00 Smcs; Cummins Central Power \$31.43 Smcs; D&M Security \$136.00 Smcs; Dell \$601.30 smcs,co; Denver Yellow Cab \$3.50 Smcs; Depository Trust \$643,725.00 Ds; Dept of the Treasury \$48.41 Ps; Deterding's \$290.85 Smcs; Diamond Vogel Paint \$107.46 Smcs; Diane Publishing \$18.00 Smcs; Dorn,J \$23.48 Smcs; Double M Farms \$2,000.00 Smcs; DPC Industries \$9,546.85 Smcs; Dugan Business Forms \$442.95 Smcs; Dultmeier Sales \$48.00 Smcs; Dutton-Lainson \$417.02 smcs,co; Eakes \$651.97 smcs,co; Earl May \$163.90 Smcs; Easy Picker Golf Products \$122.76 Smcs; Econo Lodge West Dodge \$49.99 Smcs; Eickhoff,B \$56.00 Ps; Eirich,T \$50.00 Smcs; Elgin Sweeper \$201,962.00 Co; Elliott Equipment \$205.37 Smcs; Enpro \$109.70 Smcs; Entenmann-Rovin \$418.74 Smcs; Enterprise \$37.00 Smcs; Envision Ware \$2,135.50 Smcs; Eriksen Construction \$152,100.00 Co; Eustis Body Shop \$181.00 Smcs; Fairbanks Int'l \$3,383.14 Smcs; Fasse Valves \$998.36 Smcs; Fastenal \$1,270.44 Smcs; FBINAA NE Chapter \$90.00 Smcs; Fedex \$51.25 Smcs; Fiddelke Heating \$508.21 Smcs; Fireguard \$37.43 Smcs; Fore Better Golf \$1,985.00 Smcs; Forsyth,J \$39.00 Smcs; Frontier \$205.72 Smcs; GA Industries \$662.79 Smcs; Gale \$384.88 Smcs; Galls \$420.40 Smcs; Garrett Tires \$530.90 Smcs; Gas Stop \$69.90 Smcs; GE Money Bank \$1,079.72 Smcs; General Traffic Controls \$67.19 Smcs; Global Industrial \$216.41 Smcs; Goodwill Industries \$30.00 Smcs; Goody Square \$139.00 Smcs; Gordons Small Engine \$28.00 Smcs; Gov't Finance \$25.00 Smcs; Graham Tire \$621.66 Smcs; Grainger \$2,850.77 Smcs; H&H Distributing \$1,260.60 Smcs; Hach \$1,051.13 Smcs; Harley Davidson \$6,030.95 Co; Hasbrouck,T \$22.47 Smcs; HD Supply \$4,565.15 Smcs; Highsmith \$818.61 Smcs; Hobby-Lobby \$104.97 Smcs; Holiday \$142.30 Smcs; Holmes Plumbing \$338.48 smcs,co; Hometown Leasing \$248.23 Smcs; Horn,A \$3.19 Smcs; Hornady Mfg \$2,802.00 Smcs; Hyatt Hotels \$904.07 Smcs; Hydrite Chemical \$1,629.45 Smcs; Hydrologic \$157.79 Smcs; ICMA RC \$2,530.02 Ps; Inland Truck Parts \$83.29 Smcs; IRS \$104,662.39 Ps; Int'l Public Mgmt \$266.00 Smcs; ITT Wedeco \$1,000.00 Smcs; J&R Sound Mail Order \$129.88 Co; Jack Lederman \$68.62 Smcs; Jack's Uniforms \$574.85 Smcs; Jacobi's Carpet One \$1,284.04 Smcs; Jessop,A \$95.00 Smcs; Johnson,S \$50.00 Smcs; Johnstone Supply \$452.03 Smcs; Jones,C \$6.30 Smcs; Jordan,A \$60.00 Smcs; K&K Parts \$736.89 Smcs; Ky Concrete \$190.00 Co; Ky Hub \$1,380.00 Smcs; Ky Implement \$685.90 Smcs; Ky United Way \$845.85 Ps; Ky Visitors Bureau \$22,786.86 Smcs; Ky Warehouse \$2,486.96 Smcs; Ky Winlectric \$252.04 Smcs; Key Equipment \$545.29 Smcs; Kile, Marilyn \$80.00 Smcs; Killion Motors \$449.22 Smcs; Kmart \$50.32 Smcs; Konica Minolta \$28.08 Smcs; Krier,K \$35.00 Smcs; Kriz Davis \$232.10 Smcs; Kwik Shop \$28.25 Smcs; Lands End \$138.51 Smcs; Lang,L \$115.20 Smcs; Lasercare \$145.00 Smcs; League of NE Municipalities \$50.00 Smcs; Lifeguard Store \$367.70 Smcs; Lighting Plastics \$56.26 Smcs; Linda's Upholstery \$662.50 Smcs; Linweld \$439.18 Smcs; Locator of Unclaimed Funds \$25.98 Smcs; Logmein \$399.50 Co; Magic Cleaning \$250.00 Smcs; Mail Express \$199.90 Smcs; Mainstreet Designs \$12,100.34 Co; Marketing Displays \$291.92 Co; Marlatt Machine Shop \$389.05 Smcs; Marriott \$861.84 Smcs; Maryland Brand \$594.10 Smcs; Mattley Design \$938.00 Smcs; Menards \$5,561.92 smcs,co; Mercer,B \$63.00 Smcs; Metlife \$8,507.37 Ps; Midlands Contracting \$67,617.63 Co; Milco Environmental \$4,500.00 Smcs; Miller & Associates \$5,139.10 smcs,co; Miller Signs \$700.00 Smcs; Moonlight Embroidery \$1,060.50 Smcs; Morgan,D \$5.09 Smcs; MPH Industries \$110.72 Co; MSI Systems Integrators \$2,000.00 Co; NALEFI \$60.00 Smcs; Napa All Makes \$1,690.98 Smcs; Nat'l Fire Protection \$323.50 Smcs; NCS Equipment \$213.74 smcs,co; NE Child Support \$2,716.36 Ps; NE Crime Commission \$49.00 Smcs; NE Dept of Revenue \$42,718.40 Ps; NE Library Comm

