

Kearney, Nebraska
August 12, 2008
7:00 p.m.

A meeting of the City Council of Kearney, Nebraska, was convened in open and public session at 7:00 p.m. on August 12, 2008 in the Council Chambers at City Hall. Present were: Stanley A. Clouse, President of the Council; Cathy Vogt, Acting 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; Rod Wiederspan, Director of Public Works; Dan Lynch, Chief of Police, Lance Lang, City Planner; and Luke Olson, Management Assistant were also present. Some of the citizens present in the audience included: Paul Brungardt, Craig Bennett, Lacrica Olson, Charles Becker, Kent Schroeder, Greg Barney, Jon Abegglen, Bill Shada, Kelvin Shearer, Tim Felker, Robin Rivera, Jeff Seiler, Molly Waller, Conrad Neverve, Ron Jacobs, Marvion Reichert, Mike Splitter, Mark Reed, Doug Kramer.

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

There was no Oral Communications.

II. UNFINISHED BUSINESS

There was no Unfinished Business.

III. PUBLIC HEARINGS

DEVELOPMENT PLANS FOR NORTH OF APPLEBEE'S AT 56TH STREET AND 2ND AVENUE

Mayor Clouse opened the public hearing on the Application submitted by Paul Brungardt from Brungardt Engineering (Applicant) for Roberta Corrigan Farm (Owner) for Planned District Development Plan Approval for the construction of commercial plaza development on property zoned "District C-2/PD, Community Commercial/Planned Development Overlay District" and described as Lot 2, Ingalls Crossing Fourth Addition, an addition to the City of Kearney, Buffalo County, Nebraska (north of Applebee's at 56th Street and 2nd Avenue) and to consider approval of Resolution No. 2008-130. Planning Commission recommended approval of the development plans for this property as presented.

The applicant is requesting approval of development plans for a commercial development located just north of Applebees. The legal description is Lot 2 of Ingalls Crossing 4th Addition. The property is zoned C-2/PD and approximately 1.5 acres in size. A complete development plan package has been submitted and staff has reviewed the submittal and offers the following comments:

1. The building footprint is 11,200 square feet in area. The building will be split into separate bays for multiple tenants, either commercial retail or commercial office.
2. 93 parking stalls are provided. Only 45 spaces are required for business occupancy. Restaurants, however, demand a higher parking yield. The applicant has designed the site to allow for some restaurant space in the building but there is not sufficient parking for total restaurant occupancy.
3. The building materials and architectural design are attractive with curb appeal from both 2nd Avenue and 1st Avenue. Building materials are a combination of brick, split-face block, and EFIS.
4. All roof mounted mechanical equipment shall be screened from view from any adjacent public street by parapet walls.
5. A complete landscape plan has been submitted.
6. Maximum allowable impervious coverage in this zoning district is 80%, 66% is proposed.
7. Erosion and sediment control plans have been submitted.
8. Storm drainage shall sheet flow across the site to 1st Avenue where the water will be captured by the existing stormwater inlets and piping system. The water is then directed to a regional stormwater detention cell that was constructed with previous phases of Ingalls Crossing.
9. The applicants were advised that multiple services for water and sewer would be required if the bays were to be individually sold in the future such that each bay would have its own services. The applicant has opted for single service so the bays cannot be sold separately.

Planning Commission discussed these items at the Public Hearing to insure that the applicant is aware of them, especially items 2, 3, 4 and 9. The applicant was in agreement.

Paul Brungardt from Brungardt Engineering presented this matter to the Council. He presented plans for the proposed Ashton Point Commercial Plaza located north of Applebee's between 1st Avenue and 2nd Avenue in the open lot. This area encompasses Graham Tires, Sears, Ace True Value Store, Burger King, Applebee's and Big "O" Tires. The proposal is to put an 11,200 square foot structure in the center of it with wrap around parking around the facility. They have 93 parking stalls around the site which is more than adequate for this potential retail center. This also would accommodate a restaurant in this area with more than enough spaces to accommodate off-street parking. Access to the site will be off 1st Avenue, as well as a private drive shared by Applebee's. The building will have a stucco top with some brick and stone work. They are looking at a shell only at this time and there are no tenants available. The structure is opened up in such a way that it will face the north and the south and gives the developer the opportunity to encourage retail stores to come in and set up shop. The building will be 70' X 130' in length with two proposed towers in opposite corners.

The landscaping plan provides for an existing set of tree lines between Applebee's and the Ashton Point site. They will be providing adequate canopy trees on the north and the east sides. They plan to meet with the City regarding the type of trees on the west side because right now there is an overhead power line that is directly in the site of the 10-foot green space. They will need to use some type of a canopy tree which does not interfere with those overhead power lines.

With the development of this section of ground, everything will be drained out to the storm drain system. Just east of McDonald's, there is a huge open detention cell which covers the storm water detention for this site, as well as Applebee's, McDonald's and the other sites that are still undeveloped.

Council member Lammers asked if these were to be open bays and would each need a separate water service. Mr. Brungardt stated if the space were to be sold on an individual bay basis each would require their own water service. The developer is addressing this as a rented space which will require only one sanitary service and one water service into this building.

Council member Lammers also asked if there was room to add on parking if they decided to put two restaurants in that building. Mr. Brungardt stated if the entire 11,200 square feet were considered for retail, they would only need about 50 stalls. That leaves approximately 40 stalls left to accommodate a restaurant. He thought that they could occupy half of this space with a restaurant and still meet the off-street parking requirements.

Council member Buschkoetter voiced a concern about access roads in general falling into disrepair and referenced the one in the area by Wal-Mart and Arby's. He asked if the Council could do something to insure that does not happen, although it might be a little late for this Ashton Point project. Director of Public Works Rod Wiederspan stated there have been a number of private drives in the past. The one that deteriorated recently between Wal-Mart and Arby's was not built to City standards. It was an asphalt driveway which is also what the access road for Ashton Point is proposed to be. If the driveway is built to City standards with 6-inch concrete, curb and gutter, the City would be more apt to take it over in the future. If deteriorated concrete access drives were to

be replaced to City standards, then the City would look at taking those over as City streets if there were enough right-of-way to be dedicated. Most of those are too tight on space so the City cannot do that. If the City decides it does not want private streets in the future, it could be addressed on the planning side in the standards.

City Manager Michael Morgan stated conditions could be placed on access drives in a subdivision or development as is required for parking lot surfacing. Placing the condition on the access road that it cannot fall into disrepair provides a tool to enforce it. Usually in the private sector, citizen's purchasing power dictates improvements. Director of Public Works stated although Wal-Mart wanted to get their access road repaired sooner due to all the wet weather this spring, they were not able to get a contractor to do it. In the meantime, they kept adding rock which washed away. The repair to the road by Wal-Mart was replaced with concrete instead of asphalt.

Mr. Brungardt stated regarding an agreement, there will be an agreement between this developer and Applebee's as far as a shared drive, so both parties will take full responsibility for the maintenance and upkeep. When 1st Avenue does get extended north to the Menards' south entrance, coming in from the west this access drive is the only way you can get into the Applebee's site. He did not ever foresee them letting this fall into disrepair. City Manager stated that the City could deal with new access drives as part of the project by taking them into consideration for future developments. Council member Buschkoetter stated he would like to have some type of tool in the future to use to correct that disrepair situation if it should arise.

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 Paul Brungardt from Brungardt Engineering (Applicant) for Roberta Corrigan Farm (Owner) for Planned District Development Plan Approval for the construction of commercial plaza development on property zoned "District C-2/PD, Community Commercial/Planned Development Overlay District" and described as Lot 2, Ingalls Crossing Fourth Addition, an addition to the City of Kearney, Buffalo County, Nebraska (north of Applebee's at 56th Street and 2nd Avenue) and approve **Resolution No. 2008-130**. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

RESOLUTION NO. 2008-130

WHEREAS, Paul Brungardt from Brungardt Engineering (Applicant) for Roberta Corrigan Farm (Owner) have applied for Planned District Development Plan Approval for the construction of commercial plaza development on property zoned "District C-2/PD, Community Commercial/Planned Development Overlay District" and described as Lot 2, Ingalls Crossing Fourth Addition, an addition to the City of Kearney, Buffalo County, Nebraska (north of Applebee's at 56th Street and 2nd Avenue).

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 Roberta Corrigan Farm (Owner) for Planned District Development Plan Approval for the construction of commercial plaza development on property to be zoned "District C-2/PD, Community Commercial/Planned Development Overlay District" and described as Lot 2, Ingalls Crossing Fourth Addition, an addition to

the City of Kearney, Buffalo County, Nebraska (north of Applebee's at 56th Street and 2nd Avenue).

PASSED AND APPROVED THIS 12TH DAY OF AUGUST, 2008.

ATTEST:
CATHY M. VOGT
ACTING CITY CLERK

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

REZONE WEST OF 17TH AVENUE NORTH OF 56TH STREET

Public Hearings 2 and 3 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Kent Cordes from Miller & Associates (Applicant) for DT Development, Inc. (Owner) to rezone 7.17 acres, more or less, from "District AG, Agricultural District" to "District C-0, Office District" AND to rezone 32.05 acres, more or less, from "District AG, Agricultural District" to "District C-2, Community Commercial District" property described as a tract of land being part of the Southeast Quarter of Section 22, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (west of 17th Avenue north of 56th Street). Planning Commission recommended approval of the rezoning and subdivision plat for this property.

The applicant is requesting approval to rezone and plat a tract of land that is north of 56th Street and west of 17th Avenue. The applicant is requesting rezoning of 7.17 acres from Agricultural to Office District, and 32.05 acres from Agricultural to Community Commercial District. The Future Land Use Map of the City of Kearney Comprehensive Development Plan shows this property to be best suited for Mixed Use 1. The proposed zoning categories are in conformance with the land use designation. Staff recommends that the C-2 zoning at the 17th Avenue intersection be the west limit of C-2 zoning along 56th Street. Any future commercial requests to the west will carry a staff recommendation of C-1 or C-0.

