

Kearney, Nebraska
July 22, 2008
7:00 p.m.

A meeting of the City Council of Kearney, Nebraska, was convened in open and public were: Stanley A. Clouse, President of the Council session at 7:00 p.m. on July 22, 2008, in the Council Chambers at City Hall. Present; Michaelle Trembly, City Clerk; Council Members Randy Buschkoetter, Don Kearney, Bruce Lear, and Bob Lammers. Absent: None. Michael Morgan, City Manager; Michael Tye, City Attorney; Wendell Wessels, Director of Finance and Administration; Kirk Stocker, Director of Utilities; Lance Lang, City Planner; Rod Wiederspan, Director of Public Works; Dan Lynch, Chief of Police; Neal Lewis, Director of Park & Recreation; Luke Olson, Management Assistant; and Cathy Vogt, Secretary were also present. Some of the citizens present in the audience included: Mitch Humphrey, Paul Brungardt, Marc Loescher, Roberta Loescher, Linda Schwartz, Donna Bamford, Julie Brooker, Doralene Weed, Mark Foradori, Rhoda Brown, Dave Klone, Brandi Bosselman, Larry Peters, Gail Lowenberg, Kent Cordes, Sara Giboney from Kearney Hub, Steve Altmaier from KGFW Radio.

Notice of the meeting was given in advance thereof by publication in the Kearney Hub, the designated method for giving notice, a copy of the proof of publication being attached to these minutes. Advance notice of the meeting was also given to the City Council and a copy of their acknowledgment or receipt of such notice is attached to these minutes. Availability of the Agenda was communicated in the advance notice and in the notice to the Mayor and City Council. All proceedings hereafter shown were taken while the meeting was open to the attendance of the public.

I. ROUTINE BUSINESS

INVOCATION

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

PLEDGE OF ALLEGIANCE

The Mayor and 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

Galen and Marilyn Hadley updated the Council on the fund raising efforts for the Kearney Public Library expansion. This project is made possible as a result of the half cent sales tax that the citizens passed on a 3-1 margin. It has been 30 years since the current Library was built and Kearney has expanded a lot in that period of time. With

the City's pledge of \$4 million from the sales tax, the space will be expanded by approximately 50 percent. That is not quite enough and a group has gotten together to raise private funds to take the Library to a higher level. Their goal is to raise \$2.5 million to add to the City's \$4 million for a total of \$6.5 million. With that amount, they can more than double the size of the addition. He stated that although Grand Island is larger than Kearney in population, the circulation at the Kearney Public Library is 50 percent larger than the Grand Island circulation. The people of Buffalo County and Kearney use the Library.

Marilyn Hadley commended the Kearney Public Library Foundation for their work and for serving on the Capital Campaign Committee or on the Public Awareness Committee that supports the effort of the Capital Campaign. At the present time, they are in the process of recruiting lead benefactor gifts, next will be contacting businesses and individual gifts and then will finally open it up to the community with a goal of completing their campaign by the end of the year. They have raised a half million dollars in commitments (20 percent of their goal).

They had a huge children's program this summer with over 1600 children participating in the reading program. It was interesting to find out how many people use the Library. A part of the summer program was the Children's Coin Campaign to help build the new addition and provide this renovation. They presented the Committee with over \$300 from their Coin Campaign, plus a \$100 profit from the lemonade stands that they set up to raise additional funds. More updates will follow.

II. UNFINISHED BUSINESS

There was no Unfinished Business.

III. PUBLIC HEARINGS

AMENDMENTS TO CHAPTER 50 OF THE CITY CODE

Moved by Kearney seconded by Lammers to remove from the table Public Hearing 1 on the proposed amendments to Chapter 50 of the City Code. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

Mayor Clouse opened the public hearing on the proposed amendments to Chapter 50, "Sign Regulations" of the Code of the City of Kearney as follows: Section 50-102 "Definition of Terms" to provide a definition for Numeric Display Signs; to amend Section 50-104 "General Regulations; Basic Design Elements for Signs" to provide requirements for numeric display signs.

City Planner Lance Lang presented this matter to the Council. This was tabled at the June 10, 24 and July 8, 2008 City Council meetings. The applicant from Bosselman was before the Planning Commission in April with a request to amend Chapter 50 of the City Code 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 routinely 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 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.

Staff took this opportunity to propose other amendments to on-premise signs in Chapter 50. Unfortunately, the scope of the proposed amendments has caused delay in adoption as several issues regarding on-premise electronic signs have “muddied the water” so to speak. Staff can continue to research the issues at hand and at the same time move the proposed section regulating fuel price signs forward.

Staff proposes a new sign category in the definition section for “Numeric Display Sign” that will include time, temperature, and fuel price display. Regulations are established for this type of sign including requirements for setback, maximum size, maximum brightness, and a note recognizing that such signs shall be deducted from the total sign budget allowed for the premises.

Staff recommends that the proposed amendment regarding “Numeric Display Signs” be approved and staff will continue to research other aspects of on-premise electronic information signs to bring forward another amendment addressing those issues.

Brandi Bosselman from Bosselman’s Inc. stated the reason for their request is because they purchased two convenience stores in Kearney. The existing signs were the rectangular signs with plastic changeable numbers. Their proposal is for a digital sign display that can be changed by computer inside the facility. The one they are looking at purchasing does have the dimming capability, but it does not flash, rotate or display any alphabetical message. Since the signs can be changed from inside, it will eliminate the safety issue of employees going outside and using those long poles with the clasps which have resulted in some injuries due to high winds, falling, etc. This will also improve the look of their stores.

There was no one present in opposition to this hearing.

Moved by Lammers seconded by Lear to close the hearing and approve the proposed amendments to Chapter 50, “Sign Regulations” of the Code of the City of Kearney as follows: Section 50-102 “Definition of Terms” to provide a definition for Numeric Display Signs; to amend Section 50-104 “General Regulations; Basic Design Elements for Signs” to provide requirements for numeric display signs. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

REZONING WEST OF 6TH AVENUE AND 4TH STREET

Public Hearings 2, 3, 4 and 5 were discussed together but voted on separately. It pertains to the development west of 6th Avenue and 4th Street.

Moved by Lear seconded by Buschkoetter to remove from the table Public Hearing 2 on the application to rezone. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried.

Mayor Clouse opened the public hearing on the Application submitted by Mitch Humphrey from Buffalo Surveying (Applicant) for Cash-Wa Distributing Company of Kearney, Inc. (Owner) to rezone from "District R-1, Urban Residential Single-Family District (Low Density)" to "District M-1/PD, Limited Industrial/Planned Development Overlay District" property described as part of Government Lot 3 and accretions located in Section 11, Township 8 North, Range 16 West of 6th P.M., and part of 6th Avenue (to be vacated), containing 24.34 acres, more or less, Buffalo County, Nebraska (west of 6th Avenue and 4th Street).

The applicant is requesting approval for expansion of industrial facilities at the Cash-Wa site. The expansion area is located west of 6th Avenue and is currently a vacant field. A large truck terminal and refrigerated warehouse with additional truck parking and circulation are proposed. A portion of 6th Avenue will be vacated, but the applicant will install 4th Avenue between 4th Street and 8th Street to insure adequate north-south circulation in the area. A cul-de-sac bulb will be constructed at the south terminus of 6th Avenue. 4th Street will be extended west to the west property line of the Cash-Wa property. The applicant is working with the Community Redevelopment Authority to offset the costs of some of the public improvements that will be constructed as improvement districts. In addition to the street vacation, the project requires rezoning, platting, annexation, and approval of Development Plans. Staff has reviewed the submittal and offers the following comments:

A portion of 6th Avenue is proposed for vacation as it lies directly west of the existing Cash-Wa facilities from 4th Street north approximately 900 feet. A cul-de-sac bulb will be constructed at the south terminus of 6th Avenue (at the north end of the section of street to be vacated). This cul-de-sac will be constructed by Developer Constructed Infrastructure Agreement. Staff had some concerns with the impact on local traffic flow that may occur if 6th Avenue were to be vacated. As previously mentioned, the applicant will install 4th Avenue between 4th Street and 8th Street to insure adequate north-south circulation in the area.

A subdivision agreement will specify that 6th Avenue shall not be vacated or closed to public traffic until such time as 4th Avenue is paved between 4th Street and 8th Avenue, or at a minimum, a gravel all-weather street is installed for the winter with commitments to build the permanent improvements as soon as practical next construction season. The Subdivision Agreement will be on the August 12, 2008 City Council meeting.

The tract of land proposed for this expansion is 24.34 acres and is currently zoned R-1, Urban Residential Single-Family District (Low Density). The existing Cash-Wa facilities on the east side of 6th Avenue are currently zoned M-1, Limited Industrial District. Since the proposed expansion combined with existing Cash-Wa is quite large, staff has requested that the site be treated as a "campus" requiring planned development procedures. Therefore, the requested rezoning is M-1/PD, Limited Industrial Zone, Planned District Overlay. The Future Land Use Map of the Comprehensive Development Plan of the City of Kearney shows this area to be "Mixed Use 3." M-1 zoning is compatible with this land use designation. There are existing residential homes along the north boundary of the subject property and planned residential homes for future development to the west. The owner is aware of the City's concerns, and the

adjacent landowner's concerns with developing a high volume truck terminal in close proximity to existing and future residential neighborhoods.

The proposed Preliminary Plat and Final Plat consist of 4 lots as follows:

- Lot 1, Block 1 is 14.05 acres north of 4th Street extended and west of 6th Avenue. The bulk of the proposed development including the refrigerated warehouse and truck terminal will be located on this lot.
- Lot 1, Block 2 is 4.55 acres and is reserved for future development.
- Lot 2, Block 2 is 1.75 acres and will contain overflow parking for tractor trailer rigs.
- Lot 3, Block 2 is the southernmost lot directly adjacent to the creek. This 2.66 acre parcel will be used for stormwater detention for the entire development site.

A Public Works Plan has been submitted for this development. Stormwater will be collected in a stormwater management cell at the south end of the property on Lot 3, Block 2 next to the creek. Final engineering comps will be required prior to the issuance of any building permits.

A Subdivision Agreement is being prepared for the August 12, 2008 meeting that addresses the following issues:

- 6th Avenue shall not be vacated or closed to public traffic until such time as 4th Avenue is paved between 4th Street and 8th Avenue, or, if approved by the Public Works Director in writing, a gravel all-weather street between 4th Street and 8th Street built to City standards may be installed for the winter with written commitments from the owner to build the permanent improvements as soon as practical during the next construction season.
- To request improvement districts for 4th Avenue, from 4th Street north to 8th Street, for 4th Street from 6th Avenue to the west boundary of Cash-Wa Second Addition, and 6th Avenue from the existing public improvements south to the terminus of the proposed cul-de-sac and to pay assessments for the public improvements in accordance with Chapter 57-103 of the Kearney City Code.
- To agree not to protest future improvement districts in 6th Avenue south of 4th Street.
- To agree to pay connection fees associated with Water Connection District 89-1 and Sanitary Sewer Connection District 2001-2 when the plat is filed at the Register of Deeds Office.
- To reference the CRA contract between the City, the Owner, the CRA and other benefiting property owners.

There was some opposition to closing 6th Avenue and constructing 4th Avenue at the Planning Commission meeting from some of the property owners along 4th Avenue. Through the CRA agreement and contribution from the City's Capital Improvement Sales Tax, the adjacent landowners will pay a reduced rate for the improvements.

This property can be served by municipal water and sanitary sewer and is contiguous to the current City limit line. This property therefore shall be annexed into the corporate limits of the City of Kearney.