\$600.00 Smcs; NE Life Magazine \$34.95 Smcs; NE Mosquito & Vector \$70.00 Smcs; NE Safety & Fire Equipment \$245.00 Smcs; NE Sec of State \$1.80 Smcs; NE Truck Center \$792.40 Smcs; NE Turf Products \$607.76 Smcs; NEland Distributors \$775.00 Smcs; Nevco Scoreboard \$329.86 Smcs; New Life Assembly \$100.00 Smcs; Newman Signs \$108.07 Smcs; NMC \$947.50 Smcs; North Central Lab \$654.16 Smcs; Northern Safety \$131.62 Smcs; Northern Tool \$70.28 Smcs; Northgate Vet \$125.00 Smcs; Northwest Electric \$12.93 Smcs; Northwestern Energy \$5,557.15 Smcs; Numeridex \$721.57 Smcs; Nuttelman Fencing \$1,199.33 Co; Office Max \$739.73 smcs,co; Officenet \$619.63 Smcs; Oikos Tree Crops \$641.13 Smcs; O'Reilly Auto \$899.52 Smcs; Oriental Trading \$192.45 Smcs; Orscheln \$735.58 Smcs; Otto Environmental Systems \$19,745.28 Smcs; Overhead Door \$194.59 Smcs; Paramount \$259.61 Smcs; Party America \$25.98 Smcs; Payflex Systems \$471.75 Ps; PBD Ala-graph Editions \$48.85 Smcs; Peerless Machine \$83.46 Smcs; Peoplecube \$300.00 Smcs; Pep Co \$51.10 Smcs; Pepsi-Cola \$5,467.13 Smcs; Ping \$151.89 Smcs; Pioneer Door \$58.00 Smcs; Pioneer Revere \$755.60 Smcs; Platte Valley Comm \$307.33 Smcs; Poppin' Penelope \$200.00 Smcs; Presto-X \$136.00 Smcs; Quill \$549.07 Smcs; Radioshack \$63.10 Smcs; Random House \$910.40 Smcs; Reams \$4,265.32 smcs,co; Recognition Unlimited \$32.80 Smcs; Recorded Books \$734.69 Smcs; Reikes Equipment \$534.60 Smcs; Republic Beverage \$447.11 Smcs; Respond first Aid System \$75.05 Smcs; Rick's Sod Farm \$1,213.50 Smcs; Royse,A \$15.36 Smcs; SA Foster Lumber \$8.40 Smcs; Sahling Kenworth \$69.82 Smcs; Sanco Equipment \$580.02 Co; Sanitation Products \$4,062.98 Smcs; Savko Plastic Pipe \$279.07 Smcs; Schmidt,K \$8.28 Smcs; Schommer,S \$26.99 Smcs; Seals Unlimited \$233.79 Smcs; Sears \$417.15 Smcs; See Clear Cleaning \$1,400.00 Smcs; Select Sprayers \$45.07 Smcs; S-F Analytical \$281.00 smcs; Sherwin Williams \$5,033.24 smcs,co; Show Me Cables \$116.03 Smcs; Sign Center \$180.76 Smcs; Simmons Gun Specialties \$863.47 Smcs; Sixth Street Self Storage \$82.50 Smcs; Snap-On Tools \$159.85 Smcs; Solid Waste Agency \$37,791.64 Smcs; Spellman,P \$13.30 Smcs; Sports Turf Managers \$110.00 Smcs; Sprinkler Warehouse \$556.45 Smcs; Starostka Group \$46,193.81 Co; State of NE/AS Central \$4,171.98 Smcs; State of NE/DAS Comm \$18.40 Smcs; Steinbrinks Landscaping \$3,123.98 Smcs; Sterling Distributing \$443.00 Smcs; Story,G \$211.85 Smcs; Strategic Insights \$650.00 Smcs; Strategos Int'l \$700.00 Smcs; Sun Life Financial \$24,316.91 Smcs; Sunmart \$80.81 Smcs; Supershuttle Denver \$46.00 Smcs; Sydow,J \$40.00 Smcs; Target \$87.86 Smcs; Theis,J \$60.00 Smcs; Theis,J \$80.01 Smcs; Tielke Enterprise \$182.46 Smcs; Tomark Sports \$894.58 Smcs; Tractor-Supply \$3,599.61 Smcs; Tri City Outdoor Power \$164.68 Smcs; Tye & Rademacher \$11,116.53 Smcs; Tyrrell,L \$20.35 Smcs; Ultra Chem \$424.16 Smcs; United Seeds \$297.00 Smcs; UNK \$45.00 Smcs; Upbeat \$1,985.16 Smcs; UPS Store \$251.59 smcs,ps; US Flag & Flagpole \$484.00 Smcs; USA Blue Book \$700.60 Smcs; USA Track & Field \$20.95 Smcs; USPS \$821.24 Smcs; Van Diest Supply \$1,897.57 Smcs; Vanderbilts \$166.98 Smcs; Vericom Computers \$350.00 Smcs; Voss Lighting \$1,056.50 Smcs; Walling Water Management \$704.22 Smcs; Wal-mart \$3,130.40 smcs,co; West Villa Animal Hospital \$186.43 Co; Wicks Sterling Trucks \$17.57 Smcs; Wiezorek,J \$35.00 Smcs; Wilke Donovans \$359.95 Smcs; Wilkins Hinrichs Stober \$4,500.00 Co; Yanda's Music \$42.62 Smcs; Zarek,A \$22.92 Smcs; Zimmerman Printers \$398.00 Smcs; Payroll Ending 5-25-2008 -- \$311,276.79. The foregoing schedule of claims is published in accordance with Section 19-1102 of the Revised Statutes of Nebraska, and is published at an expense of \$_____ to the City of Kearney.

3. Approve Change Order No. 2 showing an increase in the amount of \$1,154.00 submitted by Central Contracting Corp. and approved by Miller & Associates for the construction of the Kearney Area Landfill Tipping Station located at 6711 West 56th Street and approve **Resolution No. 2008-94**.

RESOLUTION NO. 2008-94

WHEREAS, Central Contracting Corporation has performed services in connection with the Kearney Area Landfill Tipping Station, and the City's engineer, Miller & Associates, have filed Change Order No. 2 showing an increase to the contract sum in the amount of \$1,154.00, as shown on Exhibit "A", attached hereto and made a part hereof by reference:

| | |
|---|----------------------------|
| Original Contract Sum | <u>\$444,470.00</u> |
| Change Order No. 1 plus an additional 94 work days (2-12-2008) | + 1,897.00 |
| Change Order No. 2 (6-10-2008) | + 1,154.00 |
| Contract Sum To Date | <u><u>\$447,521.00</u></u> |

Substantial Completion Date is May 22, 2008

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 Exhibit "A" be and is hereby accepted and approved.