The Preliminary Plat for Spruce Hollow Estates Third was approved at the July 18, 2008 meeting of the Planning Commission and the layout depicted on the plat is substantially the same as the original master plan for the area. The proposed subdivision will consist of four lots and is to be known as Spruce Hollow Estates Third. A 5.38 acre outlot is located on the west side of the subdivision. This outlot will convey storm drainage and will also provide opportunities for utility easements and open space enhancements such as pedestrian trails. The two lots with frontage on 56th Street are to be zoned C-2. The remaining lot is to be zoned C-0. Proposed 19th Avenue provides northerly access from 56th Street and culminates in a roundabout at the intersection of proposed 58th Street. This subdivision is not contiguous to the corporate limits and therefore will not be annexed at this time. A Subdivision Agreement is attached that addresses the future annexation issues and maintenance of common space.

Since 1994 the City has been encouraging development of the 56th Street corridor. The sanitary sewer lift stations that were installed in 1994 have been followed up with municipal water extensions and paving of this beltway arterial. Recent development interest in the area, including Spruce Hollow and Fountain Hills development, forecast a vibrant mixed-use growth area for the community. The size of these developments point

to long term growth over a period of many years. This growth potential, coupled with the designation of 56th Street as the northerly east-west leg of the City beltway system, will require careful infrastructure planning to accommodate the needs of the area. It is likely that road widening of 56th Street to four lanes with protected turn lanes and a traffic signal at 56th Street and 17th Avenue will be required in the future. The timing of these types of improvements will be determined by future traffic impact studies.

Craig Bennett from Miller & Associates presented this matter to the Council. In 2006, a preliminary plat was presented for the entire area. The Spruce Hollow Estates Third site will basically stay consistent with the preliminary plat, but changing the location of the road slightly to the east. They are still planning for all the same road connections within the preliminary plat. The majority of the property had been proposed as being commercial and the remainder as multi-family. They are now splitting that up a little differently than they had originally proposed. It will basically have the same concept. The property existing around the site is zoned agricultural by default with some C-1/PD that is not developed next to it on the south.

The proposed subdivision is laid out with 56th Street on the south, but they have changed the proposal for 19th Avenue to up the middle of the property. They will also have a round-about which is consistent with several they proposed throughout the development. There is a 100-year floodway that goes through this outlot which would be used for detention and borders the site. They have easements between the lots, but currently do not have developers who have spoken for any particular lot. The lot that is shown as C-0 is where they are looking at a Christian school. Originally, the preliminary plat showed R-4 zoning which is consistent with primary and secondary school use, but the City staff believed that a C-0 zoning was also a good conforming use.

This site is not contiguous to City limits so it cannot be annexed. The developers signed an agreement that the owners will not protest annexation should City limits become adjacent to him and the desire is to have it annexed in. From a utility standpoint, there is existing sanitary sewer located on the south side of 56th Street (forced main goes along part of it and then gravity fed). They will be utilizing some of that sanitary sewer for this subdivision. There is an existing 24-inch watermain along the south and a 16-inch watermain along the east. They are planning on extending the sanitary sewer on the gravity side of the lift station and still allow for future development in the next phases. The storm water will be collected and by creating a dam it will also serve as a water detention on the south side of 58th Street.

There will be a boulevard with medians in the center. Under the current policy, those medians will be maintained by the association for this subdivision and not by the City Park and Recreation staff. There will be trees and landscaping in the breaks around the round-about as this developer has done in other boulevards.

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 Kent Cordes from Miller & Associates (Applicant) for DT Development, Inc. (Owner) to rezone 7.17 acres, more or less, from "District AG, Agricultural District" to "District C-0, Office District" AND to rezone 32.05 acres, more or less, from "District AG, Agricultural District" to "District C-2, Community Commercial District" property described

as a tract of land being part of the Southeast Quarter of Section 22, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (west of 17th Avenue north of 56th Street). Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

FINAL PLAT FOR SPRUCE HOLLOW ESTATES THIRD

Public Hearings 2 and 3 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Kent Cordes from Miller & Associates (Applicant) for DT Development, Inc. (Owner) for the Final Plat and Subdivision Agreement for "Spruce Hollow Estates Third", a subdivision in Buffalo County, Nebraska for property described as a tract of land being part of the Southeast Quarter of Section 22, Township 9 North, Range 16 West of the 6th P.M., containing 39.22 acres, more or less, Buffalo County, Nebraska (west of 17th Avenue north of 56th Street) and to consider approval of Resolution No. 2008-131.

There was no one present in opposition to this hearing.

Moved by Lear seconded by Buschkoetter to close the hearing and approve the Application submitted by Kent Cordes from Miller & Associates (Applicant) for DT Development, Inc. (Owner) for the Final Plat and Subdivision Agreement for "Spruce Hollow Estates Third", a subdivision in Buffalo County, Nebraska for property described as a tract of land being part of the Southeast Quarter of Section 22, Township 9 North, Range 16 West of the 6th P.M., containing 39.22 acres, more or less, Buffalo County, Nebraska (west of 17th Avenue north of 56th Street) and approve **Resolution No. 2008-131**. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried.

RESOLUTION NO. 2008-131

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of "SPRUCE HOLLOW ESTATES THIRD" a subdivision in Buffalo County, Nebraska for a tract of land being part of the Southeast Quarter of Section 22, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska and more particularly described as follows: Beginning at the southeast corner of the Southeast Quarter of said Section 22 and assuming the south line of said Southeast Quarter (also the centerline of 56th Street) as bearing S89°09'44"W and all bearings contained herein are relative thereto; thence S89°09'44"W and on said south line a distance of 1886.17 feet; thence N00°50'16"W a distance of 50.0 feet; thence N00°20'34"W a distance of 94.18 feet; thence N12°48'55"W a distance of 137.89 feet; thence N05°19'56"W a distance of 142.70 feet; thence N01°46'30"W a distance of 229.65 feet; thence N05°16'33"W a distance of 166.20 feet; thence N00°29'09"E a distance of 120.20 feet; thence N30°45'33"E a distance of 88.88 feet; thence N38°39'26"E a distance of 80.00 feet; thence southeasterly along a non-tangent curve to the left having a central angle of 14°16'06", a radius of 960.00 feet, an arc length of 239.07 feet, and a chord bearing S58°28'37"E at a distance of 238.45 feet; thence S65°36'40"E a distance of 162.40 feet; thence southeasterly along a tangent curve to the left having a central angle of 24°51'12", a radius of 210.00 feet, and an arc length of 91.09 feet; thence N89°32'08"E tangent to

said curve a distance of 404.77 feet; thence northeasterly along a tangent curve to the left having a central angle of 58°40'04", a radius of 25.00 feet, and an arc length of 25.60 to a point of reverse curvature; thence northeasterly, easterly and southeasterly along a curve to the right having a central angle of 111° 47'53", a radius of 100.00 feet, and an arc length of 195.12 feet to a point of reverse curvature; thence southeasterly along a curve to the left having a central angle of 53°07'49", a radius of 25.00 feet, and an arc length of 23.18 feet to a point of tangency; thence N89°32'08"E tangent to said previous curve a distance of 799.03 feet to the east line of said Southeast Quarter; thence S00°26'26"E on said east line a distance of 858.21 feet to the place of beginning, containing 39.22 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 terms and requirements of Sections 16-901 through 16-904 inclusive, R.R.S. 1943 (as amended) be accepted and ordered filed and recorded in the Office of the Register of Deeds, Buffalo County, Nebraska.

BE IT FURTHER RESOLVED that the Subdivision Agreement, marked as Exhibit "A" attached hereto and made a part hereof by reference, be and is hereby approved and that the President of the Council be and is hereby authorized and directed to execute said agreement on behalf of the City of Kearney, Nebraska. Said Subdivision Agreement shall be filed with the final plat with the Buffalo County Register of Deeds.

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

PASSED AND APPROVED THIS 12TH DAY OF AUGUST, 2008.

ATTEST:
CATHY M. VOGT
ACTING CITY CLERK

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

REDEVELOPMENT PROJECT FOR REDEVELOPMENT AREA #8 – CASH-WA DEVELOPMENT

Mayor Clouse opened the public hearing on the redevelopment project for Redevelopment Area #8 for an area described as follows: Lot 2, Cash-Wa Addition, an addition to the City of Kearney, Buffalo County, Nebraska; **TOGETHER WITH** 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 S 89°55'15" W and all bearings contained herein are relative thereto; thence S 89°55'15" W and on the north line of said Government Lot 3 a 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 S 89°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 S 01°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 S 41°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 N 48°22'24" E and on the existing centerline of the North Channel of the Platte River a distance of 22.40 feet;

thence S 75°37'17" E and continuing on the aforesaid centerline a distance of 92.16 feet; thence S 33°54'09" E and continuing on the aforesaid centerline a distance of 160.70 feet; thence S 55°33'45" E and continuing on the aforesaid centerline a distance of 146.67 feet; thence S 39°43'31" E and continuing on the aforesaid centerline a distance of 104.49 feet; thence S 04°32'40" E and continuing on the aforesaid centerline a distance of 164.01 feet; thence S 44°29'09" E and continuing on the aforesaid centerline a distance of 48.91 feet; thence N 75°35'06" E and continuing on the aforesaid centerline a distance of 45.45 feet; thence N 38°48'43" E and continuing on the aforesaid centerline a distance of 138.53 feet; thence N 43°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 N 46°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 N 00°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 S 89°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 said 6th Avenue; thence N 00°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) N 89°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 N 00°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 S 68°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 line 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, N 00°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 Lot 3 and the east right-of-way line of said 6th Avenue a distance of 288.22 feet to the place of beginning, Buffalo County, Nebraska; **AND TOGETHER WITH** all that part of 4th Avenue, an avenue in the City of Kearney, Buffalo County, Nebraska, located north of the south line of 4th Street, a street in the City of Kearney, Buffalo County, Nebraska and south of the north line of 8th Street, a street in the City of Kearney, Buffalo County, Nebraska, with said part of 4th Avenue being located in part of Government Lot 4 and part of the Northeast Quarter of the Northeast Quarter of Section 11, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Beginning at the point of intersection of the west line of 4th Avenue and the south line of 4th Street, a street in the City of Kearney, Buffalo County, Nebraska; thence northerly