The applicant has submitted a complete Development Plan package. The proposed refrigerated warehouse/truck terminal is 71,300 square feet in size. There are 16 truck docks on the east side and a 30-stall parking lot for passenger vehicles on the south side of the building. Further south, along 4th Street, there is a gravel truck parking lot proposed. On the south side of 4th Street a parking lot is proposed for trailer storage.

The building is approximately 400 feet south of the existing single-family homes to the north and approximately 120 feet east of the future residential development to the west. A landscaped bufferyard with berms and evergreen trees was established along the north property line in 2006. A similar bufferyard will be constructed along the west property line as depicted on the Landscape Plan. There are 153 total trees proposed including street trees as well as the bufferyard trees. A chain link security fence will be erected around the perimeter of the site but it will be setback so that the landscaping is on the outside of the fenced area. The area around the proposed truck terminal will be hard surfaced with concrete while the truck and trailer parking will consist of rock with a concrete curb around the perimeter. All exterior lights will be sharp cut off fixtures including wall mounted fixtures.

As previously noted, this development is large and the facilities are being treated with a "campus" approach through the application of a planned zoning district overlay. There is a substantial amount of open space that remains to the north and to the west of the proposed truck terminal. There is also a lot that is reserved for future development. All of this property is zoned for industry. Planned development procedures require the owner to come back to the Planning Commission and City Council for review and approval of any future additions or new development on the vacant areas. Staff is appreciative of the owner's sensitivity to the neighboring residential properties with this phase of the project and expects that any future development will likewise take into account the delicate relationship between the industrial and residential interface.

Mitch Humphrey from Buffalo Surveying stated as far as his involvement with this process over the last two years, there have been several meetings with the neighborhood group that lives to the south of this site and believed they have been appeased and satisfied with what the Hennings are planning on doing. The site is a vacant site that the Hennings purchased a number of years ago in anticipation of expansion. The property is located south of an existing housing development which is zoned R-1 as is this site. They will need to rezone this site from R-1 to M-1/PD which means there will be a planned development review which Paul Brungardt will address. The platting is simple. 4th Street, south of the Cash-Wa site is sitting on top of an existing City of Kearney sewer main which finds its way to Yanney Heritage Park. That sewer main was laid in anticipation of development of both housing and commercial along the existing location. They plan to put a street on top of that which will end up with some new water lines and paving which will benefit not only the Hennings, but also Fred Hammer property to the west and Kelly Rapp, who owns ground to the west of that and other owners who may wish to develop in the future.

The large lot just west of the existing Cash-Wa building consists of about 14.05 acres that will be the site of the line expansion. South of 4th Street (which will be dedicated) will consist of Lot 1 which is 1.76 acres, Lot 2 located west which will be 4.55 acres, and Lot 3 for the detention cell area that will be in excess of 2.75 acres. As part of this

project, 6th Avenue will have to be vacated which is located between the west side of the existing Cash-Wa building and the east side of the proposed site location. After vacating that street, they will dedicate back a portion of street right-of-way to accommodate an off-set large cul-de-sac that will not carry a lot of traffic. As part of the project, it will be required to pave 4th Avenue from 4th Street to 8th Street. 4th Avenue right-of-way has existed for many years in right-of-way form. Part of 4th Avenue is graveled and part of it is barricaded off with nothing more than a road top graded in it and is not used. There will be a little paving, sewer and water that will have to be installed as part of the project. The annexation of the west half of the project is also being requested. For some reason, the City's annexation line splits north/south through the site so the west half of this is not annexed at this time. This will allow Fred Hammer to add on to some of his property to the west and formalizes and clarifies the City's annexation lines in that area.

Council member Kearney asked if a paving district would be required to pave 4th Avenue. Mr. Humphrey stated that there will be some tax increment financing for this paving. Cash-Wa had a meeting with the CRA board regarding that part of this project. City Planner stated that before any of the cost allocations are finalized, there must be an agreement between the parties and that will come before the Council for approval. Council member Kearney stated Lorin Fairbanks had contacted him with some concerns on the cost, but was unable to attend this meeting to voice his opinion.

City Manager Michael Morgan stated the funding mechanism will come later. The best way to explain it is that 4th Street extension would be proposed to be funded 25 percent by City ½ cent sales tax and would be brought to the Council for approval, 37½ percent would be funded by the CRA and the remaining 37½ percent would be funded by Cash-Wa as they own all that property on both sides. There is not an immediate need to put in the 4th Street extension. It most likely would occur over two years. The 4th Avenue extension would be funded 25 percent by City ½ cent sales tax that would be brought to the Council for approval, 37½ percent would be funded by the CRA and the remaining 37½ percent would be proposed to be split among all the property owners in the district.

City Manager stated that this would also fall under the "gap paving" procedures. The protest from property owners would not necessarily be allowed. Council would have the ability to order that in, but what they have tried to do over the past few weeks is to find a financial solution that is favorable for all the parties involved. The 4th Avenue would affect property owners other than Cash-Wa.

The total of 25 percent for 4th Street and 25 percent for 4th Avenue for the City would total \$192,000 from the sales tax. The CRA has TIF funds set aside to do some of this and also will take some funds out of their current levy amount. As discussed in previous meetings, the CRA has a certain amount each year that they levy and that balance has built up over the years and they are also going to use part of those funds. The paving on 4th Avenue could be assessed like a paving district, but could also be a "gap paving" project. The bottom line is that over 60 percent of the cost will be borne by the City and the CRA.

Mr. Humphrey stated that what they were presenting at this meeting along with the final plat which will require a subdivision agreement to come forth. City staff and Planning

Commission recognize that 4th Avenue needs to be open prior to closing 6th Avenue so traffic can circulate. That gives the City some leverage to see that 4th Avenue is accommodated prior to closing some of the other street right-of-way. It was the general consensus that 4th Avenue was the only concern they had heard about this project.

Council member Kearney wanted to make sure that the other property owners had a chance to speak regarding the paving. City Manager stated that it is important to consider the paving as a part of this project. Council member Buschkoetter stated that the approval at this meeting is basically with the understanding that the road will be built so it would be beneficial to know what that would cost. Using Fairbanks as an example, they might not be excited about having the land that they have been using (which has been the right-of-way) divided in half and then being charged for it. He believed that is something that they need to give some thought to at this meeting although they are not actually acting on that. Council member Lammers stated that Fairbanks has been aware of that right-of-way which has always been on their property. Council member Buschkoetter stated he has no problem with closing off the right-of-way, but is concerned about charging them for something that they do not see as a benefit to their property. Council member Lear pointed out that property owners on side street assessments do not have the opportunity to object out, but still has to pay a part of the assessment.

Council member Kearney stated that Mr. Fairbanks indicated that he is in favor of the Cash-Wa project, but would like the opportunity to speak on 4th Avenue. City Manager stated that from a fairness point of view, they have other businesses asking why the City did not find funding for 60 percent of their cost on something they did not want. The 4th Avenue extension is approximately \$420,000. Currently, 60 percent is being paid; at 100 percent would be another \$160,000 from somewhere. The CRA probably does not have any additional funds to offer.

Paul Brungardt from Brungardt Engineering stated they met with the CRA just before going to the Planning Commission meeting on Friday. Mr. Henning and Cash-Wa have not had an opportunity to meet with the adjacent property owners to discuss this new financial proposal that the City and CRA have offered. That meeting will take place before the next City Council meeting. He will provide Mr. Henning with those assessment amounts and he will meet with Mr. Fairbanks, Mr. Marshall and others in the area. Mr. Brungardt stated the goal of that meeting is to let the adjacent property owners know what the proposal is and allow them to voice their concerns before coming back to the City Council with funding mechanisms and request for districts.

City Manager stated the CRA is proposing 100 percent because of the unique nature of the impact on the neighbors so they have taken that into consideration. The CRA has never done 100 percent on any other project, so believed that Council would be interested in seeing some financial support from the City to keep it within budget.

Mr. Brundgardt stated they can break out the price for 4th Avenue from the probable cost estimates that he has come up with and project those so they can provide what the total dollar amount is and show how much is being assessed toward each property. That meeting is yet to take place. What is before the Council is the rezoning, the final plat, the annexation with the public works plans and the proposed site plan. They

propose a planned district that will be one large campus which will include the existing Cash-Wa buildings and the proposed site. The existing distribution center (dry storage facility) is located off 6th Avenue. The proposal is to put in an off set cul-de-sac on 6th Avenue and keep the utility easement in check and create a series of open ditches and culverts to allow for drainage of the site. To the north is an existing landscape area as a buffer to the neighborhood, with the proposal of a 20-foot green space buffer between residential and the Cash-Wa site. On the inside of this facility will be a security fence in accordance with Homeland Security since they store and distribute food sources. They must have this area contained and guarded. With this improvement, there will be one entrance into the Cash-Wa site on the south edge of the south side of the 6th Avenue extension.

There will be a guard tower with the ability to stack three trucks as they wait to go to the guard tower and get their moving orders. They will proceed to the proposed 71,000 square foot facility for cold storage. It will be very similar in construction and design to what they currently have. He outlined how the trucks will be able to move about on the campus and exit on 4th Street and on to 2nd Avenue. This will eliminate most of the truck traffic they have going through the residential area to the north. The City is getting ready to do the expansion and improvements on the 3rd Avenue and 4th Street and 2nd Avenue intersection which will allow these trucks to make that turn into the campus. They will not have to come down 8th Street or 6th Avenue and circle around. They are doing this to allow Cash-Wa to move around within their site, but also not to disturb the neighborhoods around them.

They will have a gravel lot within the compound to allow trucks which might have to stack to wait there and not on 4th Street like they are currently doing. The loading docks for the new facility will be on the east side because when they are loading, the trucks can get loud. This allows them to use the building itself as a buffer. They are creating a buffer for noise away from the neighborhood and controlling the dust, which were some of the concerns that the neighbors had about this proposed site.

They are proposing a green space buffer along Fred Hammer's development to the west. There is the existing landscaping area to the north. They will be providing a series of ash and oak trees as required by the City along 4th Street and along 6th Avenue cul-de-sac and their portion of the 4th Avenue extension. They will do about 935 linear of street paving and installing a sanitary sewer line which will connect off of 8th Street. If these lots would ever need sanitary service in the future, it is there on the backside. The water main will be connected up to 8th Street. The storm sewer will be collected and runs back to the north and into the storm drain system and out into the ditch along the highway.

For the cul-de-sac, they will have to peel about 150 feet of the paving back so they can fit the bulb in. There will also be a secondary entrance. It will not be one of their primary uses, but in case they would need to get fire trucks in or another type emergency this would allow them to enter. It will be a secured gate with a key entry.

On 4th Street, the sanitary sewer is in place and goes to Yanney Heritage Park. They propose to put in the street, extend the water from 4th Street and 6th Avenue intersection up to the west edge of the property. There will also be a storm sewer being brought down into an open ditch with a storm drain and retention/detention cell

located south of the parking lot. The drainage provided will take care of the whole industrial section. They did the design to accommodate 8th Street, from 4th Avenue, 6th Avenue and over. They will be able to do that with some grading. One of the neighborhood concerns was ponding by that berm and so they are going to put some drain pipes through it to allow better drainage.

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 Mitch Humphrey from Buffalo Surveying (Applicant) for Cash-Wa Distributing Company of Kearney, Inc. (Owner) to rezone from "District R-1, Urban Residential Single-Family District (Low Density)" to "District M-1/PD, Limited Industrial/Planned Development Overlay District" property described as part of Government Lot 3 and accretions located in Section 11, Township 8 North, Range 16 West of 6th P.M., and part of 6th Avenue (to be vacated), containing 24.34 acres, more or less, Buffalo County, Nebraska (west of 6th Avenue and 4th Street). Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried.