PASSED AND APPROVED THIS 10TH DAY OF JUNE, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

4. Adopt the Amendment and Restatement of the Money Accumulation Plan for Employees of the City of Kearney by adopting the amendments for tax-qualified government retirement plans under the Economic Growth and Tax Relief Reconciliation Act of 2001, the Pension Funding Act of 2004, and the American Jobs Creation Act of 2006 and approve **Resolution No. 2008-95**.

RESOLUTION NO. 2008-95

BE IT RESOLVED that the City of Kearney, Nebraska shall amend and restate and it hereby does adopt the amended and restated Money Accumulation Plan for Employees of the City of Kearney (the "Money Accumulation Plan") in the form of the Plan document attached hereto and by this reference fully incorporated herein. The purpose of said amendment is to adopt the amendments for tax-qualified government retirement plans under the Economic Growth and Tax Relief Reconciliation Act of 2001, the Pension Funding Act of 2004, the American Jobs Creation Act of 2004, the Gulf Opportunity Zone Act of 2005, certain changes und the Pension Protection Act of 2006, and such other changes required by applicable law or as otherwise determined to be necessary and appropriate by the City.

BE IT FURTHER RESOLVED by the President and Council of the City of Kearney, Nebraska that the Mayor and other appropriate elected officials and officers of the City of Kearney shall be, and they hereby are, authorized to do all things necessary to carry out and accomplish the foregoing Resolution, including the execution of any document or amendment which may be necessary or appropriate to amend and administer the Money Accumulation Plan, including such actions as may be necessary or appropriate to achieve and maintain qualification of the Money Accumulation Plan under Section 401(a) of the Internal Revenue Code of 1986, as amended, as said sections apply to government plans.

PASSED AND APPROVED THIS 10TH DAY OF JUNE, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

5. Adopt the Amendment and Restatement of the City of Kearney, Nebraska Police Officers' Pension Plan by adopting the amendments for tax-qualified government retirement plans under the Economic Growth and Tax Relief Reconciliation Act of 2001, the Pension Funding Act of 2004, the American Jobs Creation Act of 2004, the Gulf Opportunity Zone Act of 2005, and certain changes under the Pension Protection Act of 2006 and approve **Resolution No. 2008-96**.

RESOLUTION NO. 2008-96

BE IT RESOLVED that the City of Kearney, Nebraska shall amend and restate and it hereby does adopt, the amended and restated Kearney, Nebraska Police Officers' Pension Plan (the "Pension Plan") in the form of the Plan document attached hereto and by this reference fully incorporated herein. The purpose of said amendment is to adopt the amendments for tax-qualified government retirement plans under the Economic Growth and Tax Relief Reconciliation Act of 2001, the Pension Funding Act of 2004, the American Jobs Creation Act of 2004, the Gulf Opportunity Zone Act of 2005, certain changes under the Pension Protection Act of 2006, and such other changes required by applicable law or as otherwise determined to be necessary and appropriate by the City.

BE IT FURTHER RESOLVED by the President and Council of the City of Kearney, Nebraska that the Mayor and other appropriate elected officials and officers of the City of Kearney shall be, and they hereby are, authorized to do all things necessary to carry out and accomplish the foregoing Resolution, including the execution of any document or amendment which may be necessary or appropriate to amend and administer the Pension Plan, including such actions as may be necessary or appropriate to achieve and maintain qualification of the Pension Plan under Section 401(a) of the Internal Revenue Code of 1986, as amended, as said sections apply to government plans.

PASSED AND APPROVED THIS 10TH DAY OF JUNE, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

6. Adopt the Amendment and Restatement of the City of Kearney, Nebraska Firefighters' Pension Plan by adopting the amendments for tax-qualified government retirement plans under the Economic Growth and Tax Relief Reconciliation Act of 2001, the Pension Funding Act of 2004, the American Jobs Creation Act of 2004, the Gulf Opportunity Zone Act of 2005, and certain changes under the Pension Protection Act of 2006 and approve **Resolution No. 2008-97**.

RESOLUTION NO. 2008-97

BE IT RESOLVED that the City of Kearney, Nebraska shall amend and restate and it hereby does adopt, the amended and restated Kearney, Nebraska Firefighters' Pension Plan (the "Pension Plan") in the form of the Plan document attached hereto and by this reference fully incorporated herein. The purpose of said amendment is to adopt the amendments for tax-qualified government retirement plans under the Economic Growth and Tax Relief Reconciliation Act of 2001, the Pension Funding Act of 2004, the American Jobs Creation Act of 2004, the Gulf Opportunity Zone Act of 2005, certain changes under the Pension Protection Act of 2006, and such other changes required by applicable law or as otherwise determined to be necessary and appropriate by the City.

BE IT FURTHER RESOLVED by the President and Council of the City of Kearney, Nebraska that the Mayor and other appropriate elected officials and officers of the City of Kearney shall be, and they hereby are, authorized to do all things necessary to carry out and accomplish the foregoing Resolution, including the execution of any document or amendment which may be necessary or appropriate to amend and administer the Pension Plan, including such actions as may be necessary or appropriate to achieve and maintain qualification of the Pension Plan under Section 401(a) of the Internal Revenue Code of 1986, as amended, as said sections apply to government plans.

PASSED AND APPROVED THIS 10TH DAY OF JUNE, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

7. Approve **Resolution No. 2008-31A** correcting the legal description for the final plat of "East Cook Subdivision", an addition to the City of Kearney, Buffalo County, Nebraska for property described as a tract of land being part of the South Half of the Southeast Quarter of the Southwest Quarter of Section 6, Township 8 North, Range 15 West of the 6th P.M., containing 8.21 acres, more or less, Buffalo County, Nebraska (east of Avenue M, west of Antelope Avenue and north of 11th Street).