on the west line of said 4th Avenue (if extended southerly) a distance of 60.0 feet to the southeast corner of Cash-Wa Addition, an addition to the City of Kearney, Buffalo County, Nebraska; thence continuing northerly on the west line of said 4th Avenue and on the east line of said Cash-Wa Addition a distance of 926.01 feet to the northeast corner of said Cash-Wa Addition; thence westerly and continuing on the west line of said 4th Avenue a distance of 20.0 feet to the southeast corner of Marshall Addition, an addition to the City of Kearney, Buffalo County, Nebraska; thence northerly continuing on the west line of said 4th Avenue and on the east line of said Marshall Addition a distance of 322.05 feet to the northeast corner of said Marshall Addition, said point being on the south line of 8th Street, a street in the City of Kearney, Buffalo County, Nebraska; thence continuing northerly on the west line of said 4th Avenue and on the east line of said Marshall Addition (if extended northerly) a distance of 60.0 feet to the point of intersection of the north line of said 8th Street and the west line of said 4th Avenue; thence continuing northerly on the west line of said 4th Avenue a distance of 11.17 feet, more or less, to a point on the north line of said 8th Street (if extended westerly); thence easterly on the north line of said 8th Street (if extended westerly) a distance of 80.0 feet to a point on the east line of said 4th Avenue, said point also being on the west line of Richards Subdivision, a subdivision to the City of Kearney, Buffalo County, Nebraska; thence southerly on the east line of said 4th Avenue and the west line of said Richards Subdivision a distance of 80.0 feet to a point on the south line of said 8th Street; thence continuing southerly on the east line of said 4th Avenue and the west line of said Richards Subdivision a distance of 102.08 feet to the southwest corner of said Richards Subdivision said point also being the northwest corner of Clabaugh's Subdivision to the City of Kearney, Buffalo County, Nebraska; thence continuing southerly on the east line of said 4th Avenue and on the West line of said Clabaugh's Subdivision and on the West line of Clabaugh's 2nd Subdivision to the City of Kearney, Buffalo County, Nebraska (if extended southerly) a distance of 1142 feet, more or less, to a point on the North line of said 4th Street; thence continuing southerly on the east line of said 4th Avenue (if extended southerly) a distance of 60.0 feet to a point on the south line of said 4th Street; thence westerly on the south line of said 4th Street a distance of 60.0 feet to the place of beginning, the aforescribed tracts containing a total of 38.51 acres, more or less, all in Buffalo County, Nebraska and to consider approval of Resolution No. 2008-132. Planning Commission recommended approval of the project.

In 2006, the City Council approved a Blight Study and Redevelopment Plan for Redevelopment Area #8 in southwest Kearney as presented by the Kearney Area Redevelopment Authority (CRA). This approval allows the use of Tax Increment Financing (TIF) to pay for public improvements in the area and to encourage economic growth. Potential projects seeking CRA assistance must apply on a case by case basis. In 2007 the City Council approved CRA funding for a multi-plex theater known as Kearney Cinema 8 which has subsequently been constructed. At that time, Cash-Wa was also considering expansion of its physical plant. Staff and the CRA officials expressed some concerns regarding traffic accessibility and traffic flow in this area if it were to develop with a heavy traffic generators such as a theater complex and an expanded truck terminal. The City and the CRA formulated a plan to conduct a traffic study of the area and fund the necessary road improvements. As the Cash-Wa expansion moves forward, some of those funding dollars for public improvements are being requested of the CRA at this time.

State law requires that the Planning Commission and City Council review the proposed project for compatibility with land uses and compliance with zoning that has been established for this site and surrounding land area by previously adopted plans including the City of Kearney Comprehensive Development Plan, the Unified Land Development Ordinance, and the Redevelopment Plan for Area #8 prepared for the CRA. Staff has reviewed the proposed expansion plans for the Cash-Wa site. The plans are deemed to be in conformance with the aforementioned planning documents. This process allows the City, developers and other partners to promote and finance growth through multiple funding mechanisms.

Staff and the Planning Commission recommend the City Council approve the project plans for the Cash-Wa expansion to allow the CRA to provide funding assistance for public improvements that will benefit the project, the public, and development potential for the surrounding land.

Jon Abegglen, Chairman of the Community Redevelopment Authority, presented this matter to the Council. The estimated TIF is projected to be a \$1,350,000.00 and would be payable to the property owner or rebated back to the property owner over a 14-year period. The total eligible cost for this project is estimated to be \$1,661,000.00. The Council had been provided with the cost basis analysis. The CRA approved this request on July 3, 2008 and the Planning Commission approved it on July 18, 2008. The majority of these costs that the Tax Increment Financing will pay for is infrastructure cost for paving that abuts the adjacent property owners. The balance will go to the campus project for Redevelopment Area 8 for the expansion of Cash-Wa Distributing for an area located at 401 West 4th Street.

There was no one present in opposition to this hearing.

Moved by Buschkoetter seconded by Clouse to close the hearing and approve the redevelopment project for Redevelopment Area #8 for an area described as follows: Lot 2, Cash-Wa Addition, an addition to the City of Kearney, Buffalo County, Nebraska; TOGETHER WITH 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 S 89°55'15" W and all bearings contained herein are relative thereto; thence S 89°55'15" W and on the north line of said Government Lot 3 a 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 S 89°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 S 0°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 S 41°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 N 48°22'24" E and on the existing centerline of the North Channel of the Platte River a distance of 22.40 feet; thence S 75°37'17" E and continuing on the aforesaid centerline a distance of 92.16 feet; thence S 33°54'09" E and continuing on the aforesaid centerline a distance of 160.70 feet; thence S 55°33'45" E and continuing on the

aforesaid centerline a distance of 146.67 feet; thence S 39°43'31" E and continuing on the aforesaid centerline a distance of 104.49 feet; thence S 04°32'40" E and continuing on the aforesaid centerline a distance of 164.01 feet; thence S 44°29'09" E and continuing on the aforesaid centerline a distance of 48.91 feet; thence N 75°35'06" E and continuing on the aforesaid centerline a distance of 45.45 feet; thence N 38°48'43" E and continuing on the aforesaid centerline a distance of 138.53 feet; thence N 43°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 N 46°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 N 00°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 S 89°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 said 6th Avenue; thence N 00°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) N 89°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 N 00°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 S 68°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 line 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, N 00°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 Lot 3 and the east right-of-way line of said 6th Avenue a distance of 288.22 feet to the place of beginning, Buffalo County, Nebraska; AND TOGETHER WITH all that part of 4th Avenue, an avenue in the City of Kearney, Buffalo County, Nebraska, located north of the south line of 4th Street, a street in the City of Kearney, Buffalo County, Nebraska and south of the north line of 8th Street, a street in the City of Kearney, Buffalo County, Nebraska, with said part of 4th Avenue being located in part of Government Lot 4 and part of the Northeast Quarter of the Northeast Quarter of Section 11, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Beginning at the point of intersection of the west line of 4th Avenue and the south line of 4th Street, a street in the City of Kearney, Buffalo County, Nebraska; thence northerly on the west line of said 4th Avenue (if extended southerly) a distance of 60.0 feet to the southeast corner of Cash-Wa Addition, an addition to the City of Kearney, Buffalo County, Nebraska; thence continuing northerly on the west line of said

4th Avenue and on the east line of said Cash-Wa Addition a distance of 926.01 feet to the northeast corner of said Cash-Wa Addition; thence westerly and continuing on the west line of said 4th Avenue a distance of 20.0 feet to the southeast corner of Marshall Addition, an addition to the City of Kearney, Buffalo County, Nebraska; thence northerly continuing on the west line of said 4th Avenue and on the east line of said Marshall Addition a distance of 322.05 feet to the northeast corner of said Marshall Addition, said point being on the south line of 8th Street, a street in the City of Kearney, Buffalo County, Nebraska; thence continuing northerly on the west line of said 4th Avenue and on the east line of said Marshall Addition (if extended northerly) a distance of 60.0 feet to the point of intersection of the north line of said 8th Street and the west line of said 4th Avenue; thence continuing northerly on the west line of said 4th Avenue a distance of 11.17 feet, more or less, to a point on the north line of said 8th Street (if extended westerly); thence easterly on the north line of said 8th Street (if extended westerly) a distance of 80.0 feet to a point on the east line of said 4th Avenue, said point also being on the west line of Richards Subdivision, a subdivision to the City of Kearney, Buffalo County, Nebraska; thence southerly on the east line of said 4th Avenue and the west line of said Richards Subdivision a distance of 80.0 feet to a point on the south line of said 8th Street; thence continuing southerly on the east line of said 4th Avenue and the west line of said Richards Subdivision a distance of 102.08 feet to the southwest corner of said Richards Subdivision said point also being the northwest corner of Clabaugh's Subdivision to the City of Kearney, Buffalo County, Nebraska; thence continuing southerly on the east line of said 4th Avenue and on the West line of said Clabaugh's Subdivision and on the West line of Clabaugh's 2nd Subdivision to the City of Kearney, Buffalo County, Nebraska (if extended southerly) a distance of 1142 feet, more or less, to a point on the North line of said 4th Street; thence continuing southerly on the east line of said 4th Avenue (if extended southerly) a distance of 60.0 feet to a point on the south line of said 4th Street; thence westerly on the south line of said 4th Street a distance of 60.0 feet to the place of beginning, the aforescribed tracts containing a total of 38.51 acres, more or less, all in Buffalo County, Nebraska and approve **Resolution No. 2008-132**. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried.