FINAL PLAT – CASH-WA SECOND ADDITION

Public Hearings 2, 3, 4 and 5 were discussed together but voted on separately. It pertains to the development west of 6th Avenue and 4th Street.

Moved by Lear seconded by Buschkoetter to remove from the table Public Hearing 3 on the application for the final plat for Cash-Wa Second Addition. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried.

Mayor Clouse opened the public hearing on the Application submitted by Mitch Humphrey from Buffalo Surveying (Applicant) for Cash-Wa Distributing Company of Kearney, Inc. (Owner) for the Final Plat for "Cash-Wa Second Addition", an addition to the City of Kearney, Buffalo County, Nebraska for property described as part of Government Lot 3 and accretions located in Section 11, Township 8 North, Range 16 West of 6th P.M., and part of 6th Avenue (to be vacated), containing 24.34 acres, more or less, Buffalo County, Nebraska (west of 6th Avenue and 4th Street) and to consider approval of Resolution No. 2008-108.

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 Mitch Humphrey from Buffalo Surveying (Applicant) for Cash-Wa Distributing Company of Kearney, Inc. (Owner) for the Final Plat for "Cash-Wa Second Addition", an addition to the City of Kearney, Buffalo County, Nebraska for property described as part of Government Lot 3 and accretions located in Section 11, Township 8 North, Range 16 West of 6th P.M., and part of 6th Avenue (to be vacated), containing 24.34 acres, more or less, Buffalo County, Nebraska (west of 6th Avenue and 4th Street) and approve **Resolution No. 2008-108**. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

RESOLUTION NO. 2008-108

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of "CASH-WA SECOND ADDITION" an addition to the City of Kearney, Buffalo County, Nebraska for a tract of land being part of Government Lot 3 and accretions located in Section 11, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska and part of 6th Avenue (now vacated), an avenue in the City of Kearney, Buffalo County, Nebraska, more particularly described as follows: Referring to the northeast corner of Government Lot 3 and assuming the north line of Government Lot 3 as bearing S89°55'15"W and all bearings contained herein are relative thereto; thence S89°55'15"W and on the north line of said Government Lot 3 distance of 50.0 feet to the ACTUAL PLACE OF BEGINNING, said point being on the west right-of-way line of 6th Avenue, an avenue in the City of Kearney, Buffalo County Nebraska; thence continuing S89°55'15"W and on the north line of said Government Lot 3 a distance of 608.96 feet to the southeast corner of the West Half of the Northwest Quarter of the Northeast Quarter of said Section 11; thence S01°11'54"W a distance of 1,410.38 feet to a point on the existing north high bank of the North Channel of the Platte River; thence leaving said existing north high bank S41°37'36"E a distance of 38.2 feet to a point on the existing centerline of the North Channel of the Platte River; thence N48°22'24"E and on the existing centerline of the North Channel of the Platte River a distance of 22.40 feet; thence S75°37'17"E and continuing on the aforesaid centerline a distance of 92.16 feet; thence S33°54'09"E and continuing on the aforesaid centerline a distance of 160.70 feet; thence S55°33'45"E and continuing on the aforesaid centerline a distance of 146.67 feet; thence S39°43'31"E and continuing on the aforesaid centerline a distance of 104.49 feet; thence S04°32'40"E and continuing on the aforesaid centerline a distance of 164.01 feet; thence S44°29'09"E and continuing on the aforesaid centerline a distance of 48.91 feet; thence N75°35'06"E and continuing on the aforesaid centerline a distance of 45.45 feet; thence N38°48'43"E and continuing on the aforesaid centerline a distance of 138.53 feet; thence N43°30'59"E and continuing on the aforesaid centerline a distance of 133.53 feet; thence leaving the existing centerline of the North Channel of the Platte River N46°29'01"W a distance of 95.14 feet to a point on the existing north high bank of the North Channel of the Platte River, said point also being 50.0 feet westerly of as measured at right angles from the east line of said Government Lot 3 and the east right-of-way line of said 6th Avenue, and with said point also being on the west right-of-way line of said 6th Avenue; thence N00°59'55"E on the west right-of-way of said 6th Avenue and on a line parallel with the east line of said Government Lot 3 and the east right-of-way line of said 6th Avenue a distance of 527.09 feet to a point on the north line of 4th Street (if extended westerly), a street in the City of Kearney, Buffalo County, Nebraska; thence S89°04'00"E and on the north line of 4th Street (if extended westerly) a distance of 50.0 feet to a point on the east line of said Government Lot 3, said point also being on the east right-of-way line of 6th Avenue; thence N00°59'55"E and on the east line of said Government Lot 3 and on the east right-of-way line of said 6th Avenue (now vacated) a distance of 735.05 feet to the southwest corner of Lot 1, Cash-Wa Addition, an addition to the City of Kearney, Buffalo County, Nebraska; thence leaving the east line of said Government Lot 3 and the east right-of-way line of said 6th Avenue (now vacated) N89°08'15"W and on the south line of said Lot 1, Cash-Wa Addition (if extended westerly) a distance of 25.00 feet to a point on the centerline of said 6th

Avenue (now vacated); thence N00°59'55"E on the centerline of said 6th Avenue (now vacated) and on a line parallel with the east line of said Government Lot 3 and east right-of-way line of said 6th Avenue (now vacated) a distance of 121.24 feet to a point on a non-tangent 60.0 radius curve, concave northwesterly; thence southwesterly leaving the centerline of said 6th Avenue (now vacated) and on said non-tangent curve forming a central angle of 26°05'29" an arc distance of 27.32 feet to a point of non-tangency, said point being S68°20'50"W a chord distance 27.09 feet from the previously described point, and said point being 50.0 feet westerly of as measured from right angles from the east line of said Government Lot 3 and the east right-of-way of said 6th Avenue (now vacated) and said point also being on the west right-of-way line of said 6th Avenue (now vacated); thence leaving said curve, non-tangent, N00°59'55"E on the west right-of-way line of said 6th Avenue and on a line parallel with the east line of said Government 3 and the east right-of-way line of said 6th Avenue a distance of 288.22 feet to the place of beginning, containing 24.34 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, when approved by the City Council, shall be filed at the same time the final plat is filed 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 22ND DAY OF JULY, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

ANNEXATION OF CASH-WA SECOND ADDITION

Public Hearings 2, 3, 4 and 5 were discussed together but voted on separately. It pertains to the development west of 6th Avenue and 4th Street.

Moved by Lear seconded by Buschkoetter to remove from the table Public Hearing 4 on the application for annexation. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried.

Mayor Clouse opened the public hearing on the Application submitted by Mitch Humphrey from Buffalo Surveying (Applicant) for Cash-Wa Distributing Company of Kearney, Inc. (Owner) for the annexation of "Cash-Wa Second Addition", an addition to the City of Kearney, Buffalo County, Nebraska for property described as part of Government Lot 3 and accretions located in Section 11, Township 8 North, Range 16

West of 6th P.M., and part of 6th Avenue (to be vacated), containing 13.42 acres, more or less, Buffalo County, Nebraska (west of 6th Avenue and 4th Street) and to consider approval of Resolution No. 2008-109.

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 Mitch Humphrey from Buffalo Surveying (Applicant) for Cash-Wa Distributing Company of Kearney, Inc. (Owner) for the annexation of "Cash-Wa Second Addition", an addition to the City of Kearney, Buffalo County, Nebraska for property described as part of Government Lot 3 and accretions located in Section 11, Township 8 North, Range 16 West of 6th P.M., and part of 6th Avenue (to be vacated), containing 13.42 acres, more or less, Buffalo County, Nebraska (west of 6th Avenue and 4th Street) and approve **Resolution No. 2008-109**. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

RESOLUTION NO. 2008-109

WHEREAS, an Application has been submitted by Mitch Humphrey from Buffalo Surveying (Applicant) for Cash-Wa Distributing Company of Kearney, Inc. (Owner) for the inclusion of "Cash-Wa Second Addition" an addition within the corporate boundaries of the City of Kearney said property described as a tract of land being part of Government Lot 3 and accretions located in Section 11, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska and part of 6th Avenue (now vacated), an avenue in the City of Kearney, Buffalo County, Nebraska, more particularly described as follows: Referring to the northeast corner of Government Lot 3 and assuming the north line of Government Lot 3 as bearing S89°55'15"W and all bearings contained herein are relative thereto; thence S89°55'15"W and on the north line of said Government Lot 3 distance of 50.0 feet to the ACTUAL PLACE OF BEGINNING, said point being on the west right-of-way line of 6th Avenue, an avenue in the City of Kearney, Buffalo County Nebraska; thence continuing S89°55'15"W and on the north line of said Government Lot 3 a distance of 608.96 feet to the southeast corner of the West Half of the Northwest Quarter of the Northeast Quarter of said Section 11; thence S01°11'54"W a distance of 1,410.38 feet to a point on the existing north high bank of the North Channel of the Platte River; thence leaving said existing north high bank S41°37'36"E a distance of 38.2 feet to a point on the existing centerline of the North Channel of the Platte River; thence N48°22'24"E and on the existing centerline of the North Channel of the Platte River a distance of 22.40 feet; thence S75°37'17"E and continuing on the aforesaid centerline a distance of 92.16 feet; thence S33°54'09"E and continuing on the aforesaid centerline a distance of 160.70 feet; thence S55°33'45"E and continuing on the aforesaid centerline a distance of 146.67 feet; thence S39°43'31"E and continuing on the aforesaid centerline a distance of 104.49 feet; thence S04°32'40"E and continuing on the aforesaid centerline a distance of 164.01 feet; thence S44°29'09"E and continuing on the aforesaid centerline a distance of 48.91 feet; thence N75°35'06"E and continuing on the aforesaid centerline a distance of 45.45 feet; thence N38°48'43"E and continuing on the aforesaid centerline a distance of 138.53 feet; thence N43°30'59"E and continuing on the aforesaid centerline a distance of 133.53 feet; thence leaving the existing centerline of the North Channel of the Platte River N46°29'01"W a distance of 95.14 feet to a point on the existing north high bank of

the North Channel of the Platte River, said point also being 50.0 feet westerly of as measured at right angles from the east line of said Government Lot 3 and the east right-of-way line of said 6th Avenue, and with said point also being on the west right-of-way line of said 6th Avenue; thence $N00^{\circ}59'55''E$ on the west right-of-way of said 6th Avenue and on a line parallel with the east line of said Government Lot 3 and the east right-of-way line of said 6th Avenue a distance of 527.09 feet to a point on the north line of 4th Street (if extended westerly), a street in the City of Kearney, Buffalo County, Nebraska; thence $S89^{\circ}04'00''E$ and on the north line of 4th Street (if extended westerly) a distance of 50.0 feet to a point on the east line of said Government Lot 3, said point also being on the east right-of-way line of 6th Avenue; thence $N00^{\circ}59'55''E$ and on the east line of said Government Lot 3 and on the east right-of-way line of said 6th Avenue (now vacated) a distance of 735.05 feet to the southwest corner of Lot 1, Cash-Wa Addition, an addition to the City of Kearney, Buffalo County, Nebraska; thence leaving the east line of said Government Lot 3 and the east right-of-way line of said 6th Avenue (now vacated) $N89^{\circ}08'15''W$ and on the south line of said Lot 1, Cash-Wa Addition (if extended westerly) a distance of 25.00 feet to a point on the centerline of said 6th Avenue (now vacated); thence $N00^{\circ}59'55''E$ on the centerline of said 6th Avenue (now vacated) and on a line parallel with the east line of said Government Lot 3 and east right-of-way line of said 6th Avenue (now vacated) a distance of 121.24 feet to a point on a non-tangent 60.0 radius curve, concave northwesterly; thence southwesterly leaving the centerline of said 6th Avenue (now vacated) and on said non-tangent curve forming a central angle of $26^{\circ}05'29''$ an arc distance of 27.32 feet to a point of non-tangency, said point being $S68^{\circ}20'50''W$ a chord distance 27.09 feet from the previously described point, and said point being 50.0 feet westerly of as measured from right angles from the east line of said Government Lot 3 and the east right-of-way of said 6th Avenue (now vacated) and said point also being on the west right-of-way line of said 6th Avenue (now vacated); thence leaving said curve, non-tangent, $N00^{\circ}59'55''E$ on the west right-of-way line of said 6th Avenue and on a line parallel with the east line of said Government 3 and the east right-of-way line of said 6th Avenue a distance of 288.22 feet to the place of beginning, containing 24.34 acres, more or less, all in Buffalo County, Nebraska; and

WHEREAS, the Kearney City Planning Commission has received and held a public hearing on June 20, 2008 on the inclusion of "Cash-Wa Second 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 "Cash-Wa Second 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 July 8, 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 "Cash-Wa Second 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 "Cash-Wa Second 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 22ND DAY OF JULY, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

DEVELOPMENT PLANS FOR CASH-WA-SECOND ADDITION

Public Hearings 2, 3, 4 and 5 were discussed together but voted on separately. It pertains to the development west of 6th Avenue and 4th Street.