RESOLUTION NO. 2008-31A

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of East Cook Subdivision an addition to the City of Kearney, Buffalo County, Nebraska for a tract of land being the east 24.0 feet of Lot 18, all of Lot 19, all of Lot 20, Block 22, Crusier and Davies Addition to the City of Kearney, Buffalo County, Nebraska, together with all that part of Crusier and Davies Addition now vacated and formerly referred to as Lots 1 through 28, Block 21, Lots 1 through 10, the east 24.0 feet of Lot 11, the east 24.0 feet of Lot 18, Lots 19 through 28, Block 22, all of

vacated Avenue "S" abutting Block 21 on the west and Block 22 on the east, all that part of Avenue "U" lying west of the east line of the Southeast Quarter of the Southwest Quarter of Section 6, Township 8 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska and abutting Block 21 on the east, all of the South Half of vacated 12th Street lying east of the west line of the east 24.0 feet of Lot 11, Block 22, Cruser and Davies Addition and west of the east line of the Southeast Quarter of the Southwest Quarter of said Section 6 and all being more particularly described as: part of the South Half of the Southeast Quarter of the Southwest Quarter of Section 6, Township 8 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska. Beginning at the southeast corner of the Southwest Quarter of said Section 6 and assuming the east line of the Southeast Quarter of the Southwest Quarter as bearing N01°08'11"E and all bearings contained herein are relative thereto; thence N01°08'11"E and on the said east line of the Southeast Quarter of the Southwest Quarter a distance of 308.34 feet to the centerline of 12th Street (now vacated); thence N89°03'58"W and on said vacated centerline a distance of 1147.0 feet to the northeast corner of Lot 2, Hoehner Park Addition, an addition to the City of Kearney, Buffalo County, Nebraska; thence S01°01'31"W and on said east line of Lot 2 a distance of 315.43 feet to the south line of said Section 6; thence S89°26'07"E on said south line a distance of 1146.41 feet to the point of beginning, containing 8.21 acres, more or less, all in Buffalo County, Nebraska, duly made out, acknowledged and certified, and the same hereby is approved in accordance with the provisions and requirements of Section 19-916 of the Nebraska Revised Statutes, be accepted and ordered filed and recorded in the Office of the Register of Deeds of Buffalo County, Nebraska; said addition is hereby included within the corporate limits of said City and shall be and become a part of said City for all purposes whatsoever, and the inhabitants of such addition shall be entitled to all the rights and privileges and shall be subject to all laws, ordinances, rules and regulations of said City.

BE IT FURTHER RESOLVED that the 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.

PASSED AND APPROVED THIS 10TH DAY OF JUNE, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

8. Approve **Resolution No. 2008-32A** correcting the legal description for the annexation of "East Cook Subdivision" an addition to the City of Kearney, Buffalo County, Nebraska for property described as a tract of land being part of the South Half of the Southeast Quarter of the Southwest Quarter of Section 6, Township 8 North, Range 15 West of the 6th P.M., containing 8.21 acres, more or less, Buffalo County, Nebraska (east of Avenue M, west of Antelope Avenue and north of 11th Street).

RESOLUTION NO. 2008-32A

WHEREAS, an Application has been submitted by Craig Bennett from Miller & Associates (Applicant) for Robert G. Cook (Owner) for the inclusion of "East Cook Subdivision" an addition within the corporate boundaries of the City of Kearney said

property described as a tract of land being the east 24.0 feet of Lot 18, all of Lot 19, all of Lot 20, Block 22, Crusier and Davies Addition to the City of Kearney, Buffalo County, Nebraska, together with all that part of Crusier and Davies Addition now vacated and formerly referred to as Lots 1 through 28, Block 21, Lots 1 through 10, the east 24.0 feet of Lot 11, the east 24.0 feet of Lot 18, Lots 19 through 28, Block 22, all of vacated Avenue "S" abutting Block 21 on the west and Block 22 on the east, all that part of Avenue "U" lying west of the east line of the Southeast Quarter of the Southwest Quarter of Section 6, Township 8 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska and abutting Block 21 on the east, all of the South Half of vacated 12th Street lying east of the west line of the east 24.0 feet of Lot 11, Block 22, Crusier and Davies Addition and west of the east line of the Southeast Quarter of the Southwest Quarter of said Section 6 and all being more particularly described as: part of the South Half of the Southeast Quarter of the Southwest Quarter of Section 6, Township 8 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska. Beginning at the southeast corner of the Southwest Quarter of said Section 6 and assuming the east line of the Southeast Quarter of the Southwest Quarter as bearing N01°08'11"E and all bearings contained herein are relative thereto; thence N01°08'11"E and on the said east line of the Southeast Quarter of the Southwest Quarter a distance of 308.34 feet to the centerline of 12th Street (now vacated); thence N89°03'58"W and on said vacated centerline a distance of 1147.0 feet to the northeast corner of Lot 2, Hoehner Park Addition, an addition to the City of Kearney, Buffalo County, Nebraska; thence S01°01'31"W and on said east line of Lot 2 a distance of 315.43 feet to the south line of said Section 6; thence S89°26'07"E on said south line a distance of 1146.41 feet to the point of beginning, containing 8.21 acres, more or less, all in Buffalo County, Nebraska; and

WHEREAS, the Kearney City Planning Commission has received and held a public hearing on February 15, 2008 on the inclusion of "East Cook Subdivision" 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 "East Cook Subdivision" an addition to the City of Kearney, Buffalo County, Nebraska;

WHEREAS, a public hearing was held by the Kearney City Council relating to said application on March 11, 2008 who deemed the said addition to be included within the corporate limits to be advantageous to and in the best interests of the City.

WHEREAS, the Kearney City Council passed Resolution No. 2008-32 on March 11, 2008 annexing "East Cook Subdivision", an addition to the City of Kearney, Buffalo County, Nebraska into the corporate limits; and

WHEREAS, an error in the legal description was discovered by the Buffalo County Register of Deeds when the final plat was being recorded; and

WHEREAS, it is necessary to correct the legal description for the plat of "East Cook Subdivision", an addition to the City of Kearney, Buffalo County, Nebraska.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the land to be platted as "East Cook Subdivision" 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 "East Cook Subdivision" 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 10TH DAY OF JUNE, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

9. Approve the bids received for the purchase of one rider type trencher/backhoe to be used by the Park & Recreation Department and award the bid to Ditch Witch of Nebraska in the amount of \$36,228.82.

10. Authorize Administration to negotiate with Wilke Contracting for the construction of the 2007 Part V Improvements (bridge work on 4th Street between 2nd Avenue and 3rd Avenue) and approve **Resolution No. 2008-98**.