RESOLUTION NO. 2008-132

WHEREAS, the City of Kearney, Nebraska, a municipal corporation and city of the first class, has determined it be desirable to undertake and carry out urban redevelopment projects in areas of the City which are determined to be substandard and blighted and in need of redevelopment; and

WHEREAS, the Nebraska Community Development Law, Chapter 18, Article 21, Nebraska Reissue Revised Statutes of 1991, as amended (the "Act"), prescribes the requirements and procedures for the planning and implementation of redevelopment projects; and

WHEREAS, the City has previously declared an area of the City to be substandard and blighted and in need of redevelopment pursuant to the Act; and

WHEREAS, the Community Redevelopment Authority of the City of Kearney, Nebraska (the "Authority"), has prepared a Redevelopment Plan No. 8 pursuant to Section 18-2111 of the Act ("Redevelopment Plan"), and recommended the Redevelopment Plan to the Planning Commission of the City; and

WHEREAS, the Planning Commission of the City reviewed the Redevelopment Plan pursuant to the Act and submitted its recommendations, if any, to the City,

pursuant to Section 18-2114 of the Act; and

WHEREAS, following consideration of the recommendations of the Authority to the Planning Commission, the recommendations of the Planning Commission to the City, if any, and following the public hearing with respect to the Redevelopment Plan, this City approved the Plan; and

WHEREAS, there has been presented to the City by the Authority for approval pursuant to and in accordance with Section 18-2119 of the Act a specific Redevelopment Project within the Redevelopment Plan and as authorized in the Redevelopment Plan, as legally described as Lot 2, Cash-Wa Addition, an addition to the City of Kearney, Buffalo County, Nebraska; TOGETHER WITH 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 S 89°55'15" W and all bearings contained herein are relative thereto; thence S 89°55'15" W and on the north line of said Government Lot 3 a 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 S 89°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 S 01°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 S 41°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 N 48°22'24" E and on the existing centerline of the North Channel of the Platte River a distance of 22.40 feet; thence S 75°37'17" E and continuing on the aforesaid centerline a distance of 92.16 feet; thence S 33°54'09" E and continuing on the aforesaid centerline a distance of 160.70 feet; thence S 55°33'45" E and continuing on the aforesaid centerline a distance of 146.67 feet; thence S 39°43'31" E and continuing on the aforesaid centerline a distance of 104.49 feet; thence S 04°32'40" E and continuing on the aforesaid centerline a distance of 164.01 feet; thence S 44°29'09" E and continuing on the aforesaid centerline a distance of 48.91 feet; thence N 75°35'06" E and continuing on the aforesaid centerline a distance of 45.45 feet; thence N 38°48'43" E and continuing on the aforesaid centerline a distance of 138.53 feet; thence N 43°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 N 46°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 N 00°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 S 89°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 said 6th Avenue; thence N 00°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) N 89°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 N 00°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 S 68°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 line 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, N 00°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 Lot 3 and the east right-of-way line of said 6th Avenue a distance of 288.22 feet to the place of beginning, Buffalo County, Nebraska; AND TOGETHER WITH all that part of 4th Avenue, an avenue in the City of Kearney, Buffalo County, Nebraska, located north of the south line of 4th Street, a street in the City of Kearney, Buffalo County, Nebraska and south of the north line of 8th Street, a street in the City of Kearney, Buffalo County, Nebraska, with said part of 4th Avenue being located in part of Government Lot 4 and part of the Northeast Quarter of the Northeast Quarter of Section 11, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Beginning at the point of intersection of the west line of 4th Avenue and the south line of 4th Street, a street in the City of Kearney, Buffalo County, Nebraska; thence northerly on the west line of said 4th Avenue (if extended southerly) a distance of 60.0 feet to the southeast corner of Cash-Wa Addition, an addition to the City of Kearney, Buffalo County, Nebraska; thence continuing northerly on the west line of said 4th Avenue and on the east line of said Cash-Wa Addition a distance of 926.01 feet to the northeast corner of said Cash-Wa Addition; thence westerly and continuing on the west line of said 4th Avenue a distance of 20.0 feet to the southeast corner of Marshall Addition, an addition to the City of Kearney, Buffalo County, Nebraska; thence northerly continuing on the west line of said 4th Avenue and on the east line of said Marshall Addition a distance of 322.05 feet to the northeast corner of said Marshall Addition, said point being on the south line of 8th Street, a street in the City of Kearney, Buffalo County, Nebraska; thence continuing northerly on the west line of said 4th Avenue and on the east line of said Marshall Addition (if extended northerly) a distance of 60.0 feet to the point of intersection of the north line of said 8th Street and the west line of said 4th Avenue; thence continuing northerly on the west line of said 4th Avenue a distance of 11.17 feet, more or less, to a point on the north line of said 8th Street (if extended westerly); thence easterly on the north line of said 8th Street (if extended westerly) a distance of 80.0 feet to a point on the east line of said 4th Avenue, said point also being on the west line of Richards Subdivision, a subdivision to the City of Kearney, Buffalo County, Nebraska; thence southerly on the east line of said 4th Avenue and the west line of said Richards Subdivision a distance of 80.0 feet to a point on the south line of said 8th Street; thence continuing southerly on the east line of said 4th Avenue and the west line of said Richards Subdivision a distance of 102.08 feet to the southwest corner of said Richards Subdivision said point also being the northwest corner of Clabaugh's Subdivision to the City of Kearney, Buffalo County, Nebraska; thence continuing

southerly on the east line of said 4th Avenue and on the West line of said Clabaugh's Subdivision and on the West line of Clabaugh's 2nd Subdivision to the City of Kearney, Buffalo County, Nebraska (if extended southerly) a distance of 1142 feet, more or less, to a point on the North line of said 4th Street; thence continuing southerly on the east line of said 4th Avenue (if extended southerly) a distance of 60.0 feet to a point on the south line of said 4th Street; thence westerly on the south line of said 4th Street a distance of 60.0 feet to the place of beginning, the aforescribed tracts containing a total of 38.51 acres, more or less, all in Buffalo County, Nebraska (401 West 4th Street); and

WHEREAS, the City Council has determined that the proposed Redevelopment Project would not be economically feasible without the use of tax increment financing; that the proposed Redevelopment Project would not occur in the community without the use of tax increment financing, and; that the costs and benefits of the proposed Redevelopment Project have been found to be in the long-term best interests of the community.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska that:

1. The Redevelopment Plan of the City previously approved for the area described on the attached Exhibit "A", including the Redevelopment Project legally described as Lot 2, Cash-Wa Addition, an addition to the City of Kearney, Buffalo County, Nebraska; TOGETHER WITH 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 S 89°55'15" W and all bearings contained herein are relative thereto; thence S 89°55'15" W and on the north line of said Government Lot 3 a 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 S 89°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 S 01°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 S 41°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 N 48°22'24" E and on the existing centerline of the North Channel of the Platte River a distance of 22.40 feet; thence S 75°37'17" E and continuing on the aforesaid centerline a distance of 92.16 feet; thence S 33°54'09" E and continuing on the aforesaid centerline a distance of 160.70 feet; thence S 55°33'45" E and continuing on the aforesaid centerline a distance of 146.67 feet; thence S 39°43'31" E and continuing on the aforesaid centerline a distance of 104.49 feet; thence S 04°32'40" E and continuing on the aforesaid centerline a distance of 164.01 feet; thence S 44°29'09" E and continuing on the aforesaid centerline a distance of 48.91 feet; thence N 75°35'06" E and continuing on the aforesaid centerline a distance of 45.45 feet; thence N 38°48'43" E and continuing on the aforesaid centerline a distance of 138.53 feet; thence N 43°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 N 46°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 N 00°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 S 89°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 said 6th Avenue; thence N 00°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) N 89°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 N 00°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 S 68°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 line 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, N 00°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 Lot 3 and the east right-of-way line of said 6th Avenue a distance of 288.22 feet to the place of beginning, Buffalo County, Nebraska; AND TOGETHER WITH all that part of 4th Avenue, an avenue in the City of Kearney, Buffalo County, Nebraska, located north of the south line of 4th Street, a street in the City of Kearney, Buffalo County, Nebraska and south of the north line of 8th Street, a street in the City of Kearney, Buffalo County, Nebraska, with said part of 4th Avenue being located in part of Government Lot 4 and part of the Northeast Quarter of the Northeast Quarter of Section 11, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Beginning at the point of intersection of the west line of 4th Avenue and the south line of 4th Street, a street in the City of Kearney, Buffalo County, Nebraska; thence northerly on the west line of said 4th Avenue (if extended southerly) a distance of 60.0 feet to the southeast corner of Cash-Wa Addition, an addition to the City of Kearney, Buffalo County, Nebraska; thence continuing northerly on the west line of said 4th Avenue and on the east line of said Cash-Wa Addition a distance of 926.01 feet to the northeast corner of said Cash-Wa Addition; thence westerly and continuing on the west line of said 4th Avenue a distance of 20.0 feet to the southeast corner of Marshall Addition, an addition to the City of Kearney, Buffalo County, Nebraska; thence northerly continuing on the west line of said 4th Avenue and on the east line of said Marshall Addition a distance of 322.05 feet to the northeast corner of said Marshall Addition, said point being on the south line of 8th Street, a street in the City of Kearney, Buffalo County, Nebraska; thence continuing northerly on the west line of said 4th Avenue and on the east line of said Marshall Addition (if extended northerly) a distance of 60.0 feet to the point of intersection of the north line of said 8th Street and the west line of said 4th Avenue; thence continuing northerly on the west line of said 4th Avenue a distance

of 11.17 feet, more or less, to a point on the north line of said 8th Street (if extended westerly); thence easterly on the north line of said 8th Street (if extended westerly) a distance of 80.0 feet to a point on the east line of said 4th Avenue, said point also being on the west line of Richards Subdivision, a subdivision to the City of Kearney, Buffalo County, Nebraska; thence southerly on the east line of said 4th Avenue and the west line of said Richards Subdivision a distance of 80.0 feet to a point on the south line of said 8th Street; thence continuing southerly on the east line of said 4th Avenue and the west line of said Richards Subdivision a distance of 102.08 feet to the southwest corner of said Richards Subdivision said point also being the northwest corner of Clabaugh's Subdivision to the City of Kearney, Buffalo County, Nebraska; thence continuing southerly on the east line of said 4th Avenue and on the West line of said Clabaugh's Subdivision and on the West line of Clabaugh's 2nd Subdivision to the City of Kearney, Buffalo County, Nebraska (if extended southerly) a distance of 1142 feet, more or less, to a point on the North line of said 4th Street; thence continuing southerly on the east line of said 4th Avenue (if extended southerly) a distance of 60.0 feet to a point on the south line of said 4th Street; thence westerly on the south line of said 4th Street a distance of 60.0 feet to the place of beginning, the aforescribed tracts containing a total of 38.51 acres, more or less, all in Buffalo County, Nebraska (401 West 4th Street), is hereby determined to be feasible and in conformity with the general plan for the development of the City of Kearney as a whole and the Redevelopment Plan, including the Redevelopment Project identified on the attached Exhibit "A", is in conformity with the legislative declarations and determinations set forth in the Act;

2. The City Council hereby determines that the proposed Redevelopment Project would not be economically feasible without the use of tax increment financing; that the proposed Redevelopment Project would not occur in the community without the use of tax increment financing, and; that the costs and benefits of the proposed Redevelopment Project are found to be in the long-term interests of the community.