Moved by Lear seconded by Buschkoetter to remove from the table Public Hearing 5 on the application for development plans approval. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried.

Mayor Clouse opened the public hearing on the Application submitted by Paul Brungardt from Brungardt Engineering (Applicant) for Cash-Wa Distributing Company of Kearney, Inc. (Owner) for Planned District Development Plan Approval for the construction of cold storage facility and a parking lot on property to be zoned "District M-1/PD, Limited Industrial/Planned Development Overlay District" and described as part of Government Lot 3 and accretions located in Section 11, Township 8 North, Range 16 West of 6th P.M., and part of 6th Avenue (to be vacated), containing 24.34 acres, more or less, Buffalo County, Nebraska (west of 6th Avenue and 4th Street) and to consider approval of Resolution No. 2008-110.

There was no one present in opposition to this hearing.

Moved by Lammers seconded by Lear to close the hearing and approve the Application submitted by Paul Brungardt from Brungardt Engineering (Applicant) for Cash-Wa Distributing Company of Kearney, Inc. (Owner) for Planned District Development Plan Approval for the construction of cold storage facility and a parking lot on property to be zoned "District M-1/PD, Limited Industrial/Planned Development Overlay District" and described as part of Government Lot 3 and accretions located in Section 11, Township 8 North, Range 16 West of 6th P.M., and part of 6th Avenue (to be vacated), containing 24.34 acres, more or less, Buffalo County, Nebraska (west of 6th Avenue and 4th Street) and approve **Resolution No. 2008-110**. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried.

RESOLUTION NO. 2008-110

WHEREAS, Paul Brungardt from Brungardt Engineering (Applicant) for Cash-Wa Distributing Company of Kearney, Inc. (Owner) have applied for Planned District Development Plan Approval for the construction of cold storage facility and a parking lot on property to be zoned "District M-1/PD, Limited Industrial/Planned Development Overlay District" and described as being part of Government Lot 3 and accretions located in Section 11, Township 8 North, Range 16 West of the 6th P.M., Buffalo

County, Nebraska and part of 6th Avenue (now vacated), an avenue in the City of Kearney, Buffalo County, Nebraska, more particularly described as follows: Referring to the northeast corner of Government Lot 3 and assuming the north line of Government Lot 3 as bearing $S89^{\circ}55'15''W$ and all bearings contained herein are relative thereto; thence $S89^{\circ}55'15''W$ and on the north line of said Government Lot 3 distance of 50.0 feet to the ACTUAL PLACE OF BEGINNING, said point being on the west right-of-way line of 6th Avenue, an avenue in the City of Kearney, Buffalo County Nebraska; thence continuing $S89^{\circ}55'15''W$ and on the north line of said Government Lot 3 a distance of 608.96 feet to the southeast corner of the West Half of the Northwest Quarter of the Northeast Quarter of said Section 11; thence $S01^{\circ}11'54''W$ a distance of 1,410.38 feet to a point on the existing north high bank of the North Channel of the Platte River; thence leaving said existing north high bank $S41^{\circ}37'36''E$ a distance of 38.2 feet to a point on the existing centerline of the North Channel of the Platte River; thence $N48^{\circ}22'24''E$ and on the existing centerline of the North Channel of the Platte River a distance of 22.40 feet; thence $S75^{\circ}37'17''E$ and continuing on the aforesaid centerline a distance of 92.16 feet; thence $S33^{\circ}54'09''E$ and continuing on the aforesaid centerline a distance of 160.70 feet; thence $S55^{\circ}33'45''E$ and continuing on the aforesaid centerline a distance of 146.67 feet; thence $S39^{\circ}43'31''E$ and continuing on the aforesaid centerline a distance of 104.49 feet; thence $S04^{\circ}32'40''E$ and continuing on the aforesaid centerline a distance of 164.01 feet; thence $S44^{\circ}29'09''E$ and continuing on the aforesaid centerline a distance of 48.91 feet; thence $N75^{\circ}35'06''E$ and continuing on the aforesaid centerline a distance of 45.45 feet; thence $N38^{\circ}48'43''E$ and continuing on the aforesaid centerline a distance of 138.53 feet; thence $N43^{\circ}30'59''E$ and continuing on the aforesaid centerline a distance of 133.53 feet; thence leaving the existing centerline of the North Channel of the Platte River $N46^{\circ}29'01''W$ a distance of 95.14 feet to a point on the existing north high bank of the North Channel of the Platte River, said point also being 50.0 feet westerly of as measured at right angles from the east line of said Government Lot 3 and the east right-of-way line of said 6th Avenue, and with said point also being on the west right-of-way line of said 6th Avenue; thence $N00^{\circ}59'55''E$ on the west right-of-way of said 6th Avenue and on a line parallel with the east line of said Government Lot 3 and the east right-of-way line of said 6th Avenue a distance of 527.09 feet to a point on the north line of 4th Street (if extended westerly), a street in the City of Kearney, Buffalo County, Nebraska; thence $S89^{\circ}04'00''E$ and on the north line of 4th Street (if extended westerly) a distance of 50.0 feet to a point on the east line of said Government Lot 3, said point also being on the east right-of-way line of 6th Avenue; thence $N00^{\circ}59'55''E$ and on the east line of said Government Lot 3 and on the east right-of-way line of said 6th Avenue (now vacated) a distance of 735.05 feet to the southwest corner of Lot 1, Cash-Wa Addition, an addition to the City of Kearney, Buffalo County, Nebraska; thence leaving the east line of said Government Lot 3 and the east right-of-way line of said 6th Avenue (now vacated) $N89^{\circ}08'15''W$ and on the south line of said Lot 1, Cash-Wa Addition (if extended westerly) a distance of 25.00 feet to a point on the centerline of said 6th Avenue (now vacated); thence $N00^{\circ}59'55''E$ on the centerline of said 6th Avenue (now vacated) and on a line parallel with the east line of said Government Lot 3 and east right-of-way line of said 6th Avenue (now vacated) a distance of 121.24 feet to a point on a non-tangent 60.0 radius curve, concave northwesterly; thence southwesterly leaving the centerline of said 6th Avenue (now vacated) and on said non-tangent curve forming a central angle of $26^{\circ}05'29''$ an arc distance of 27.32 feet to a point of non-tangency, said point being $S68^{\circ}20'50''W$ a chord distance 27.09 feet from the previously described point, and said point being 50.0 feet

westerly of as measured from right angles from the east line of said Government Lot 3 and the east right-of-way of said 6th Avenue (now vacated) and said point also being on the west right-of-way line of said 6th Avenue (now vacated); thence leaving said curve, non-tangent, N00°59'55"E on the west right-of-way line of said 6th Avenue and on a line parallel with the east line of said Government 3 and the east right-of-way line of said 6th Avenue a distance of 288.22 feet to the place of beginning, containing 24.34 acres, more or less, all in Buffalo County, Nebraska (west of 6th Avenue and 4th Street).

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the application of Paul Brungardt from Brungardt Engineering (Applicant) for Cash-Wa Distributing Company of Kearney, Inc. (Owner) for Planned District Development Plan Approval for the construction of cold storage facility and a parking lot on property to be zoned "District M-1/PD, Limited Industrial/Planned Development Overlay District" and described as being part of Government Lot 3 and accretions located in Section 11, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska and part of 6th Avenue (now vacated), an avenue in the City of Kearney, Buffalo County, Nebraska, more particularly described as follows: Referring to the northeast corner of Government Lot 3 and assuming the north line of Government Lot 3 as bearing S89°55'15"W and all bearings contained herein are relative thereto; thence S89°55'15"W and on the north line of said Government Lot 3 distance of 50.0 feet to the ACTUAL PLACE OF BEGINNING, said point being on the west right-of-way line of 6th Avenue, an avenue in the City of Kearney, Buffalo County Nebraska; thence continuing S89°55'15"W and on the north line of said Government Lot 3 a distance of 608.96 feet to the southeast corner of the West Half of the Northwest Quarter of the Northeast Quarter of said Section 11; thence S01°11'54"W a distance of 1,410.38 feet to a point on the existing north high bank of the North Channel of the Platte River; thence leaving said existing north high bank S41°37'36"E a distance of 38.2 feet to a point on the existing centerline of the North Channel of the Platte River; thence N48°22'24"E and on the existing centerline of the North Channel of the Platte River a distance of 22.40 feet; thence S75°37'17"E and continuing on the aforesaid centerline a distance of 92.16 feet; thence S33°54'09"E and continuing on the aforesaid centerline a distance of 160.70 feet; thence S55°33'45"E and continuing on the aforesaid centerline a distance of 146.67 feet; thence S39°43'31"E and continuing on the aforesaid centerline a distance of 104.49 feet; thence S04°32'40"E and continuing on the aforesaid centerline a distance of 164.01 feet; thence S44°29'09"E and continuing on the aforesaid centerline a distance of 48.91 feet; thence N75°35'06"E and continuing on the aforesaid centerline a distance of 45.45 feet; thence N38°48'43"E and continuing on the aforesaid centerline a distance of 138.53 feet; thence N43°30'59"E and continuing on the aforesaid centerline a distance of 133.53 feet; thence leaving the existing centerline of the North Channel of the Platte River N46°29'01"W a distance of 95.14 feet to a point on the existing north high bank of the North Channel of the Platte River, said point also being 50.0 feet westerly of as measured at right angles from the east line of said Government Lot 3 and the east right-of-way line of said 6th Avenue, and with said point also being on the west right-of-way line of said 6th Avenue; thence N00°59'55"E on the west right-of-way of said 6th Avenue and on a line parallel with the east line of said Government Lot 3 and the east right-of-way line of said 6th Avenue a distance of 527.09 feet to a point on the north line of 4th Street (if extended westerly), a street in the City of Kearney, Buffalo County, Nebraska; thence S89°04'00"E and on the north line of 4th Street (if extended westerly) a distance of 50.0 feet to a point on the east line of said Government Lot 3, said point also being on the east right-of-way line of 6th Avenue;

thence N00°59'55"E and on the east line of said Government Lot 3 and on the east right-of-way line of said 6th Avenue (now vacated) a distance of 735.05 feet to the southwest corner of Lot 1, Cash-Wa Addition, an addition to the City of Kearney, Buffalo County, Nebraska; thence leaving the east line of said Government Lot 3 and the east right-of-way line of said 6th Avenue (now vacated) N89°08'15"W and on the south line of said Lot 1, Cash-Wa Addition (if extended westerly) a distance of 25.00 feet to a point on the centerline of said 6th Avenue (now vacated); thence N00°59'55"E on the centerline of said 6th Avenue (now vacated) and on a line parallel with the east line of said Government Lot 3 and east right-of-way line of said 6th Avenue (now vacated) a distance of 121.24 feet to a point on a non-tangent 60.0 radius curve, concave northwesterly; thence southwesterly leaving the centerline of said 6th Avenue (now vacated) and on said non-tangent curve forming a central angle of 26°05'29" an arc distance of 27.32 feet to a point of non-tangency, said point being S68°20'50"W a chord distance 27.09 feet from the previously described point, and said point being 50.0 feet westerly of as measured from right angles from the east line of said Government Lot 3 and the east right-of-way of said 6th Avenue (now vacated) and said point also being on the west right-of-way line of said 6th Avenue (now vacated); thence leaving said curve, non-tangent, N00°59'55"E on the west right-of-way line of said 6th Avenue and on a line parallel with the east line of said Government 3 and the east right-of-way line of said 6th Avenue a distance of 288.22 feet to the place of beginning, containing 24.34 acres, more or less, all in Buffalo County, Nebraska (west of 6th Avenue and 4th Street).