RESOLUTION NO. 2008-98

WHEREAS, Miller & Associates Consulting Engineers and the City of Kearney have reviewed the sealed bids which were opened on June 3, 2008, at 2:00 p.m. for the construction of the 2007 Part V Improvements (bridge work on 4th Street between 2nd Avenue and 3rd Avenue); and

WHEREAS, the Engineer's Opinion of Probable Construction Cost for the 2007 Part V Improvements was \$264,060.50; and

WHEREAS, the City received two bids for the 2007 Part V Improvements which exceeded the Engineer's estimate.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska that in accordance with Section 16-321(7) of the Nebraska Revised Statutes, the City Council hereby directs and authorizes the City Manager to negotiate a contract for services, material or labor to construct the 2007 Part V Improvements (bridge work on 4th Street between 2nd Avenue and 3rd Avenue) at a cost commensurate with the Engineer's Estimate. Any contract negotiated shall be submitted to the City Council for final approval.

PASSED AND APPROVED THIS 10TH DAY OF JUNE, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

11. Approve the Plans and Specifications for the construction of the 2008 Part 8 Improvements consisting of Paving Improvement District No. 2008-927 for 62nd Street, Avenue S, Avenue T and Avenue U as said streets abut Lots 1 and 2 of Block 1; Lots 1, 2, 3, 4, 5, 6, and 7 of Block 2; Lots 1 and 2 of Block 3; Lots 1, 2, 3 of Block 4; Lot 1 of Block 5, all in Eastbrooke Tenth; Water District No. 2008-551 for 62nd Street, Avenue S Avenue T and Avenue U as said streets abut Lots 1 and 2 of Block 1; Lots 1, 2, 3, 4, 5, 6, and 7 of Block 2; Lots 1 and 2 of Block 3; Lots 1, 2, 3 of Block 4; Lot 1 of Block 5, all in Eastbrooke Tenth; and Sanitary Sewer District No. 2008-493 for 62nd Street, Avenue T and Avenue U as said streets abut Lots 1 and 2 of Block 1; Lots 1, 2, 3, 4 of Block 2;

Lots 1 and 2 of Block 4; Lot 1 of Block 5, all in Eastbrooke Tenth and set the bid opening date for July 1, 2008 at 2:00 p.m.

12. Approve the application for a Special Designated License submitted by CMO Inc., dba "Knights of Columbus 1728" in connection with their Class I-27979 liquor license to dispense beer and wine inside the 40' x 30' enclosed area west and adjoining the Knights of Columbus located at 1900 Central Avenue on June 30, 2008 from 5:00 p.m. to 8:00 p.m.

V. CONSENT AGENDA ORDINANCES

ORDINANCE NO. 7437 – SELL TRACT OF LAND IN LAKE VILLA ESTATES

In 1979, Howard and Betty Connell deeded certain property to the City of Kearney for the purposes of establishing a well and a sewage treatment facility for the Lake Villa Estates Addition. The deed specifically indicated that when the City of Kearney stopped using the property for the purpose of a sewage treatment facility, it would then revert back to the Grantors or their heirs or successors.

This subdivision has now been connected to City sewer and water and the above-referenced facility is no longer needed to service the subdivision. Therefore, a deed is necessary to clear title to that property and transfer ownership to the real estate to the heirs of Howard and Betty Connell. A Quitclaim Deed has been prepared for this purpose.

Council Member Lammers introduced Ordinance No. 7437, being Subsection 1 of Agenda Item V to sell a part of Lot 6 of Block 1, Lake Villa Estates, an addition to the City of Kearney, Buffalo County, Nebraska AND a tract of land in government Lot 3 located in Section 13, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska to Elizabeth Merrifield and Five Points Bank, and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Buschkoetter seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7437 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion carried. Ordinance was read by number.

Moved by Buschkoetter seconded by Clouse that Ordinance No. 7437 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance,

Ordinance No. 7437 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

ORDINANCE NO. 7422A – AMEND LEGAL DESCRIPTION FOR EAST COOK SUBDIVISION

On March 11, 2008 the City Council approved the development of East Cook Subdivision; said property is located approximately ½ mile east of Avenue M on the north side of 11th Street. It has come to the City's attention that there is an error in the legal description that needs to be corrected. The legal description for the final plat, the annexation and the rezoning need corrected in order to file the final plat and Subdivision Agreement with the Register of Deeds. This is merely a housekeeping matter.

Council Member Lammers introduced Ordinance No. 7422A, being Subsection 2 of Agenda Item V to amend the legal description for the rezoning from "District AG, Agricultural District" to "District M-1, Limited Industrial District" property described as a tract of land being part of the South Half of the Southeast Quarter of the Southwest Quarter of Section 6, Township 8 North, Range 15 West of the 6th P.M., containing 8.21 acres, more or less, Buffalo County, Nebraska (east of Avenue M, west of Antelope Avenue and north of 11th Street), and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Buschkoetter seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7422A by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion carried. Ordinance was read by number.

Moved by Buschkoetter seconded by Clouse that Ordinance No. 7422A be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7422A is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

VI. REGULAR AGENDA

ORDINANCE NO. 7438 – AMEND CHAPTER 8 OF CITY CODE (PERTAINS TO PUBLIC HEARING 1)

Council Member Clouse introduced Ordinance No. 7438, being Subsection 1 of Agenda Item VI to amend Section 8-301 "Definitions" of Article 3 "General Traffic Regulations" of Chapter 8 "Police" of the Code of the City of Kearney to define hauling trailers and recreational vehicles; to amend Section 8-919 "Recreational Vehicles" of Article 9 "Stopping, Standing and Parking" of Chapter 8 "Police" of the Code of the City of Kearney to allow the parking of recreational vehicles on streets for the purpose of loading and unloading only, and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Kearney seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7438 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried. Ordinance was read by number.