3. Approval of the Redevelopment Plan is hereby ratified and reaffirmed, as amended by this Resolution, and the Authority is hereby directed to implement the Redevelopment Plan in accordance with the Act,

4. Pursuant to Section 18-2147 of the Act, ad valorem taxes levied upon real property in a redevelopment project for the benefit of any public body, included or authorized in the Plan which is legally described as Lot 2, Cash-Wa Addition, an addition to the City of Kearney, Buffalo County, Nebraska; TOGETHER WITH 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 S 89°55'15" W and all bearings contained herein are relative thereto; thence S 89°55'15" W and on the north line of said Government Lot 3 a 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 S 89°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 S 01°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 S 41°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 N 48°22'24" E and on the existing centerline of the North Channel of the Platte River a distance of 22.40 feet;

thence S 75°37'17" E and continuing on the aforesaid centerline a distance of 92.16 feet; thence S 33°54'09" E and continuing on the aforesaid centerline a distance of 160.70 feet; thence S 55°33'45" E and continuing on the aforesaid centerline a distance of 146.67 feet; thence S 39°43'31" E and continuing on the aforesaid centerline a distance of 104.49 feet; thence S 04°32'40" E and continuing on the aforesaid centerline a distance of 164.01 feet; thence S 44°29'09" E and continuing on the aforesaid centerline a distance of 48.91 feet; thence N 75°35'06" E and continuing on the aforesaid centerline a distance of 45.45 feet; thence N 38°48'43" E and continuing on the aforesaid centerline a distance of 138.53 feet; thence N 43°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 N 46°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 N 00°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 S 89°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 said 6th Avenue; thence N 00°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) N 89°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 N 00°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 S 68°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 line 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, N 00°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 Lot 3 and the east right-of-way line of said 6th Avenue a distance of 288.22 feet to the place of beginning, Buffalo County, Nebraska; AND TOGETHER WITH all that part of 4th Avenue, an avenue in the City of Kearney, Buffalo County, Nebraska, located north of the south line of 4th Street, a street in the City of Kearney, Buffalo County, Nebraska and south of the north line of 8th Street, a street in the City of Kearney, Buffalo County, Nebraska, with said part of 4th Avenue being located in part of Government Lot 4 and part of the Northeast Quarter of the Northeast Quarter of Section 11, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Beginning at the point of intersection of the west line of 4th Avenue and the south line of 4th Street, a street in the City of Kearney, Buffalo County, Nebraska; thence northerly

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a. That proportion of the ad valorem tax which is produced by the levy at the rate fixed each year by or for each public body upon the redevelopment project valuation (as defined in the Act) shall be paid into the funds of each such public body in the same proportion as are all other taxes collected by or for the body; and

b. That proportion of the ad valorem tax on real property in the redevelopment project in excess of such amount, if any, shall be allocated to and, when collected, paid into a special fund of the Authority to be used solely to pay the principal of, the interest on, and any premiums due in connection with the bonds, loans, notes or advances of money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such Authority for financing or refinancing, in whole or in part, the redevelopment project. When such bonds, loans, notes, advances of money, or indebtedness, including interest and premiums due, have been paid, the Authority shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon taxable real property in such a redevelopment project shall be paid into the funds of the respective public bodies.

c. Any interest and penalties due for delinquent taxes shall be paid into

the funds of each public body in the same proportion as are all other taxes collected by or for the public body.

5. The Mayor and City Clerk are authorized and directed to execute and file with the Treasurer and Assessor of Buffalo County, Nebraska, an Allocation Agreement and Notice of Pledge of Taxes with respect to the Redevelopment Project substantially in the form attached hereto as Exhibit "B" with appropriate insertions.

PASSED AND APPROVED THIS 12TH DAY OF AUGUST, 2008.

ATTEST:
CATHY M. VOGT
ACTING CITY CLERK

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

AMENDMENTS TO CHAPTER 50 OF CITY CODE

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 delete the definition of Computerized Message Posting Sign; to delete the sentence "Signs whose information is limited to time and temperature are not considered electronic information signs" from subparagraph O "Electronic Information Signs"; to delete the sentence "This definition specifically excludes electronic information signs" from subparagraph R "Flashing Sign"; to amend Section 50-103 "General Sign and Street Graphics Regulations" to delete subparagraph 3 pertaining to banners, balloons and posters; to require illumination levels controlling brightness and minimum required hold time for electronic information signs shall comply with Section 50-104 of Chapter 50; to allow political campaign signs to be placed no sooner than 45 days prior to an election; to provide requirements for inflatable balloons, posters, pennants, ribbons, streamers, spinners; to amend Section 50-104 "General Regulations; Basic Design Elements for Signs" to delete the requirement that no electronic information sign shall be located within 500 feet of another electronic information line, measured from the points of the 2 signs nearest each other; to provide no more than one electronic information sign is permitted per property; to provide requirements regarding programming and illumination of electronic information signs; and to provide electronic information signs shall be deducted from the total sign budget allowed for the premises. Planning Commission recommended approval.

City Planner Lance Lang presented this matter to the Council. A summary of the proposals for electronic signs are: the hold time for the message be a minimum of two seconds, full stream animated video is allowable, all electronic signs must be equipped with a dimming device so that the light level at night can be controlled and there is no longer any size restriction of 80 feet or less. The other item of interest involves pennants, banners, streamers, flags, balloons and those types of advertising devices which have not been allowed under the current code and for which enforcement has sometimes been difficult. The proposal from staff and Planning Commission was to allow those for a period of two 30 consecutive days per year. This is taking into consideration the need for grand opening events or an annual sale. This would regulate those as temporary signs instead of outlawing them altogether or allowing them continuously all year. There has been a history of letters sent out asking that those banners be removed with varying degrees of success. There also is the complicating factor of other fund raising events; such as, the Duck Race with the big rubber duck on display which is out of the norm. It is difficult to say that they cannot do that. By making

the Code more lenient and allowing them for a limited time (twice a year), it will provide some flexibility and an enforcement tool by allowing a permit to be obtained which can be tracked by date.

Council member Lammers asked if balloons would be permitted on their lots as long as they are not in the public right-of-way. Mr. Lang stated that in general they do not want to see any signage whether temporary or permanent on the power poles or placed in the public right-of-way. Those need to be placed behind their property line. However, those banners, etc. would only be allowed twice a year by permit on their property, but at no time would they legally be allowed in the public right-of-way.

Council member Lear stated that under Section F-2D, Attached Temporary Commercial Lines, Item F-1 says no permit or permit fee is required. He asked if this is a permit driven process with a fee being charged for the two permits. Mr. Lang stated the intention of the permit is so they can track the dates to be displayed. The number of days can be adjusted according to the conditions set by Council.

Council member Lear stated there was some conflict in the sections of this Code regarding whether there is a fee for the permit or not. Mr. Lang stated that he did not believe that the Planning Commission intentionally wanted the fee charged for the permit. He believed this section was overlooked by Planning Commission at their meeting. The ordinance could be amended with a motion to reflect there is no fee to be charged. City Manager Michael Morgan stated this is not just for car lots but for every business in town. If Council agrees on the permit, it could certainly be done without a fee.

City Manager stated the other requirement in the Ordinance that was not mentioned was the political sign requirement. There are a specific number of days (45 days prior and 10 days after an election) to allow them to exist. Previously, there was no provision for placement prior to an election, only the provision the signs be removed ten days after an election. Mr. Lang stated according to their research, it is a common practice to have a date to allow those signs to be put out and a date to pick them up. This is a housekeeping issue.

Mayor Clouse stated the present ordinance on the books is an old ordinance. Based on staff's recommendation and Planning Commission's review, this would allow the City to be more flexible with those time lines and permits.

Kelvin Shearer, 1711 East 45th Street, stated he is the manager at Midway Chrysler, Dodge, Jeep and Midway Buick, Cadillac. He was representing a number of new and used vehicle lots in Kearney. He introduced those he represented; Bill Shada (Midway Buick, Cadillac), Tim Felker (Midway Chrysler, Dodge, Jeep), Rubin Rivera (Sierra Auto Sales), Jeff Seiler (Crossroads Ford), Molly Waller (Molly's Motor Works), Con Nerverve (Conrad's Auto Center), and Lonnie Jacobs (Bridgestreet Auto).

Mr. Shearer stated they object to the balloon and banner regulations. They just recently received the letter regarding this from Max Richardson (Development Services) which caught them by surprise. At that time, the dealers called each other and took their banners/balloons down in order to be in compliance. He later found out they were going to have this hearing. He pointed out that the auto dealers in town contribute a lot to the

City of Kearney, not only in the revenue and taxes they bring in but also in the contributions they make to various community organizations. They believe that this restriction of the balloon and banner advertising is very detrimental to their business. The car business is presently very bad and they are all struggling to survive. They need to do anything they can to attract attention to their lots and to bring people in and sell automobiles which is beneficial for the City of Kearney and the dealers. There have been banners, streamers and balloons on their cars for years.

Mr. Shearer stated he just received information from GM about new certified banners that hang on the antennas of the vehicles. If this ordinance is approved, they would not be able to use those to let people know what they offer that type of deal. His business does put balloons on the cars, but take them down at nights. Their request is to ultimately have the requirements taken out completely. The only way they would have a 60-day period for displaying signs is for a going out of business sale. That is how critical they feel this is to their business. After discussion with his group that were present, they came up with what they believe is a good compromise. They would be willing to pay a permit fee of \$25-\$30 per year to be able to display the streamers, banners, balloons which would be renewable every December. That way the City would know who has the permits and could police them.