PASSED AND APPROVED THIS 22ND DAY OF JULY, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

LIQUOR LICENSE – APPLE MARKET

Mayor Clouse opened the public hearing on the application for a Class C-81872 (Beer, Wine and Distilled Spirits – On and Off Sale) liquor license submitted by B & R STORES, INC., dba "Apple Market" located at 7 West 25th Street, consider the manager application for Robert Steider, and to consider approval of Resolution No. 2008-118.

According to Section 53-132(2) of the Nebraska Revised Statutes states: A retail license or bottle club license shall be issued to any qualified applicant if it is found by the Liquor Commission that:

1. the applicant is fit, willing, and able to properly provide the service proposed within the city, village, or county where the premises described in the application are located;
2. the applicant can conform to all provisions, requirements, rules, and regulations provided for in the Nebraska Liquor Control Act;
3. the applicant has demonstrated that the type of management and control exercised over the licensed premises will be sufficient to insure that the licensed business can conform to all provisions, requirements, rules, and regulations provided for in the Nebraska Liquor Control Act, and
4. the issuance of the license is or will be required by the present or future public convenience and necessity.

Grand Central Apple Market located at 7 West 25th Street has been purchased by B & R Stores and has applied for a Class C liquor license. B & R Stores operate a number of stores throughout the state and has a liquor license associated with those stores as well.

The Application for Manager identifies Robert Steider of Lincoln as the corporate manager. According to the Police Department, Ed Mach will continue to operate the store on a daily basis. The background of the company indicates substantial knowledge and experience on the part of staff and the reports indicate a willingness to cooperate fully.

Robert Steider presented this matter to the Council. He explained their training that is provided to the employees. The current Apple Market has not had any violations which indicate the employees received good training.

There was no one present in opposition to this hearing.

Moved by Lear seconded by Buschkoetter to close the hearing and approve the application for a Class C-81872 (Beer, Wine and Distilled Spirits – On and Off Sale) liquor license submitted by B & R STORES, INC., dba “Apple Market” located at 7 West 25th Street, consider the manager application for Robert Steider, and approve **Resolution No. 2008-118**. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried.

RESOLUTION NO. 2008-118

WHEREAS, B & R STORES, INC., dba “Apple Market” has filed with the Nebraska Liquor Control Commission and the City Clerk of the City of Kearney, Nebraska, an application for a Class C-81872 (Beer, Wine and Distilled Spirits – On and Off Sale) Liquor License to do business at 7 West 25th Street, Kearney, Nebraska, and has paid all fees and done all things required by law as provided in the Nebraska Liquor Control Act; and

WHEREAS, B & R STORES, INC., dba “Apple Market” also filed with the Nebraska Liquor Control Commission and the City Clerk of the City of Kearney, Nebraska, an application for Corporate Manager of Robert Steider; and

WHEREAS, a hearing was held relating to said application on July 22, 2008.

NOW, THEREFORE, BE IT RESOLVED that the President and City Council of the City of Kearney, Nebraska approve or recommend approval to the Nebraska Liquor Control Commission of the issuance of a Class C-81872 (Beer, Wine and Distilled Spirits – On and Off Sale) Liquor License to B & R STORES, INC., dba “Apple Market” located at 7 West 25th Street, Kearney, Nebraska, and to approve the application for Corporate Manager of Robert Steider.

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

PASSED AND APPROVED THIS 22ND DAY OF JULY, 2008.

ATTEST:

STANLEY A. CLOUSE

MICHAELLE E. TREMBLY
CITY CLERK

PRESIDENT OF THE COUNCIL
AND EX-OFFICIO MAYOR

IV. CONSENT AGENDA

Moved by Buschkoetter seconded by Clouse that Subsections 1 through 20 of Consent Agenda Item IV be approved. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

1. Approve Minutes of Regular Meeting held July 8, 2008 and Special Meeting held July 10, 2008.

2. Approve the following Claims:

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

AT&T \$101.14 smcs; Ace Irrigation \$70.00 smcs; A-G Pipe \$9,950.00 smcs; Anderson Brothers \$907.31 smcs; Anderson Ford Lincoln \$117,595.00 co; Arc of Buffalo Co \$911.08 smcs; Ashworth \$883.42 smcs; Ask Supply \$165.08 smcs; Aurora Co-op \$20.80 smcs; Baird-Holm \$6,930.00 smcs; Baker & Taylor Books \$2,392.97 smcs; Bamford \$260.00 smcs; BBC Audiobooks \$419.56 smcs; Beckenhauer,T \$258.00 smcs; Berens-Tate Consulting \$4,500.00 smcs; Bluecross Blueshield \$35,841.00 smcs; Bosselman \$47,541.96 smcs; Boylan,S \$75.00 smcs; Broadfoot's \$1,950.00 smcs; Buffalo Co Court \$196.08 ps; Buffalo Co Sheriff \$110,328.53 smcs; Buffalo Co Treasurer \$75.00 co; Buffalo Co Weed District \$645.61 smcs; Cash-Wa \$3,684.12 smcs; Central Contracting \$21,826.60 co; CH Diagnostic \$445.00 smcs; Charter \$435.96 smcs; Checketts,T \$46.74 smcs; Chesterman \$2,565.68 smcs; City Glass \$406.10 smcs; City of GI \$2,183.93 smcs; City of Ky \$120,126.38 smcs,ps; Clevenger Petroleum \$4,480.00 smcs; College Savings Plan of NE \$75.00 ps; Conseco Life Ins \$24.00 ps; Construction Rental \$171.20 smcs; Control Masters \$74.25 smcs; Culligan \$58.00 smcs; D&D Industries \$295.00 smcs; D&M Security \$114.00 smcs; Dawson Co PPD \$1,496.70 smcs; Dell \$8,055.96 co; Dennis,T \$25.00 smcs; Depository Trust \$4,754,868.75 ds; Deterdings \$23,083.38 smcs; DPC Industries \$4,762.15 smcs; Dutton-Lainson \$18.08 smcs; Eakes \$4,002.14 smcs; Ed Broadfoot & Sons \$3,500.00 smcs; Elliott Equipment \$641.39 smcs; EMC Ins \$519.00 smcs; Eustis Body Shop \$828.40 smcs; Express Distributing \$82.00 smcs; Fairbanks \$30,444.64 smcs; Farmers Union Coop \$22.50 smcs; Fedex \$106.13 smcs; Fireguard \$46.31 smcs; Footjoy \$62.48 smcs; Frontier \$8,693.98 smcs; Gale \$310.10 smcs; Gangwish Turf \$22.50 smcs; Garrett Tires & Treads \$1,101.67 smcs; Graphic Screen Printing \$88.00 smcs; Great American Outdoor \$792.92 smcs; Great Plains One Call \$632.25 smcs; H&H Distributing \$2,098.30 smcs; Harley Davidson \$68.92 smcs; HD Supply \$7,615.69 smcs; Hoehner Turf \$75.00 smcs; Holmes Plumbing \$16.33 smcs; Hydrite Chemical \$12,943.95 smcs; ICMA RC \$3,030.01 ps; IRS \$114,009.76 ps; ISDN \$188.25 smcs; Jack Lederman \$1,353.86 smcs; Jim Wicht Construction \$240.00 smcs; Johnson Service \$3,932.50 smcs; Kayton Electric \$7,223.75 smcs; Ky Clinic \$134.00 smcs,ps; Ky Concrete \$6,171.93 smcs,co; Ky Hub \$2,279.86 smcs; Ky Implement \$728.56 smcs;

Ky Noon Rotary \$95.00 smcs; Ky Towing \$340.00 smcs; Kelley Tree Service \$73,844.00 smcs; KHAS-TV \$830.00 smcs; KHGI \$1,910.00 smcs; Kirkham Michael \$13,541.30 co; Konica Minolta \$283.75 smcs; Kowalek,G \$35.10 smcs; K-State Diagnostic \$250.00 smcs; Lang,L \$119.50 smcs; Leadership Ky \$400.00 smcs; League of NE Municipalities \$271.00 smcs; Lewis,B \$10.00 smcs; Linweld \$34.50 smcs; Livingston,K \$36.00 smcs; Lockmobile \$14.75 smcs; Magic Cleaning \$660.00 smcs; Mail Express \$360.61 smcs; Manary,M \$298.00 smcs; Marlatt Machine Shop \$710.16 smcs; McCarty,D \$302.00 smcs; Menards \$15.26 smcs; Michael's Monument \$500.00 co; Midwest Labs \$116.90 smcs; Miller Signs \$100.00 smcs; MOCIC Annual Conference \$245.00 smcs; Mollring,A \$150.00 smcs; MSI Systems Integrators \$1,400.00 co; Municipal Pipe Tool \$6,579.42 co; NE Child Support \$2,707.13 ps; NE Dept of Aeronautics \$2,095.00 ds,er; NE Dept Weights \$49.10 smcs; NE Golf & Turf \$400.00 smcs; NE Golf Assn \$800.00 smcs; NE Workforce Development \$1,865.00 ps; NEland Distributors \$1,291.00 smcs; Northwestern Energy \$2,000.26 smcs; Norm's Plumbing \$1,022.85 smcs; Novus \$31.50 smcs; Nuttelman Fencing \$5,883.92 co; Ocean Systems \$199.00 smcs; Officenet \$663.98 smcs,co; O'Keefe Elevator \$697.64 smcs; Otto Environmental \$74.86 smcs; Overhead Door \$16,500.00 smcs,co; Paramount Linen \$747.02 smcs; Paul Davis Restoration \$1,698.72 co; Paulsen \$85,943.00 smcs,co; Pep Co \$102.20 smcs; Pepsi-Cola \$2,471.00 smcs; Pflug,J \$20.00 smcs; Platte Valley Comm \$583.30 smcs; Polk City Directories \$331.70 smcs; Presto-X \$152.00 smcs; Random House \$24.00 smcs; Ready Mixed Concrete \$2,653.89 smcs,co; Recorded Books \$2,278.92 smcs; Republican Nat'l \$632.29 smcs; Resource Management \$564.75 smcs; Safety-Kleen \$305.23 smcs; Sam's Club Direct \$3,134.29 smcs; Snap-on Tools \$77.95 smcs; Schmidt,K \$19.00 smcs; Schultz,S \$8.00 smcs; Schwab,J \$40.71 smcs; Siel Construction \$75,774.42 co; Smitty's Construction \$5,570.00 co; Solid Waste Agency \$53,480.69 smcs; Solid Waste Equipment \$7,813.29 smcs; Springer Roofing \$15,429.50 co; State Troopers Assn \$75.00 smcs; Sterling Distributing \$427.54 smcs; Sunny Comm \$5,293.75 co; Super Shine Auto Care \$8.00 smcs; Theis,G \$34.95 smcs; Theis,J \$60.00 smcs; Tielke Enterprise \$244.47 smcs; Titelist \$2,667.95 smcs; Trade Well Pallet \$1,045.00 smcs; Tri-Cities Group \$359.81 smcs; UPRR \$1,591.35 er,smcs; Unique Management \$286.50 smcs; US Yellow Pages \$891.00 smcs; Walter's Electric \$1,048.14 smcs; Wells Fargo \$300.00 co; Wiegand Security \$75.00 smcs; Wilkins Hinrichs Stober \$55,680.00 co; Williams,M \$99.80 smcs; Zimmerman Printers \$1,437.39 smcs; Payroll Ending 7-5-2008 -- \$342,233.79. 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. Receive recommendations of Planning Commission and set August 12, 2008 at 7:00 p.m. as date and time for hearing on those applications where applicable.
4. Approve **Resolution No. 2008-72A** correcting the legal description for the final plat of New Viaero Addition to the City of Kearney, Buffalo County, Nebraska for property located at 1918 and 1920 West 24th Street.