Moved by Kearney seconded by Lammers that Ordinance No. 7438 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lammers. Nay: None. Lear absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7438 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

ORDINANCE NO. 7439 – AMEND CHAPTER 9 OF CITY CODE (PERTAINS TO PUBLIC HEARING 1)

Council Member Clouse introduced Ordinance No. 7439, being Subsection 2 of Agenda Item VI to amend Section 9-901 "Definitions" of Division I "General Provisions" of Article 9 "Manufactured Homes" of Chapter 9 "Public Works" of the Code of the City of Kearney to delete the definition of a camping vehicle and to define recreational vehicle; to amend Section 9-906 "Where Trailers Permitted; Camping Vehicles" of Division I "General Provisions" of Article 9 "Manufactured Homes" of Chapter 9 "Public Works" of the Code of the City of Kearney to delete the reference of camping vehicle and replace with recreational vehicle; to allow two recreational vehicles per family on approved parking pads or in a commercial or industrial district in approved areas; and to prohibit recreational vehicles to be parked, stored or left upon the public street for a period in excess of 48 hours; and to amend Section 9-907 "Where Trailers Permitted; Hauling Trailers" of Division I "General Provisions" of Article 9 "Manufactured Homes" of Chapter 9 "Public Works" of the Code of the City of Kearney to provide no more than two recreational vehicles or personal hauling trailers in any combination may be stored per family in a residential setting on approved parking pads, and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and

said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Kearney seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7439 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried. Ordinance was read by number.

Moved by Kearney seconded by Lammers that Ordinance No. 7439 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lammers. Nay: None. Lear absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7439 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

ORDINANCE NO. 7440 – AMEND CHAPTER 49 OF CITY CODE (PERTAINS TO PUBLIC HEARING 1)

Council Member Clouse introduced Ordinance No. 7440, being Subsection 3 of Agenda Item VI to amend Section 49-110 “Parking for Personal and Recreational Vehicles” of Chapter 49 “Off-Street Parking” of the Code of the City of Kearney by deleting in its entirety and replacing with a new Section 49-110 “Parking for Personal and Recreational Vehicles in Residential Areas” and to provide definitions and requirements for parking in approved locations, and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Kearney seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7440 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, Kearney. Nay: None. Lear absent. Motion carried. Ordinance was read by number.

Moved by Kearney seconded by Lammers that Ordinance No. 7440 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lammers. Nay: None. Lear absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7440 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

ORDINANCE NO. 7441 – REZONE 1908, 1910 AND 1912 7TH AVENUE (PERTAINS TO PUBLIC HEARING 2)

Council Member Lammers introduced Ordinance No. 7441, being Subsection 4 of Agenda Item VI to rezone from “District M-1, Limited Industrial District” to “District R-3, Urban Residential Multi-Family District (Medium Density)” property described as Lots 4, 5 and 6 of Block 15, Ashland Addition to the City of Kearney, Buffalo County, Nebraska (1908, 1910 and 1912 7th Avenue), and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Buschkoetter seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7441 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion carried. Ordinance was read by number.

Moved by Buschkoetter seconded by Clouse that Ordinance No. 7441 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7441 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

ORDINANCE NO. 7442 – VIAERO WIRELESS CONDITIONAL USE PERMIT, 609 PLATTE ROAD (PERTAINS TO PUBLIC HEARING 3)

Council Member Lammers introduced Ordinance No. 7442, being Subsection 5 of Agenda Item VI to grant a Conditional Use Permit to NE Colorado Cellular, Inc., dba Viaero Wireless (Applicant) and FirstTier Capital Corporation, dba Kearney Event Center, Inc. (Owner) to construct a 150-foot self-supporting telecommunications monopole with an aggregate building and supporting equipment on property zoned “District C-2/PD, Community Commercial/Planned Development Overlay District” and described as Lot 2, Broadfoot 3rd Addition to the City of Kearney, Buffalo County, Nebraska (609 Platte Road), and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed

on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Buschkoetter seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7442 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion carried. Ordinance was read by number.

Moved by Buschkoetter seconded by Clouse that Ordinance No. 7442 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7442 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

ORDINANCE NO. 7443 – VACATE PORTION OF E.K. AND MARY YANNEY HERITAGE PARK (PERTAINS TO PUBLIC HEARING 5)

Council Member Lammers introduced Ordinance No. 7443, being Subsection 6 of Agenda Item VI to vacate Lot 2, E.K. and Mary Yanney Heritage Park, an addition to the City of Kearney, Buffalo County, Nebraska (south of 11th Street and east of Kea West Avenue), and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Buschkoetter seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7443 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion carried. Ordinance was read by number.

Moved by Buschkoetter seconded by Clouse that Ordinance No. 7443 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7443 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

ORDINANCE NO. 7444 – REZONE NORTH AND SOUTH OF 48TH STREET, EAST OF 11TH AVENUE AND 48TH STREET (PERTAINS TO PUBLIC HEARING 7)

Council Member Lammers introduced Ordinance No. 7444, being Subsection 7 of Agenda Item VI to rezone 4.82 acres, more or less, from “District AG, Agricultural District” to “District R-2, Urban Residential Mixed-Density District”, and to rezone 15.06 acres, more or less, from “District AG, Agricultural District” to “District R-3/PD, Urban Residential Multi-Family (Medium Density)/Planned Development Overlay District”, property described as part of the Northeast Quarter of the Southwest Quarter and part of the Southeast Quarter of the Northwest Quarter of Section 26, Township 9 North, Range 16 West of 6th P.M., Buffalo County, Nebraska (north and south of 48th Street, east of 11th Avenue and 48th Street), and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Buschkoetter seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7444 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion carried. Ordinance was read by number.

Moved by Buschkoetter seconded by Clouse that Ordinance No. 7444 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7444 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

ORDINANCE NO. 7445 – AMEND CHAPTER 50 OF CITY CODE (PERTAINS TO PUBLIC HEARING 11)

Moved by Clouse seconded by Kearney to table until June 24, 2008 Ordinance No. 7445 amending Chapter 50, “Sign Regulations” of the Unified Land Development Ordinance to revise definitions contained in section 50-102 removing “Computer Message Posting Signs,” removing reference to time and temperature display signs as exempt signs, and to add a new sign type “Numeric Display Signs”; to revise general regulations in section 50-103 to remove “Banners, Balloons, and Posters” from “Prohibited Signs” and move them to the “Temporary Sign” category, and to establish a time limit for the display of “Political Campaign Signs;” and to revise basic design elements in section 50-104 pertaining to “Electronic Information Signs” and “Numeric Display Signs” to limit the quantity, establish location requirements, to include required

“hold” times for the message displayed, and to restrict the brightness of electronic signs as it relates to the ambient light level. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion carried.