Tim Felker, 1322 10th Avenue, stated he is the general sales manager at Midway, Chrysler, Dodge, Jeep. He also works with Mr. Shearer. You could drive through any state and see a display of the kinds of graphics they are talking about. It is a day in and day out way of business, particularly in the car business. It would be very detrimental to them not to have that, especially given the current state of the car business. His business is a franchise dealer and they have advertising themes that change monthly. This is a very cost effective way for them to use the materials that are provided by manufactures to display on their own property so that the public can see that information. If this has been on the books as long as it has, he was not sure why all of a sudden it was decided that it is now going to be enforced. He asked the Council to strongly consider letting these businesses do these displays in a professional manner with the understanding there need to be regulations.

City Manager Michael Morgan stated what consistently occurs if there is a particular business in town that has violations, that business is dealt with. In turn that business usually responds with other locations you need to look at. What they are referring to is an ordinance that applies to everybody, but does not mean that every business was in violation. From a perspective of requiring a fee, it would not be worth collecting a fee and would be too subjective to enforce. The City does not want to get into deciding what a deteriorating sign is. He believed that the businesses will manage it themselves. If the Council is going to allow it, staff would suggest that the City does not require a fee.

The other compromise that might be reached is within the car lots themselves; there could be some clarification for those types of businesses within their own lot. One of the concerns is a sign along the right-of-way with streamer and banners hanging from it. Although they have a sign permit that would clearly be a violation. Perhaps a compromise on that issue could be determined. The Planning Commission brought this forward and if the Council is not comfortable with regulating it and want to make significant adjustments, it might be good to send it back to them for their perspective.

Mayor Clouse stated that he was not comfortable with the way it is stated. He wanted to make sure the digital sign issue has been resolved before they continue because this is a complex ordinance. City Manager stated that the car business is unique for the points they have expressed, but all the other businesses in town would argue they are unique as well. He did not believe that it could be allowable for one type of business and not another. The large car lots do have the capability to do these things within their own lot, but perhaps it would not be feasible for other businesses to do these types of events. He did not believe that the banners hanging on a vehicle are not really the issue. They are more concerned about signs due to their size and their length and the large balloons.

Council member Buschkoetter agreed there is no sense in having an ordinance if we are not going to enforce it and it should be removed. City Manager stated he did not think that these car dealers had the opportunity to speak in front of the Planning Commission so that would be helpful to send it back and let them see if they can find a solution that meets the dealers needs.

Council member Buschkoetter suggested passing the ordinance as it is now and that would allow 60 days in order to look at this further. City Manager stated that this would allow time to go back to the Planning Commission to see if something could be drafted to meet their needs. He suggested passing the ordinance as is and to direct staff to understand this unique set of circumstances. By doing this, it would allow all of them an additional 60 days because it will take some time to get through Planning Commission and make sure everyone is heard. By doing this, it would also essentially tell staff that all of these businesses are granted a permit and they would not be in violation for 120 days and time to resolve these issues.

Mr. Shearer stated they would be in agreement with the 120 days and would be more than willing to talk to the Planning Commission to hammer out a solution.

Greg Barney, Barney Building and Land Company, stated he thought that it would be appropriate for the City to charge some type of fee for the display of graphics. The issuing of permits would require some type of clerical cost with regard to City staff.

Moved by Clouse seconded by Lammers 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 delete the definition of Computerized Message Posting Sign; to delete the sentence "Signs whose information is limited to time and temperature are not considered electronic information signs" from subparagraph O "Electronic Information Signs"; to delete the sentence "This definition specifically excludes electronic information signs" from subparagraph R "Flashing Sign"; to amend Section 50-103 "General Sign and Street Graphics Regulations" to delete subparagraph 3 pertaining to banners, balloons and posters; to require illumination levels controlling brightness and minimum required hold time for electronic information signs shall comply with Section 50-104 of Chapter 50; to allow political campaign signs to be placed no sooner than 45 days prior to an election; to provide requirements for inflatable balloons, posters, pennants, ribbons, streamers, spinners; to amend Section 50-104 "General Regulations; Basic Design Elements for Signs" to delete the requirement that no electronic information sign shall be located within 500 feet of another electronic information line, measured from the points of the 2 signs nearest

each other; to provide no more than one electronic information sign is permitted per property; to provide requirements regarding programming and illumination of electronic information signs; and to provide electronic information signs shall be deducted from the total sign budget allowed for the premises subject to staff review Section 50-103 F2 with regard to the inflatable balloons, posters, pennants, ribbons, streamers, spinners to allow the citizens and Planning Commission to come up with a compromise. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Buschkoetter. Abstain: Kearney Nay: None. Motion carried.

LIQUOR LICENSE – BILL'S LIQUOR WEST

Mayor Clouse opened the public hearing on the Application for a Class D (Beer, Wine and Distilled Spirits – Off Sale Only) liquor license submitted by BECKER ENTERPRISES, INC., dba "Bill's Liquor West" located at 1214 West 24th Street, consider the manager application for Charles Becker, and to consider approval of Resolution No. 2008-133.

Mayor Clouse stated that he had contacted Mr. Hobert Rupe from the Nebraska Liquor Control Commission and asked him if what they would be looking at and what the Council would be looking at were very similar as far as concerns to both parties. Mr. Rupe indicated that one of the things the Liquor Commission would be looking at was if this ownership has very clear and defined changes in ownership so that there is a distinction between who owns this facility and this business. The Liquor Commission would have some issues with anything short of complete and clean cut delineation. The second piece had to do with the manager. The question is even though Charles Becker is the new owner, how is business going to be conducted differently now as an owner, as opposed to how it was handled when he was a manager of that facility. Those are the things for the Council to keep in mind as these presentations are made.

Kent Schroeder stated his law firm is representing Charles W. Becker and Becker Enterprises, Inc. Becker Enterprises has one stockholder, one officer and one director. In an attempt to build a greater firewall between the seller of the current businesses and the purchaser of the current businesses, they have abandoned any lease agreement between Gerald Becker's legal entity (JCB), as well as Charles Becker's legal entity (Becker Enterprises, Inc.). He provided a number of documents for the Council to examine: (1) Two real estate purchase agreements for Bill's Liquor with a purchase price of \$150,000 and one for Bill's Liquor West building with a purchase price of \$195,000. (2) Contracts between the two entities with respect to the purchase of the fixtures, as well as the inventory of \$20,000 plus an inventory to be taken at the time of the closing for Bill's Liquor and an additional \$10,000 for Bill's Liquor West. There is no value attached to the inventory because it is totally contingent on the outcome of the Nebraska Liquor Control Commission decision. (3) An addendum to the Certificate of Authority with respect to Becker Enterprises. At one time, Carol and Gerald Becker had signatory authority of that account which is no longer valid. The only signatory authority on this account currently is Charles W. Becker.

Mr. Schroeder stated there have been a number of persons interested in this particular agenda item. Gerald Becker had people sign a petition with respect to these two applications and he collected well over 1,000 signatures. The interesting thing about the support from the parties who signed this petition is that many are not customers of Bill's

Liquor or Bill's Liquor West. They are people who believed that when they took a look at the history of this issue, there was some injustice and would like to see that righted in this particular instance.

The history of the relationship between Gerald Becker and law enforcement in Kearney and Buffalo County was indeed a good one and they had few problems. Between 1995 and 2005 at Bill's Liquor West, there were 79 citations or police reports authored by the Kearney Police Department and other law enforcement agencies that resulted from telephone calls from their personnel and employees, as well as Charles Becker reporting those persons who were attempting to purchase alcohol without valid identification.

With regard to how this management is going to be different, there are a substantial number of things that can be done differently, but there is not a lot that can be different. Given the current state of technology, Charles Becker has placed an order for sophisticated screening devices, but has not confirmed that order until his liquor licenses are actually issued. Mr. Becker stated that all the past employees received TIPS Training (Training for Intervention Procedures). They have all passed and have received their certification.

Charles Becker, the applicant for Bill's Liquor and Bill's Liquor West, stated that he is installing the TIPS program which is recognized by the State and City as being a training seminar for employees. His policy is to mandate that before any employee starts work for him, they will have that training. He is trying to get his certification to become a TIPS trainer so the process would even be quicker for the people that he wants to hire. The requirements to become a certified TIPS trainer are to watch multiple scenarios on videos during a four hour seminar while talking with the instructor and at the end there is testing which is sent to another division to be scored. The person who was his trainer was in attendance at this meeting and available for further questions about the program. He also uses a "We Card" program that is related to tobacco use and it covers issues and areas that the liquor part did not. He is mandating all his employees to also be certified in that area. The testing for this is a pass/fail and if they pass there is a certificate that can be printed off for the employee.

Mr. Becker stated that he has purchased two ID scanners for Bill's Liquor and one ID scanner for Bill's Liquor West. These ID scanners are a state of the art technology. He demonstrated the scanner to the Council Members. The scanner reads the hologram image on the back of the driver's license from all 50 states, but also can read the mag strip on the back of credit cards and other types of ID cards. The information displayed will be the age, expiration date, eye color, weight, etc. anything that is on the ID. These will be located next to the registers. Mr. Becker stated that it will be mandatory for each of his employees to check anybody who looks under 40 years old. He stated that the second day they had the ID scanner in place, someone from Texas used a fake ID which showed the purchaser to be 11 years old and they busted a fake ID ring that was going around in Kearney. About three days prior to that time, his staff identified a California ID that was being used in Kearney and they also got that one shut down. That shows that his staff is also on their game catching minors who are trying to buy. Prior to this time, they did not have the scanner and just manually looked at the ID and compared it. Mr. Becker stated there are only three states (that he was aware of) that do not mandate this machine, of which Nebraska is one. The legislation is out there to

mandate this, but somehow it stalled out and got voted down. He believed, as a whole if we got that legislation to go through, it would be a plus for everybody. He has no tolerance for minors buying. His daughter did not drink until she turned 21 and she still does not abuse it and knows how he feels about that.

Also as an incentive to his employees, he has offered a bonus of \$50.00 to any employee who catches a minor, turns them in and a report is made. He believes that will encourage employees to crack down even more. He has expanded his training book over what they had before. It now includes more items from the TIPS program and some information shared with him from other merchants. They still have their surveillance systems in place which will help identify people.

Mr. Becker stated he has also raised wages in hopes of attracting better applicants which he believed has worked. He is still at the hands of his employees to do their job. He does his best to instill in them to do the best job possible. The thing that he has changed the most is doing more hands on with the employees, giving them more information and the addition of the ID scanner.