RESOLUTION NO. 2008-72A

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of "NEW VIAERO ADDITION" an addition to the

City of Kearney, Buffalo County, Nebraska for a tract of land being part of Lot 7, part of Lot 8 (now vacated), and part of the vacated street abutting Lot 8 on the west, all in Lincoln Way Villa Plots, an addition to the City of Kearney, Buffalo County, Nebraska, and being part of the Northeast Quarter of Section 3, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Beginning at the northwest corner of Lot 7 in said Lincoln Way Villa Plots; thence N89°35'44"E (an assumed bearing) on the north line of said Lot 7 a distance of 41.5 feet; thence S00°30'50"E a distance of 243.23 feet; thence S89°35'19"W a distance of 13.5 feet; thence S00°25'13"E a distance of 66.39 feet; thence S89°31'55"W a distance of 60.35 feet; thence N00°29'34"W a distance of 66.50 feet; thence S89°03'41"W a distance of 107.67 feet to the west line of said vacated street; thence N06°06'30"E along said west line a distance of 233.03 feet to the south line of right-of-way of U.S. Highway 30 (said line lying 10 feet southerly and parallel with the north line of said Lot 8); thence N89°30'24"E along said south line a distance of 139.29 feet to the west line of said Lot 7; thence N88°41'16"E along said west line a distance of 10.0 feet to the place of beginning, containing 1.07 acres, 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 22ND DAY OF JULY, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

5. Approve the application for a Special Designated License submitted by OFFICE SPACE, INC., dba "Lumbergs" in connection with their Class C-74704 liquor license to dispense beer and distilled spirits in the Ag Pavilion located at the Buffalo County Fairgrounds, 3807 Avenue N, on August 16, 2008 from 12:00 p.m. until 1:00 a.m. for a wedding reception.

6. Approve the application to conduct a parade submitted by the Kearney Visitors Bureau and UNK's Music Department for UNK Band Day to be held on September 27, 2008 beginning at 9:00 a.m. starting at Central Avenue and Railroad Street, north on Central Avenue to 27th Street, west on 27th Street and ending at the UNK Campus. Parking on Central Avenue from Railroad Street north to 26th Street will be prohibited after 6:00 a.m. Parking will be banned on Central Avenue from North Railroad Street to 25th Street beginning at 2:00 a.m. on the morning of September 27. The staging area to be closed beginning at 6:00 a.m. include Railroad Street from 4th Avenue to Avenue E, Avenue A from 21st Street to Railroad Street, and Avenues B, C and D from Railroad Street to 22nd Street, 3rd Avenue from Railroad Street to 22nd Street, and 1st Avenue from Railroad Street to 21st Street. This request will also allow for the selling of

refreshments during the parade.

- 7. Approve the Agreement between the City of Kearney and Merilyn Macomber to reconstruct the existing sanitary sewer drain field located on Lot 2, Abood Addition to the City of Kearney, Buffalo County, Nebraska (860 East 1st Street) and approve **Resolution No. 2008-119.**

RESOLUTION NO. 2008-119

BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the President of the Council be and is hereby authorized and directed to execute the Agreement on behalf of the City of Kearney with Merilyn Macomber to reconstruct the existing sanitary sewer drain field located on Lot 2, Abood Addition to the City of Kearney, Buffalo County, Nebraska (860 East 1st Street). A copy of the Agreement, marked as Exhibit "A", is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 22ND DAY OF JULY, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

- 8. Approve Change Order No. 2 showing a decrease in the amount of \$2,882.90 submitted by Central Contracting and approved by Wilkins Hinrichs Stober Architects for the Kearney Volunteer Fire Department Station 1 Improvements Project and approve **Resolution No. 2008-120.**

RESOLUTION NO. 2008-120

WHEREAS, Central Contracting, Inc. of Kearney, Nebraska has performed services in connection with the Kearney Volunteer Fire Department Station 1 Improvements Project, and the City's engineer, Wilkins Hinrichs Stober Architects, have filed with the City Clerk Change Order No. 2 showing a decrease in the amount of \$2,882.90 as shown on Exhibit "A" attached hereto and made a part hereof by reference.

Original Contract Sum	\$193,904.00
Change Order No. 1 (10-9-2007) and an additional 41 working days to the contract time	+ 14,770.00
Change Order No. 2 (7-22-2008)	- <u>2,882.90</u>
New Contract Price	\$205,791.10

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 22ND DAY OF JULY, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

Original Contract Sum	<u>\$382,430.00</u>
Contract Sum to Date	382,430.00
Total Completed and Stored to Date	371,175.00
Retainage	18,558.75
Amount Due to Date	352,616.25
Less Previous Certificates for Payment	<u>204,516.00</u>
Current Payment Due	\$ 78,100.25

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, and hereby find and determine that Application and Certificate for Payment No. 2, as shown on Exhibit "A", be and is hereby accepted and approved.

PASSED AND APPROVED THIS 22ND DAY OF JULY, 2008.

ATTEST:
 MICHAELLE E. TREMBLY
 CITY CLERK

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

11. Approve Application and Certificate for Payment No. 1 in the amount of \$92,751.30 submitted by Blessing, LLC and approved by Miller & Associates for the 2007 Part VI Improvements – Bid B consisting of Paving Improvement District No. 2008-925 for 9th Street Place from west line of Block 1, Park View Estates Fourth to its terminus in a cul-de-sac; Paving Improvement District No. 2008-926 for 8th Street from the west line of Block 3, Park View Estates Fourth, thence to its terminus being the east line of Park View Estates Fourth, AND TOGETHER WITH 10th Avenue from 8th Street, thence south to its terminus being the south line of Park View Estates Fourth and approve **Resolution No. 2008-123**.

RESOLUTION NO. 2008-123

WHEREAS, Midlands Contracting, Inc. of Kearney, Nebraska has performed services in connection with the 2007 Part VI Improvements – Bid B consisting of Paving Improvement District No. 2008-925 for 9th Street Place from west line of Block 1, Park View Estates Fourth to its terminus in a cul-de-sac; Paving Improvement District No. 2008-926 for 8th Street from the west line of Block 3, Park View Estates Fourth, thence to its terminus being the east line of Park View Estates Fourth, AND TOGETHER WITH 10th Avenue from 8th Street, thence south to its terminus being the south line of Park View Estates Fourth, and the City's engineer, Miller & Associates, have filed with the City Clerk Application and Certificate for Payment No. 1 in the amount of \$92,751.30 as shown on Exhibit "A" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	<u>\$251,417.50</u>
Contract Sum to Date	251,417.50
Total Completed and Stored to Date	103,057.00
Retainage	10,305.70
Amount Due to Date	92,751.30
Less Previous Certificates for Payment	<u>.00</u>
Current Payment Due	\$ 92,751.30

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, and hereby find and determine that Application and Certificate for Payment No. 1, as shown on Exhibit "A", be and is hereby accepted and approved.

PASSED AND APPROVED THIS 22ND DAY OF JULY, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

12. Approve Application and Certificate for Payment No. 2 in the amount of \$65,876.40 submitted by Midlands Contracting, Inc. and approved by Miller & Associates for the 2007 Part VI Improvements – Bid A consisting of Water District No. 2008-549 for 9th Street Place from west line of Block 1, Park View Estates Fourth to its terminus in a cul-de-sac; Water District No. 2008-550 for 8th Street from the west line of Block 3, Park View Estates Fourth, thence to its terminus being the east line of Park View Estates Fourth, AND TOGETHER WITH 10th Avenue from 8th Street, thence south to its terminus being the south line of Park View Estates Fourth; Sanitary Sewer District No. 2008-491 for 9th Street Place from west line of Block 1, Park View Estates Fourth to its terminus in a cul-de-sac; Sanitary Sewer District No. 2008-492 for 8th Street from the west line of Block 3, Park View Estates Fourth, thence to its terminus being the east line of Park View Estates Fourth, AND TOGETHER WITH 10th Avenue from 8th Street, thence south to its terminus being the south line of Park View Estates Fourth and approve **Resolution No. 2008-124.**

RESOLUTION NO. 2008-124

WHEREAS, Midlands Contracting, Inc. of Kearney, Nebraska has performed services in connection with the 2007 Part VI Improvements – Bid A consisting of Water District No. 2008-549 for 9th Street Place from west line of Block 1, Park View Estates Fourth to its terminus in a cul-de-sac; Water District No. 2008-550 for 8th Street from the west line of Block 3, Park View Estates Fourth, thence to its terminus being the east line of Park View Estates Fourth, AND TOGETHER WITH 10th Avenue from 8th Street, thence south to its terminus being the south line of Park View Estates Fourth; Sanitary Sewer District No. 2008-491 for 9th Street Place from west line of Block 1, Park View Estates Fourth to its terminus in a cul-de-sac; Sanitary Sewer District No. 2008-492 for 8th Street from the west line of Block 3, Park View Estates Fourth, thence to its terminus being the east line of Park View Estates Fourth, AND TOGETHER WITH 10th Avenue from 8th Street, thence south to its terminus being the south line of Park View Estates Fourth, and the City's engineer, Miller & Associates, have filed with the City Clerk Application and Certificate for Payment No. 2 in the amount of \$65,876.40 as shown on Exhibit "A" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	<u>\$202,988.00</u>
Contract Sum to Date	202,988.00
Total Completed and Stored to Date	188,032.00
Retainage	18,803.20
Amount Due to Date	169,228.80
Less Previous Certificates for Payment	<u>103,352.40</u>

Current Payment Due

\$ 65,876.40

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, and hereby find and determine that Application and Certificate for Payment No. 2, as shown on Exhibit "A", be and is hereby accepted and approved.