ORDINANCE NO. 7446 – VACATE ALLEY BETWEEN 1ST AVENUE AND CENTRAL AVENUE FROM 15TH STREET TO 16TH STREET (1512 CENTRAL AVENUE)

Mayor Clouse stated that Regular Agenda Items 9 and 10 can be discussed and voted on together. The City Clerk amended the Agenda on June 9, 2008 to reflect a correction in the legal description on the alley to be vacated. Ordinance No. 7446 has been amended to reflect the change.

The applicant is requesting approval to vacate the 20-foot wide north-south alley that was platted between 15th Street and 16th Street and part of 15th Street as described in the application. The courthouse building covers a majority of the platted alley between 15th Street and 16th Street and it is unclear why the alley was never previously vacated when the building was built over it. Part of 15th Street was previously vacated at this location, but an L-shaped portion remains that must be vacated. The alley from 14th Street north to vacated 15th Street is proposed to remain. Utility easements will be required for portions of the alley to be vacated that contain utilities, especially for the existing sanitary sewer line in the alley extending into vacated 15th Street.

The alley cannot “dead-end” without an adequate turnaround or a “dog leg” that leads back to a public street. Buffalo County owns the lots east of the alley and south of 15th Street. Part of this property is reserved for the proposed jailhouse. Staff suggests that an access be provided from the alley to Central Avenue somewhere across these lots.

Deputy County Attorney Andy Hoffmeister presented this matter to the Council. Buffalo County passed a bond issue for building a courthouse and judicial center. In 1875, the town of Kearney Junction and the Union Pacific Railroad donated the block the courthouse sits on with a promise to build a courthouse in 90 days for less than \$1,500.00 to put a jail on courtesy of Burlington Northern Railroad for \$2,500.00. All reservations for the courthouse block are pretty much taken care of except for three lots. They have been there more than eighty years and it is still as a courthouse which was the two conditions of the grant.

They need to expand the courthouse and build their jail. They need to have 15th Street vacated. They have existed over this alley for almost 135 years. He believed it was time to get it off the books and onto the courthouse. He did note a change from the original agenda, they missed the third request which was to vacate the alley south of (proposed vacated 15th Street) south down to the last two lots towards 15th Street. The intent of Buffalo County is that they own the two lots on the east side where there is a house located. An employee of Buffalo County owns the two lots to the west and they want to keep it open so he can get into his garages. They do not intend to barricade, but leave it open and ultimately will be a parking lot. There will be a need to significantly relocate utilities; there are some sewer lines that were found on some old maps that exist along 15th Street. There are two water meters literally in the street and some overhead utilities. They hope to proceed with this project this summer, depending on

what is being done on the courthouse project. The goal is to get the necessary paperwork completed for easements and the permits to commence construction.

Council Member Clouse introduced Ordinance No. 7446, being Subsection 9 of Agenda Item VI to vacate the alley lying between 1st Avenue and Central Avenue from 15th Street to 16th Street as it abuts Lots 1458 through 1469, inclusive, AND the alley lying between 1st Avenue and Central Avenue south of 15th Street as it abuts Lots 1506, 1507, 1508, 1509, 1514, 1515, 1516, 1517, all in Original Town of Kearney Junction now the City of Kearney, Buffalo County, Nebraska (1512 Central Avenue), and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Kearney seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7446 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried. Ordinance was read by number.

Moved by Kearney seconded by Lammers that Ordinance No. 7446 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lammers. Nay: None. Lear absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7446 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

ORDINANCE NO. 7447 – VACATE PORTION OF 15TH STREET (1512 CENTRAL AVENUE)

Council Member Clouse introduced Ordinance No. 7447, being Subsection 10 of Agenda Item VI to vacate a portion of 15th Street lying between 1st Avenue and Central Avenue in the City of Kearney, Buffalo County, Nebraska (1512 Central Avenue), and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Kearney seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7447 by number. Roll call of those in favor of the passage of said ordinance on the first

reading resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried. Ordinance was read by number.

Moved by Kearney seconded by Lammers that Ordinance No. 7447 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lammers. Nay: None. Lear absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7447 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

ORDINANCE NO. 7448 – ISSUANCE OF BONDS FOR 39TH STREET PROJECT

Mayor Clouse opened for discussion Ordinance No. 7448 authorizing the issuance of General Obligation Various Purpose Bonds of the City of Kearney, Nebraska, in the estimated principal amount of \$4,620,000 for the purpose of paying the costs of improving streets and intersections in Paving Improvement District No. 2006-908; directing the application of the proceeds of said bonds; prescribing the form of said bonds; providing for the levy and collection of taxes to pay the same; providing for the sale of the bonds; authorizing the delivery of the bonds to the purchaser; determining this ordinance a measure necessary to carry out contractual obligations of the City.

The City has completed construction and made final payments on the 2006 Part I Street Improvement Project, the 2007 Part I Street Improvement Project, and the 2007 Part II Street Improvement Project (39th Street, 6th Avenue to Pony Express). Prior to the construction of these Street Improvement Projects, Series 2006 Bond Anticipation Notes (Notes) and Series 2007 Bond Anticipation Notes (Notes) were approved by the City Council to provide funds to pay for right of way, engineers, and contractors. The Notes provided short term financing for the Street Improvement Projects and mature on July 1, 2008. Therefore, it is necessary to approve the Series 2008 Various Purpose General Obligation Bonds (Bonds) for the purpose of redeeming the Notes maturing on July 1, 2008, and provide long-term financing for this Street Improvement Project.

The total amount of the outstanding short-term Notes is \$4,470,000.00 for a term of twenty years. The annual payments on the Bonds will be approximately \$350,000.00 each year for twenty years. The City will be required to budget approximately \$350,000.00 in the Special Sales Tax Fund annually over the next twenty years in order to make the annual principal and interest payments on the Bonds.

Bruce Lefler of Ameritas Investment Corp. presented this matter to the Council. He stated they have taken out two sets of bond anticipation notes for completion of projects on 39th Street in two different phases. He reported that the sale of these bonds was successful with the coupon rates running from 2.5 percent out to 4.2 percent. The bottom line is the 20 year financing for the City at an all in cost including with the issuance of the bonds at 4.29 percent. These bonds are double tax exempt which means they are exempt from both federal and state income tax. That is advantageous to the City from the borrowing costs and that the interest rates standpoint.