Mayor Clouse asked if the "We Card" training is done on computer and wanted to know if there were safeguards to make sure they are actually completing the training before testing. Mr. Becker stated the computer training requires that person to enter their personal information. He suggested that in the future, he could require them to do the testing while they are actually in his store as the first process of their training. In addition to the "We Card" training and the TIPS training, he also spends about 4-5 hours with each employee going through procedures and the laws because he wants them to be totally aware of what their responsibilities are.

Mayor Clouse stated he was looking through the Nebraska Liquor Commission training requirements and asked how often Mr. Becker believed the TIPS training should be redone. Mr. Becker responded TIPS training is good for three years and then the employee must recertify every three years. He believes the best training is on-site training because he can teach a person more by working side by side with them, than can be learned from these classes. Mr. Becker stated he has been doing this kind of work for almost 19 years and he has seen a lot. He has been responsible for a lot of people being arrested and he plans to keep that tradition going.

Council member Lammers asked if the purchase price of his Dad's corporation was based on an appraisal from an outside source. Mr. Becker stated the real estate is based on a certain percentage above the assessed value.

Mr. Becker stated that In the past, he would spend a half day with a new employee going over the information, flipping through the "black book" and showing them what to fill out, training on the ID book that shows all the different identifications that can be accepted and what to look for in fake IDs. One of the tips he gives employees is to always compare the ears on the picture ID to the person's ears. Ears are very different from person to person. Eyes and hair color can be changed, but ears and noses for the most part stay the same.

Council member Lear asked that with new technology was some of that picture comparison not quite as applicable except to make sure the face matches the face of

the person trying to purchase. Mr. Becker stated that there is another technology beyond the ID scanner which is called "Bio-Metrics". The first step would be to use the unit he is using to do the ID scan and verify the ID is legitimate. The next step would be to use the "Bio-Metrics" which is a system that puts the ID into an electronic system and at the same time you connect the individuals finger prints (one from each index finger) to match it to that ID. This is being used in schools for lunch lines, log in for computers, salvage yards in some states are mandating them to be used to prevent stolen parts to be turned in for salvage. It is a system that is supposed to be full proof. The ID scanner that he is using is 100 percent guaranteed to tell if the ID is good or expired. If it does not show good or expired then there is a problem with that ID. The process is to take a picture of the ID, have the person sign the black book and then they will ask for a second ID. Most of the time, this process will result in the employee making a phone call to the police.

Mayor Clouse asked if Mr. Becker had met with Lacrica Olson from the Buffalo County Community Partners to discuss the beverage requirement training they have to offer. Mr. Becker stated he actually worked with Amy from their organization before Lacrica.

Council member Buschkoetter asked what the consequences of one of Mr. Becker's employees making a sale to a minor. Mr. Becker stated it would result in termination on the spot which is not a change in his policy. That has always been their policy.

Council member Lear stated some of the key things that he pulled from the statute that might be applicable to a situation like this. He wanted to confirm these things with Mr. Becker. Mr. Lear stated as he understands it, Mr. Becker is the sole officer and director of the corporation and sole stockholder. Mr. Becker confirmed that. Mr. Lear asked if there are any other managers in his corporation that would be ineligible to receive a liquor license. Mr. Becker responded, not at this time, although he is looking to put a full time manager on, but that is at a distance until he can get through this process and find that right person which he believed in the town of Kearney is hard. He did not expect that person to be ineligible to receive a liquor license. Mr. Lear confirmed with Mr. Becker that he will be the sole property owner and not a lease back situation. Mr. Becker confirmed there is no way that he would be sharing any of the profits or liabilities with anyone else or any other business entity and would have no ties to any other business. Council member Lear asked in contemplating this purchase, if there was any value being assigned to the fact that there was an existing liquor license. Mr. Becker stated that was the \$10,000.00 for the fixtures and \$20,000.00 for the value of the business.

Attorney Schroeder stated that he did not read the contract verbatim, but one of the things that Mr. Becker is paying some value for is the trade name (the good will of the business). There is no value to the actual liquor license itself.

Mayor Clouse asked if someone does not have a driver's license for an ID, what other forms of ID can be accepted. Mr. Becker stated that they can accept a military ID, a State issued ID or a passport. There are "alien cards" out there, but he believed they are so "iffy" their policy is to just turn them down. There are three different variations of these alien IDs and recently he saw a new one from the State of Nebraska which looks like a registration card for an alien, but has no merit and could not be accepted. The scanner does all the IDs that are out there. The only thing that it does not do is a

passport. A passport must be recorded in the black book.

Council member Lear asked what else would prompt them to use the black book. Mr. Becker stated if the purchaser has just turned 21, the employee would use the black book. If the ID does not come up with a valid scan, the employee would use the black book. If the staff person believes there is still some question about that ID or the person, they are asked to use the black book. Mr. Becker has instructed his employees, if they have any doubts about a person purchasing, they have the right to refuse the sale. He would rather have them pass up that sale because one sale is not going to make or break a day. He would rather have them be safe than sorry.

Council member Lammers asked if the financing of the purchase is being handled through a purchase back on contract with JCB Enterprises or through a local lender. Attorney Schroeder stated financing has not been addressed yet, but assured the Council that the relationship between Mr. Becker and his parents will not have any personal attachments whatsoever. Mr. Schroeder stated that it will be independent financing, but unknown if it will be by an individual or a financial institution.

Michael Splitter, 311 Pheasant Drive in Grand Island, stated he has been a friend of Charles Becker since they were in kindergarten. He has also worked for JCB Enterprises several times over the years, although not lately. He stated that as a good friend, when Chuck says he is going to do something then he is going to do it. He is by far a man of his word more than anybody that he knows. He urged the Council to believe what Mr. Becker said about making changes and wanting to do the right thing because that is the truth.

Mark Reed, 927 Neighborly Street in Holdrege, stated he has known Charles Becker for 19 years. He has worked for Bill's Liquor and Bill's Liquor West and he also attested to the fact that Charles is a man of his word. He was certain that Charles would do anything to make sure that there will be no sales to minors.

Doug Kramer, 4639 Parklane Drive in Kearney, stated that he was the instructor for the TIPS training class that Mr. Becker attended. Mr. Kramer has taught almost 100 individuals in Buffalo County since November. His training was paid for by the Buffalo County Community to attend a 2-day training seminar in Council Bluffs, Iowa. This was the training for intervention procedures that Mr. Becker had mentioned. It usually takes two days to do the training for on-site and off-site. They are also working through Buffalo County Community Partners, a coalition in Buffalo County that is working with a UNK task force. They are looking at doing some training on the UNK campus and some training is currently taking place. He also wants to work with that coalition to do some additional training. They have trained all of the staff at Thunderhead Brewery, owned by Treavor Shaben, who requires that all of his staff have this training including the cooks, bartenders and servers. They have also trained the staff at Carlos O'Kelly's. Mr. Kramer stated he has been very impressed with all the people who have contacted Lacrica. Amy Koch is the other certified trainer. In order for he and Ms. Koch to stay certified, they must train so many classes and then be recertified. He also stated that he works with the Liquor Commission. On the Liquor Commission website, TIPS is about the sixth one listed they have as a certified program. They also work with the Kearney Police Department that does an outstanding job with their law enforcement officers. Officer Colin Wilke has offered information from the training that he has done

over the years.

Mr. Kramer stated we are living in an age where hopefully all the IDs are updated and there are no more old ones that were so easy to peel back and insert a picture. Youth attempt a lot of different things to get fake IDs. There should be prohibition for people who are 20 and younger. For those 21 and older, in TIPS they look for responsible beverage consumption. One of the things to look for is those people coming into a restaurant or a bar who are already under the influence. It is not responsible to serve them. They must consider behavioral cues and how to do some assessments. With off-sale liquor, the purchaser is in the business for about five minutes at the most which makes it a lot tougher to do an assessment. He encouraged others to contact Ms. Olson at the Buffalo County Community Partners. He encouraged parents to get actively involved in this program to help teach their children that it is illegal and against the law for them to consume alcohol. Most of the youth are not getting their alcohol from bars or off-sale liquor places. Youth are getting this alcohol from friends who may be old enough to purchase or from mom and dad's liquor cabinet.

Michael Adelman, 1417 Avenue F in Kearney, stated that he has been an employee of Bill's Liquor for four years. The training that he received at that time was very thorough and the fear of God was put into him in terms of not selling to minors. He acknowledged that mistakes do happen. One must look at how Mr. Becker has beefed up their arsenal by adding ID scanners, implementing the TIPS program along with the on-site training and the tobacco training program on the internet. He was confident that they have the most rigorous training of any liquor store type establishment in Kearney. He would accept any challenges to that. He has turned in numerous ID's over the years and on occasion, staff has called a police officer if the customer became a problem. He believes they have done a lot of good things to a high degree and that will only get better in the future.

Council member Lear stated he wanted to note that given the nature of this, each Council member needs to state their reasons for their vote.

Mayor Clouse stated that they have clearly laid out some of the question that he had and they have been answered. They need to go forward on good faith that things are going to be followed up and done the way they say they are going to be done. The purchase has not taken place, but Mr. Schroeder has indicated that it would be done in an appropriate manner. The license has to be approved by the Liquor Commission so the Council needs to make the assumption that they are going to follow that path.

Council member Kearney stated at the start of this meeting, he was undecided how he would vote. He believed they have presented enough facts at this meeting that this is not circumvention. It is a legitimate sale and he is satisfied that Mr. Becker is doing everything he can to prevent a minor from buying any alcohol.

Council member Lammers stated he was satisfied at the answers after probing on the ownership question to make sure that there is a separation on the financing and that it is not totally an in-house situation. He thought that they addressed several items in regard to avoiding selling to minors. He was not aware of anything else that they could do in addition to what they have set up.

Council member Buschkoetter stated one of the areas of concern that he had was the legitimacy of the sale and he was certain that the Liquor Control Commission would do even more investigation. He stated that clearly mistakes were made which lead to the revocation of the license in the first place, so he believed that polices had to be done differently and things had to change. The questions he had pertained to whether those changes had been made and what direction they are going forward with. He was satisfied that the use of technology and increased training goes a long way and the immediate dismissal of anyone making a bad sale. Because of the nature and history of this liquor license, the Council has looked more critically at this application than any since he has been on the Council. He did not know what more he could ask them to do.