PASSED AND APPROVED THIS 22ND DAY OF JULY, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

13. Approve Application and Certificate for Payment No. 1 in the amount of \$1,350.00 submitted by Blessing, LLC and approved by Miller & Associates for the 2008 Part III Improvements consisting of Paving Improvement District No. 2007-915 for 14th Street from 6th Avenue to 9th Avenue; Paving Improvement District No. 2007-916 for 9th Avenue from 13th Street to 14th Street; Paving Improvement District No. 2007-917 for 9th Avenue from 16th Street to 19th Street and approve **Resolution No. 2008-125.**

RESOLUTION NO. 2008-125

WHEREAS, Blessing, LLC of Kearney, Nebraska has performed services in connection with the 2008 Part III Improvements consisting of Paving Improvement District No. 2007-915 for 14th Street from 6th Avenue to 9th Avenue; Paving Improvement District No. 2007-916 for 9th Avenue from 13th Street to 14th Street; Paving Improvement District No. 2007-917 for 9th Avenue from 16th Street to 19th Street, and the City's engineer, Miller & Associates, have filed with the City Clerk Application and Certificate for Payment No. 1 in the amount of \$1,350.00 as shown on Exhibit "A" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	<u>\$336,216.00</u>
Contract Sum to Date	336,216.00
Total Completed and Stored to Date	1,500.00
Retainage	150.00
Amount Due to Date	1,350.00
Less Previous Certificates for Payment	<u>0.00</u>
Current Payment Due	\$ 1,350.00

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, and hereby find and determine that Application and Certificate for Payment No. 1, as shown on Exhibit "A", be and is hereby accepted and approved.

PASSED AND APPROVED THIS 22ND DAY OF JULY, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

14. Approve Change Order No.1 showing an increase in the amount of \$7,476.00 submitted by Siel Construction, Inc. and approved by Miller & Associates for Landfill Construction – Cell 7 and approve **Resolution No. 2008-126.**

RESOLUTION NO. 2008-126

WHEREAS, Siel Construction, Inc. of Franklin, Nebraska has performed services in connection with the Landfill Construction – Cell 7 Project, and the City's engineer, Miller & Associates, have filed with the City Clerk Change Order No. 1 showing an increase in the amount of \$7,476.00 as shown on Exhibit "A" attached hereto and made a part hereof by reference.

Original Contract Sum	\$743,317.80
Change Order No. 1 (7-22-2008)	+ <u>7,476.00</u>
New Contract Price	\$750,793.80

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, and hereby find and determine that Change Order No. 1, as shown on Exhibit "A", be and is hereby accepted and approved.

PASSED AND APPROVED THIS 22ND DAY OF JULY, 2008.

ATTEST:
 MICHAELLE E. TREMBLY
 CITY CLERK

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

15. Approve Application and Certificate for Payment No. 2 in the amount of \$350,641.35 submitted by Paulsen, Inc. and approved by Kirkham Michael for the construction of the Airport Road Relocation Project and approve **Resolution No. 2008-127.**

RESOLUTION NO. 2008-127

WHEREAS, Paulsen, Inc. of Cozad, Nebraska has performed services in connection with the construction of the Airport Road Relocation Project, and the City's engineer, Kirkham Michael, have filed with the City Clerk Application and Certificate for Payment No. 2 in the amount of \$350,641.35 as shown on Exhibit "A" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	<u>\$1,501,718.55</u>
Contract Sum to Date	1,501,718.55
Total Completed and Stored to Date	94,770.00
Retainage	9,477.00
Amount Due to Date	85,293.00
Less Previous Certificates for Payment	<u>.00</u>
Current Payment Due	\$ 350,641.35

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, and hereby find and determine that Application and Certificate for Payment No. 2, as shown on Exhibit "A", be and is hereby accepted and approved.

PASSED AND APPROVED THIS 22ND DAY OF JULY, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

16. Approve the Plans and Specifications for the construction of the 2008 Part 6 Improvements consisting of Paving Improvement District No. 2007-919, Water District No. 2007-548, and for 10th Street from the east line of Lot 1 of Block 2, Jean Michel of Chateau Marteau, thence west to the east line of 9th Avenue, AND together with 9th Avenue from the north line of Lot 6 of Block 2, Hammer-McCarty Addition, south to the south line of said Jean Michel of Chateau Marteau; for 10th Street from the east line of Lot 1 of Block 2, Jean Michael of Chateau Marteau, thence west to the east line of 9th Avenue, AND together with 9th Avenue from the north line of Lot 6 of Block 2, Hammer-McCarty Addition, south to the south line of said Jean Michel of Chateau Marteau; Sewer District No. 2007-490 for 10th Street from the east line of Lot 1 of Block 2, Jean Michael of Chateau Marteau, thence west to the east line of 9th Avenue, AND together with 9th Avenue from the north line of Lot 6 of Block 2, Hammer-McCarty Addition, south to the south line of said Jean Michel of Chateau Marteau and set the bid opening date for August 19, 2008 at 2:00 p.m.

17. Approve the Agreement between the City of Kearney and The Solid Rock to allow a Jump-a-roo to be located in front on 2010 Central Avenue during Sidewalk Sales Days on July 24, 25 and 26, 2008 from 8:00 a.m. until 8:00 p.m. each day.

18. Approve **Resolution No. 2008-128** appointing members to fill the vacancies/expiration on the following Boards/Commissions: Airport Advisory Board, Community Redevelopment Authority, Downtown Improvement Board, Examining Board for Plumbers, Golf Advisory Board, Kearney Housing Agency, Library Advisory Board, Advisory Board of Park & Recreation Commissioners, and Planning Commission.

RESOLUTION NO. 2008-128

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

WHEREAS, vacancies currently exist on certain Boards/Commissions.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the following persons, as proposed by the Mayor of the City of Kearney, Nebraska, are hereby appointed to the designated Boards/Commissions for the term indicated:

AIRPORT ADVISORY BOARD

Leonard Skov reappointed to July 31, 2013

COMMUNITY REDEVELOPMENT AUTHORITY

Larry Butler reappointed to July 31, 2013

DOWNTOWN IMPROVEMENT BOARD

Michael Bruce appointed to fulfill the term of Alan Deterding to July 31, 2012

Walter Martin appointed to succeed Randy Schleiger to July 31, 2013

EXAMINING BOARD FOR PLUMBERS

Kelly Tucker reappointed to July 31, 2011

Norman Vinderslev reappointed to July 31, 2011

Dave Waggoner reappointed to July 31, 2011

GOLF ADVISORY BOARD

Alex Straatmann appointed to fulfill the term of Larry Vogel to July 31, 2009

Kim Smith appointed to fulfill the term of Megan O’Dea to July 31, 2010

KEARNEY HOUSING AGENCY

Maxine Lillis appointed to succeed Mary Kalb to July 31, 2013

LIRBRARY ADVISORY BOARD

Todd Herges reappointed to July 31, 2012

Rebecca Evers reappointed to July 31, 2012

Shawna Young appointed to succeed Steve Davis to July 31, 2012

ADVISORY BOARD OF PARK & RECREATION COMMISSIONERS

Marta Moorman reappointed to July 31, 2013

Mitchel Greenwall to fulfill term of John Bancroft to July 31, 2011

PLANNING COMMISSION

Jim Ganz, Jr. reappointed to July 31, 2011

Jack McSweeney reappointed to July 31, 2011

Jim McKeon appointed to succeed Dottie Bowman to July 31, 2011

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

PASSED AND APPROVED THIS 22ND DAY OF JULY, 2008.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

19. Approve the Application for a Special Designated License submitted by JUAN LAZO, dba “El Tropico” in connection with their Class IB-37623 liquor license to dispense beer and distilled spirits in the Exhibit Building located at the Buffalo County Fairgrounds, 3807 Avenue N, on August 31, 2008 from 6:00 p.m. until 12:00 a.m. for a Mexican dance.

20. Approve the Application for a Special Designated License submitted by NIGHT LIFE CONCEPTS, INC., dba “Cunningham’s Journal” in connection with their Class CK-59311 catering liquor license to dispense beer, wine and distilled spirits in the Outdoor Arena, formerly known as the Exposition Building, located at the Buffalo County Fairgrounds, 3807 Avenue N, on August 2, 2008 from 5:00 p.m. until 1:00 a.m., August 3, 2008 from 5:00 p.m. until 12:00 a.m., and on August 4, 2008 from 5:00 p.m. until 1:00 a.m. for the Buffalo County Fair.

V. CONSENT AGENDA ORDINANCES

None.

VI. REGULAR AGENDA

ORDINANCE NO. 7445 – AMEND CHAPTER 50 OF THE CITY CODE (PERTAINS TO PUBLIC HEARING 1)

Moved by Clouse seconded by Kearney to remove from the table Ordinance No. 7445.

Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried.

Council Member Kearney introduced Ordinance No. 7445, being Subsection 1 of Agenda Item VI to amend Chapter 50, "Sign Regulations" of the Code of the City of Kearney as follows: Section 50-102 "Definition of Terms" to provide a definition for Numeric Display Signs; to amend Section 50-104 "General Regulations; Basic Design Elements for Signs" to provide requirements for numeric display signs, and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Lammers seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7445 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried. Ordinance was read by number.

Moved by Lammers seconded by Lear that Ordinance No. 7445 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7445 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. 7453 – VACATE PORTION OF 6TH AVENUE (PERTAINS TO PUBLIC HEARING 2)

Council Member Lear introduced Ordinance No. 7453, being Subsection 2 of Agenda Item VI to vacate a portion of 6th Avenue lying between 4th Street and 8th Street, west of Cash-Wa Distributing, 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, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7453 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, Lear. Nay: None. Motion carried. Ordinance was

read by number.

Moved by Buschkoetter seconded by Clouse that Ordinance No. 7453 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7453 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. 7454 – REZONE WEST OF 6TH AVENUE AND 4TH STREET
(PERTAINS TO PUBLIC HEARING 2)**

Council Member Lear introduced Ordinance No. 7454, being Subsection 3 of Agenda Item VI to rezone from “District R-1, Urban Residential Single-Family District (Low Density)” to “District M-1/PD, Limited Industrial/Planned Development Overlay District” property described as part of Government Lot 3 and accretions located in Section 11, Township 8 North, Range 16 West of 6th P.M., and part of 6th Avenue (to be vacated), containing 24.34 acres, more or less, Buffalo County, Nebraska (west of 6th Avenue and 4th 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, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7454 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, Lear. Nay: None. Motion carried. Ordinance was read by number.

Moved by Buschkoetter seconded by Clouse that Ordinance No. 7454 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7454 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.

HARMON PARK FOUNTAIN AND GARDEN

Mayor Clouse opened for discussion the report concerning the renovation/replacement of the Harmon Park Fountain.

Director of Park & Recreation Neal Lewis stated they have been working on the formal garden and fountain for the past five to six months. They have had two open meetings and a Park Board Meeting. They came up with two options to solve the fountain problem. They want to replace the formal garden. The question is what to do with the fountain that was built back in the 1930's by the WPA which has some historical significance. There are some safety concerns and maintenance and replacement cost. When Harmon Park was redone twenty years ago, the internal piping of the center piece of the fountain was replaced with external piping with little sprays. At that time the internal piping had pretty much destroyed the center and it could not be saved. It was taken off and funds were not available to do a major facelift with the fountain, so it was fixed as good as it could with a new spray and lights. With the Harmon Park Activity Center renovation, they believed that it was time to look at updating the formal garden. At that time, the issue of what to do with fountain came up again. Currently, the fountain has cracks and some other problems. In the study done by Clark Enersen, they believed that this would be a tough project. At that point, we had Miller and Associates come in and do a separate analysis. The City has developed a plan and cost estimate for the Harmon Park Fountain and Garden project. The City requested an evaluation of the existing fountain be conducted by Miller & Associates.

Kent Cordes from Miller & Associates addressed the Council on their evaluation of the existing fountain. Some of the minimum repair requirements include crack repair in the pool area, re-coating the pool area, replace the pump and spray equipment, and repainting the fence around the pool area.

To renovate the existing fountain Miller & Associates estimate the minimum repairs to range between \$20,000 and \$35,000. These repairs are expected to last between 5 and 10 years with 7 years being a reasonable assumption. At that time, sealing the coating operations are likely to be required again, with an expected cost of at least \$6,000.

However, this operational procedure has several drawbacks. The system must be drained and refilled frequently, and draining the system requires entry into a confined space under the fountain pool area. The confined space area sits outside the fountain area and is a public safety concern.