Council Member Lammers introduced Ordinance No. 7448, being Subsection 11 of Agenda Item VI to authorize the issuance of General Obligation Various Purpose Bonds of the City of Kearney, Nebraska, in the estimated principal amount of \$4,620,000 for the purpose of paying the costs of improving streets and intersections in Paving Improvement District No. 2006-908; directing the application of the proceeds of said bonds; prescribing the form of said bonds; providing for the levy and collection of taxes to pay the same; providing for the sale of the bonds; authorizing the delivery of the bonds to the purchaser; determining this ordinance a measure necessary to carry out contractual obligations of the City, and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Buschkoetter seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7448 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion carried. Ordinance was read by number.

Moved by Buschkoetter seconded by Clouse that Ordinance No. 7448 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7448 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.

MANAGER APPLICATION FOR CARLOS O'KELLY'S

Mayor Clouse opened for discussion the Manager Application for Timothy Novacek submitted by CARLOS O'KELLY'S INC., dba "Carlos O'Kelly's" in connection with their Class I-41065 liquor license located at 119 3rd Avenue.

An Application for Manager has been submitted by Carlos O'Kelly's in connection with their Class I-41065 (Beer, Wine, Distilled Spirits – On Sale Only) liquor license located at 119 3rd Avenue. A background investigation was conducted on Timothy Novacek as the Manager for the Carlos O'Kelly's. Mr. Novacek was interviewed by the Kearney Police Department and a driver's history and criminal history were both acquired. The histories indicate a substantial list of contacts and charges dating back to 1997 through 2007. These include several minor issues but also include a trespassing; a failure to obey a lawful order and two DUI charges, the last of which was in 2007.

Carlos O'Kelly's was issued a liquor license in 1998. It should be noted that Carlos O'Kelly's was cited for selling to a minor on October 25, 2007, though this did not involve Mr. Novacek.

During the interview, Mr. Novacek expressed what the Officer believes was a very sincere level of regret regarding his past actions. Mr. Novacek indicated he is embarrassed and remorseful regarding his behaviors and has made significant changes in his lifestyle and behaviors. He believes he is capable of managing the license effectively and will cooperate fully.

The City Council is concerned with the selling of alcohol to minors in our community, and wants to encourage all license holders to provide the necessary training to all employees that sell or dispense alcohol. Therefore, City staff has developed a form entitled "Liquor License Training Compliance" requiring applicants to document and verify training compliance of their employees. The form has been returned indicating they provide training to their employees.

Timothy Novacek presented this matter to the Council. He has been a manager with Carlos O'Kelly's since 2001. He opened the south Lincoln store with them and worked in the north Lincoln store. He moved to Kearney in 2004. He prides himself on providing professional environment and giving back to employees not only on work concerns and also outside of work as well. He has no problem upholding the liquor laws. They currently are enrolling their employees in the classes through the City starting on June 28th; they will have 13 employees at a time which is the maximum that can be in a class. They will start with their bartenders and supervisors and move on down the line.

Mayor Clouse stated that after reviewing the application, they noted that Mr. Novacek has had a few incidents on his past record that need to be address in order to issue a liquor license in his name. In issuing liquor licenses, he looks at it as in the shadow of the leader. Mr. Novacek stated that he knows that he made some bad decisions as he was growing up. He has been surrounded by good people at Carlos O'Kelly's and each year that has gone by in his life, he has gotten smarter and more mature. He believes that those concerns are definitely in the past and has moved on. The last infraction was about 1½ years ago which was a DUI and stated that he is not a drinker, it just happened. It was a case where his brother came into town, they went out for a few drinks and it was an unfortunate incident and it really crushed me. He felt very disappointed in himself and he did not have an excuse, but definitely learned from it.

Chief Lynch stated those incidents do create concerns for the Police Department. Investigator Manary did the background on this. He and Mr. Novacek had long conversations regarding the expectations as a manager of the business. Mr. Manary believed that Mr. Novacek would do everything that he could to abide by the regulations and that he might have really changed over the last year period. Mr. Manary believed that Mr. Novacek would do a good as a manager.

Mayor Clouse stated that Carlos O'Kelly's failed a compliance check recently, so there will be further discussions if it happens again. Mr. Novacek stated they have gone to great efforts to do everything they can to eliminate the possibility of having another incident by redoing the training with the employees and having them re-sign their policy

manuals about the alcohol and drug policies.

Moved by Clouse seconded by Kearney to approve the Manager Application for Timothy Novacek submitted by CARLOS O'KELLY'S INC., dba "Carlos O'Kelly's" in connection with their Class I-41065 liquor license located at 119 3rd Avenue. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

OPEN ACCOUNT CLAIMS: PLATTE VALLEY STATE BANK - \$44,889.00, NPPD - \$2,922.72, SCHOOL DISTRICT #7 - \$3,304.80

With the absence of Council member Lear and the abstention of Council members Buschkoetter and Lammers, the Open Account Claim for School District #7 will be not be considered at this meeting but will be presented at the next meeting.

Moved by Kearney seconded by Lammers that Open Account Claims in the amount of \$44,889.00 payable to Platte Valley State Bank, and in the amount of \$2,922.72 payable to Nebraska Public Power District be allowed. Roll call resulted as follows: Aye: Kearney, Buschkoetter, Lammers. Nay: None. Clouse abstained. Lear absent. Motion carried.

VII. REPORTS

CLOSED SESSION

Moved by Lammers seconded by Buschkoetter that Council adjourn into closed session at 9:11 p.m. on June 10, 2008 for the protection of the public interest to discuss pending negotiations of lease terms on Airport property. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

Mayor Clouse restated the Council is going into closed session for the protection of the public interest to discuss pending negotiations of lease terms on Airport property. According to law, the Council has the option to reconvene back into open session and may take any formal action it deems appropriate.

Moved by Buschkoetter seconded by Clouse that Council reconvene in regular session at 9:23 p.m. Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Kearney. Nay: None. Lear absent. Motion carried.

Moved Clouse seconded Kearney to authorize the City Manager and City Attorney to negotiate on behalf of the City of Kearney with the lease holder regarding the lease terms on property located at the Kearney Regional Airport. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lammers. Nay: None. Lear absent. Motion carried.

VIII. ADJOURN

Moved by Kearney seconded by Lammers that Council adjourn at 9:24 p.m. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear

absent. Motion carried.

ATTEST:

**MICHAELLE E. TREMBLY
CITY CLERK**

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