To improve operation, a new drain valve could be added to the drain line outside of the pool area and could be made accessible through a manhole or valve box and operated with a wrench from above, without having to enter a confined space.

In order to reduce the frequency of draining and refilling the pool area (approximately every 3 weeks), a filtration system could be installed. The report submitted by Miller & Associates suggested:

- installing additional piping,
- installing a vault for the filtration equipment and the filtration equipment itself which would include a basket strainer, a cartridge filter, the recirculation pump and possibly an erosion chlorinator and chemical controller;
- a separate pump from the fountain pump could be installed to recirculate the pool water through the filtration equipment.

The cost estimate for these additional operation and maintenance items range between \$25,000 and \$40,000. These costs would not necessarily reduce the annual operation and maintenance costs, but would reduce water consumption and improve worker safety.

Clark Enersen has developed an overall plan that would include the landscaping and a replacement fountain. Attached is the cost estimate for demolition and sitework. The construction of a new fountain proposed in the Clark Enersen design was estimated at \$34,875 and the base cost of the formal garden is \$53,411.

Cost items for the project only differ in the fountain estimated costs. Total project would be \$88,286 with a replacement fountain or \$113,411 using the average cost for renovating the existing fountain. Design costs are estimated at \$12,000.

The Park & Recreation Advisory Board considered and approved the design of the fountain and garden area. \$100,000 was dedicated from the Harmon Activity Center project for the fountain and garden.

City Manager stated that the estimated costs by Miller & Associates is between \$45,000-\$75,000 for the renovation of the existing fountain and as a second cost adding the recirculation system, but would add some additional piping, pumping, filtration system and possibly some chlorination type equipment.

Council member Buschkoetter stated that it was his understanding that a new fountain would have water in it all year and that the renovated fountain would have to be drained on a seasonal basis. Director of Park & Recreation stated the water source for the fountain is the irrigation system with a new fountain they would put a new water source system so they could have water access year around. That would help with the longevity because it is harder when you drain them and they are exposed to the elements. Mr. Cordes stated it would be possible to re-pipe the existing fountain so that the water source could be used all year, but he did not have a cost for doing that.

City Manager stated the Park and Recreation Advisory Board recommended a complete replacement. They did not have the Miller & Associates study at that time because Clark Enersen said they believed that the cost of renovation would be significantly higher than to replace so they went off that assumption. In fairness to the Park Board, they were not aware of the possibilities that might be possible for the renovation regardless of the cost. They did not know that it would be approximately \$25,000 more to renovate than replace. Council member Lear asked if there were any citizens present at the Park & Recreation Advisory Board. Mr. Lewis said not at that meeting, but did have citizens at the two open meetings at the Activity Center.

Larry Peters, 4 Seminole Lane, stated there were people in support of keeping the fountain the same as a historical site. They would like to have it registered with the Historical Society of Nebraska. They looked at the architecture of the sonatorium and the activity center and believed that the art-deco design is very important. The WPA project was a very significant project for the City at the time. It will be a gorgeous park by the time they get the flowers planted and the fountain going again.

Jennifer Harvey, 28 West 28th Street, stated she was in agreement with Mr. Peters and would like to see the fountain return to how it was. The proposal that was presented for the new one was beautiful, but thought it was more important to listen to what the citizens of Kearney wanted for themselves when they built the garden. She would like to see it returned to the original design.

Steele Becker, a member of the new Historical Society, stated they would like to see the fountain restored as close as possible, but realizing that finances are a problem. There were four letters sent to the Kearney Hub between April 9th and May 3rd in support of the repair/replacement. Between May 28th and May 30th, the Hub used the question of the Harmon Park as a public survey. The responses to the survey were: 58 percent to restore the fountain, 14 percent to replace, and 24 percent do what is least expensive. The Hub reported that 500 people voted the website. During Art in the Park, they had a table manned by volunteers with information on the restoration of the fountain.

Betty Jo Armagost, representative of The Soil Sister Garden Club that has been in the Kearney area well over 45 years, stated that they have tried to better the community over many years. They recently held a garden walk that was very successful. The club decided that they would try to support the restoration of Harmon Park in some way with the proceeds. They found that although the tickets were \$6 for this garden walk, people often made donations of a larger amount. They believed through these donations that people were expressing that Harmon Park and this fountain area were very important to them and they really do care about it. The garden club has proceeds that they will donate after decisions are made. Their \$3,000 comes with a lot of heart from a lot of people who care about what is done.

Jennifer Murrish, 710 West 11th Street, with the Buffalo County Historical Society stated that wanted to comment on a few things that Steele Becker said because he was not representing the Historical Society with his earlier comments. She believed he meant to say that he was representing the new historic group. She stated that only the owners can request to be put on the National Registry. After she looked into it, since the City is the owner, they would have to request it. From everything they had been told, the community really did not want that. There are a lot of hoops to jump through to qualify and the City did not want to go through that.

Ms. Murrish invited the Nebraska State Historical Society to come to Kearney and look at it. They loved the park and everything about it. They gave "kudos" to the Park Department for everything they have done and would like to see the fountain remain as closely as possible to what it was like. They stated if you cannot restore it, do it as closely as you can. Their motto is "don't throw anything away". If you decide to throw out the railing, they requested to have it. If the old fountain is sitting somewhere, they would like to restore it and put it at the Trails and Rails Museum.

Janice Polk, 1714 9th Avenue, stated she has had the privilege of growing up in Harmon Park. Her father was Park Superintendent for ten years until his untimely death. Prior to that, her grandfather had been Park Superintendent for 35 years. She has many fond memories of that park. She asked that the Council strongly consider renovating the fountain to the best of their ability. She would like to see the gardens and fountain restored. Many years ago her father, Larry Peterson, started Art in the Park. Part of the

Art in the Park, was the art which is so important, but also the park. She thought that they have lost the park element without the flowers and the fountain working. She asked that even if they cannot get the fountain working right away, at least get the flowers in so it looks like a park that will attract people.

Marc Loescher, 1402 9th Avenue, stated that he and wife agree with regard to restoring the fountain. He stated that they do not want to put the blame on the current administration or Kearney citizens, but being a native Kearneyite, he believed that the City of Kearney has done a very poor job over the years of any type of preservation of its historical structures. If you look at the past, you will see that so many of those structures are no longer present. It gets to a point where a group of citizens believe that something must be done to stop that type of thinking. The fountain is that first project. The fountain is important to many people in the community to have it restored to as close as what it was. History is important and is the fabric that binds the community. Historical structures are part of that history and what people remember.

Nancy Polk, 3014 8th Avenue, stated she lived in Kearney until she was in third grade and then moved away, but her grandmother lived within walking distance of Harmon Park. They spent their summers at the park. She really wants to see it restored. She misses the lily pond, the checker stands, croquet, and the rock shelter where you could go on any weekday afternoon and check out checkers and games and could play. The days of playing in the park are gone and they cannot do that anymore.

Mitch Humphrey, 316 East 52nd Street, stated that although he is involved with a lot of land developers, he is really kind of a "closet preservationist". He wanted to see the City of Kearney take a stronger stand to preserve those facilities or at least take a hard look at preservation of those facilities, such as the stone structure, the checker stand, the fountain and the flower gardens. He spent a great deal of his childhood in Harmon Park and Dryden Park. He misses those facilities as well.

Council member Buschkoetter asked Mr. Lewis if the center piece of the old fountain is still around. Mr. Lewis responded that he has no idea of what happened to it.

Mayor Clouse stated this is indeed a challenging situation. He was very impressed by the new design and he really liked the way it looked and could set a new era for the Park along with the other new things in the Park. On the other hand, he has been a part of some processes where they have ended up tearing down whole buildings. From that perspective, he believed that we have the opportunity to restore. Sometimes you have to give up something to preserve what our history is. As a City, we have done a great deal with the Lead Main Street Program with a commitment to that in the last year which is all about preservation. We are going to spend significant amounts of money through grants to restore downtown Kearney when we could tear it all down and make it all new. From his view, he will vote to restore because it is something worth saving.

Council member Lammers stated that he is somewhat of a historical buff. He gets into history and goes to all the old genealogy and finds out what has happened in the past. He grew up about a block away from Harmon Park from the time he was 11 years old. He has very sentimental feelings about the Park. He would like to see it renovated to as high a degree as they can and keep the integrity. He realized that we have to upgrade the filtration systems and do some things to eliminate the hazards to works, etc. He

believed that we can do those things within a reasonable price range to make those things work.

Council member Kearney stated that he likes the schematics of the new design. He believed that sometimes there is a benefit by having a more modern attractive design. He would vote to replace it.

Council member Buschkoetter stated he likes history so much he found a way to make a living at it. He came in thinking a lot like Council member Kearney, but passion is a powerful tool. A lot of the things that the City has lost, the City cannot fix because we do not own it, we do not have it and the decision is up to the private company that does own it. There is no way for the City to take over an old building downtown and renovate the nature of it. We do have the ownership and the opportunity with the fountain. He came in thinking that he liked the new design and thought that it would look good. However, it is a slice of history and believed that we should take that opportunity to restore it.

Council member Lear stated that if there is one thing that bothered him about this process is that perhaps the Park Board did not have all the information that it should have had before making a recommendation to the Council. His intention was not to point any fingers or pinpoint anyone. They have had many cases made for restoration. Right now the cost of restoration is \$25,000 versus replace. He did not believe that was enough cost impediments not to restore. He did not grow up in Kearney and he has to respect what people who did grow up here think and their feelings for that particular Park. In general, he did not believe that the amount of money in one direction or another would make a substantial difference.

Council member Buschkoetter requested to find a fountain head (the structure in the middle of the fountain) and try to come up with something reasonably close to the original. City Manager stated the current proposal does not have any funding for a fountain head at all. It has a spray head that does certain things, with no fixture with it. It could be possible to re-create it or find something comparable.

Council member Buschkoetter stated that perhaps that could be taken care of by other donations such as from the garden club. Kent Cordes stated that he did not know what that cost would be for such a fixture. He reiterated that the cost Miller & Associates presented was only to bring it to the condition where it is operable. Their cost was not to restore it to its original condition.

Moved by Clouse seconded by Lammers to authorize Administration to move forward with the renovation of the fountain with appropriate upgrading of the plumbing and safety issues and to increase the funding appropriately. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lammers. Nay: Lear and Kearney. Motion carried.

OPEN ACCOUNT CLAIMS: PLATTE VALLEY STATE BANK - \$48,485.44, NPPD - \$76,581.40, SCHOOL DISTRICT #7 - \$1,134.70

Moved by Kearney seconded by Lammers that Open Account Claims in the amount of \$48,485.44 payable to Platte Valley State Bank and \$76,581.40 payable to Nebraska Public Power District be allowed. Roll call resulted as follows: Aye: Lammers, Kearney,

Buschkoetter. Nay: None. Clouse and Lear abstained. Motion carried.

Moved by Clouse seconded by Lear that Open Account Claims in the amount of \$1,134.70 payable to School District #7 be allowed. Roll call resulted as follows: Aye: Clouse, Kearney, Lear. Nay: None. Buschkoetter and Lammers abstained. Motion carried.

VII. REPORTS

CLOSED SESSION

Moved by Clouse seconded by Lammers that Council adjourn into closed session at 8:48 p.m. on July 22, 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, Kearney, Buschkoetter, Lear, Lammers. Nay: None. 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 Clouse seconded by Kearney that Council reconvene in regular session at 9:14 p.m. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried.

VIII. ADJOURN

Moved by Kearney seconded by Lammers that Council adjourn at 9:14 p.m. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

ATTEST:

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

**MICHAELLE E. TREMBLY
CITY CLERK**