Mayor Clouse stated to the Becker family who was present at this meeting, he was sure they had a different take on this than most of them do. As an objective third party, he believed that because of Todd Becker these changes are being made. As the liquor licenses come before the Council in the future, he would hope that they would be as diligent in reviewing each of them. The bottom line is that Bill's Liquor and Bill's Liquor West have to perform up to the standards they have set.

Council member Lear asked if there was anything that would prevent the Council to require liquor license holders to install the same kind of ID scanning technology. City Manager Michael Morgan stated that the Council could put it in their recommendation and could deny approval if they did not comply. He was not certain if the Liquor Control Commission would heed that recommendation. He believed that with applicants knowing what is expected in advance, it is clearer to them what they need to do. The City Council has maximized their ability under the law to do everything they can within their power. There is nothing to prevent the Council from requesting that type of equipment or saying to the owners that it is our policy.

City Attorney Michael Tye stated the way the statutory works is the exclusive authority for regulating licenses and the sale of liquor is vested with the Liquor Control Commission and there has been some litigation in the past over that issue. In fact some litigation involving the City of Kearney which was not successful in terms of trying to otherwise regulate. Given that statutory framework, it is more likely that it would be enforceable if it comes from the state level (Liquor Control Commission). The Council could pass this on as a recommendation. As applicants come before the Council, they could inquire if applicants are aware of this technology and if they are implementing it.

City Manager Michael Morgan stated the other option is getting involved with the legislative actions at the state by expressing their opinion as a body. There would be nothing preventing the members of the Council to put forth a recommendation as a legislative policy that this be pursued. As Mr. Becker stated, many other states have already done that. Staff could draft that for Council's consideration. The consensus of the Council was they would like to see that draft. City Manager stated it could be brought forward as a legislative item for Council to adopt a policy statement on and make the League aware of it, as well as potential legislative candidates.

Lacrica Olson, 1766 Prairie View Place, of Buffalo County Community Partners stated she is the Positive Pressure Coalition Coordinator which is the substance abuse coalition. In regard to the subject being discussed, at the State level there has been some legislative talk about mandating that all liquor license holders in the State of

Nebraska have a mandated training. There has not been anything yet as far as legislation regarding specific technology. There are some local city ordinances for mandatory training. The reason her coalition will be doing some training in North Platte is that they have a city ordinance that states all their liquor license holders must comply with this training. The training is through their law enforcement center; however, it is still not recognized by the Liquor Commission. One of the reasons they have been requested to go to North Platte is because one of the local business owners in Kearney also has a business in North Platte. The owner went through the training here and went before the North Platte Council and they said the training is still not certified in their City. She has been working with City Clerk Michaelle Trembly, who has offered to include information on the TIPS program and other training in all of the liquor license packets so that the Kearney applicants know what training is out there and who to contact for that training.

Moved by Lear seconded by Buschkoetter to close Public Hearing 6 and approve **Resolution No. 2008-133** recommending approval to the Liquor Commission on the application for a liquor license submitted by Bill's Liquor West located at 1214 West 24th Street and the application for manager for Charles Becker and that such recommendation for approval include the following reasons: (1) the applicant is an eligible applicant for said license; (2) the applicant is a person of good character and reputation in the community; (3) that there is no officer, manager, director of the corporation or any stockholder owning in the aggregate more than twenty-five percent of the stock of such corporation that would be ineligible to receive a license; (4) that the business will be the sole property of the applicant and that such licensed premises will be properly operated; (5) that the business will be the sole property of the applicant and that such licensed premises will be properly operated; (6) that there is no sharing of prophets or liabilities with any other non-licensed person or business entity; and (7) that there is no value being placed on an existing license in the applicant's purchase of the business and related assets. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

RESOLUTION NO. 2008-133

WHEREAS, BECKER ENTERPRISES, INC., dba "Bill's Liquor West" has filed with the Nebraska Liquor Control Commission and the City Clerk of the City of Kearney, Nebraska, an application for a Class D (Beer, Wine and Distilled Spirits – Off Sale Only) Liquor License to do business at 1214 West 24th 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, BECKER ENTERPRISES, INC., dba "Bill's Liquor West" also filed with the Nebraska Liquor Control Commission and the City Clerk of the City of Kearney, Nebraska, an application for Corporate Manager of Charles Becker; and

WHEREAS, a hearing was held relating to said application on August 12, 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 D (Beer, Wine and Distilled Spirits – Off Sale Only) Liquor License to BECKER ENTERPRISES, INC., dba "Bill's Liquor West" located at 1214 West 24th Street, Kearney, Nebraska, and to approve the application for Corporate Manager of Charles Becker.

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 12TH DAY OF AUGUST, 2008.

ATTEST:
CATHY M. VOGT
ACTING CITY CLERK

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

LIQUOR LICENSE – BILL'S LIQUOR

Mayor Clouse opened the public hearing on the Application for a Class C (Beer, Wine and Distilled Spirits – On and Off Sale) liquor license submitted by BECKER ENTERPRISES, INC., dba "Bill's Liquor" located at 2402 2nd Avenue, consider the manager application for Charles Becker, and to consider approval of Resolution No. 2008-134.

Mayor Clouse stated the same information applies to the Bill's Liquor application as to the Bill's Liquor West application. He asked if anyone present wished to address Public Hearing No. 7.

Marvion Reichert, #18 Rolling Hills, stated he did not have a chance to sign the petition for Bill's Liquor, but he would have. He believed that it was an injustice what was done to Jerry Becker. Although he has known Jerry Becker for many years and has only recently met Charles Becker, in his opinion he thought the licenses should be granted.

Council member Buschkoetter commented that he thought that the Nebraska State Supreme Court, the State Liquor Control Commission and the Lancaster County District Court made the right decision based on the rules and regulations. Considering the instances that took place in the early months of 2005, he did not believe the best defense of selling to a minor was they had sold to him so many times before that they could not possibly get it right. The Liquor Commission's vote was a close two to one vote, but he believed they made what seems to be a reasonable decision. If we say that we want to limit sales to minors that are done illegally and make it against the law, we must enforce it. In his opinion, the Liquor Control Commission did the right thing in enforcing it.

Moved by Lear seconded by Buschkoetter to close Public Hearing 7 and approve **Resolution No. 2008-134** recommending approval to the Liquor Commission on the application for a liquor license submitted by Bill's Liquor located at 2402 2nd Avenue and the application for manager for Charles Becker and that such recommendation for approval include the following reasons: (1) the applicant is an eligible applicant for said license; (2) the applicant is a person of good character and reputation in the community; (3) that there is no officer, manager, director of the corporation or any stockholder owning in the aggregate more than twenty-five percent of the stock of such corporation that would be ineligible to receive a license; (4) that the business will be the sole property of the applicant and that such licensed premises will be properly operated; (5) that the business will be the sole property of the applicant and that such licensed premises will be properly operated. (6) that there is no sharing of profits or liabilities with any other non-licensed person or business entity; and (7) that there is no value being placed on an existing license in the applicant's purchase of the business and

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

RESOLUTION NO. 2008-134

WHEREAS, BECKER ENTERPRISES, INC., dba "Bill's Liquor" has filed with the Nebraska Liquor Control Commission and the City Clerk of the City of Kearney, Nebraska, an application for a Class C (Beer, Wine and Distilled Spirits – On and Off Sale) Liquor License to do business at 2402 2nd Avenue, Kearney, Nebraska, and has paid all fees and done all things required by law as provided in the Nebraska Liquor Control Act; and

WHEREAS, BECKER ENTERPRISES, INC., dba "Bill's Liquor" also filed with the Nebraska Liquor Control Commission and the City Clerk of the City of Kearney, Nebraska, an application for Corporate Manager of Charles Becker; and

WHEREAS, a hearing was held relating to said application on August 12, 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 (Beer, Wine and Distilled Spirits – On and Off Sale) Liquor License to BECKER ENTERPRISES, INC., dba "Bill's Liquor" located at 2402 2nd Avenue, Kearney, Nebraska, and to approve the application for Corporate Manager of Charles Becker.

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 12TH DAY OF AUGUST, 2008.

ATTEST:
CATHY M. VOGT
ACTING CITY CLERK

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

IV. CONSENT AGENDA

Moved by Buschkoetter seconded by Clouse that Subsections 1 through 5 of Consent Agenda Item IV be approved. Roll call resulted as follows: Aye: Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried.

1. Approve Minutes of Special Meeting held July 17, 2008, Regular Meeting held July 22, 2008, and Emergency Meeting held on August 5, 2008.

2. Approve the following Claims:

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

3M \$89.00 smcs; A-1 Refrigeration \$64.04 smcs; Accucut \$31.00 smcs; Ace Hardware \$1,761.08 smcs,co; Ace Irrigation \$295.00 smcs; Advanced Auto Parts \$8.53 smcs; Adventureglass \$628.39 smcs; Aflac \$2,783.88 ps; Agri Co-op \$14,817.92 smcs;

Alamar Uniforms \$9,890.88 smcs,ps; Alltel \$1,270.55 smcs; Almquist,R \$157.50 smcs; Amax Contracting \$10.08 smcs; Amer Electric \$1,645.06 smcs,co; Amer First Aid \$144.50 smcs; Amer Legion \$247.35 smcs; Amer Library \$220.00 smcs; Amer Red Cross \$242.00 smcs; Amsan \$924.04 smcs; Anderson,B \$712.70 smcs; Ask Supply \$951.50 smcs,co; Auto Glass Center \$1,318.17 smcs; Baker & Taylor \$9,154.38 smcs; Bamford \$4,984.33 smcs,co; Barber,J \$1,122.75 smcs; Barney Abstract \$2,640.00 smcs; Bauerova,D \$31.19 smcs; BBC Audiobooks \$251.05 smcs; Beacon Athletics \$319.70 smcs; Beckstead,L \$25.00 smcs; Beinke,C \$21.45 smcs; Bermuda Self Storage \$899.57 smcs; Best Lock \$617.08 smcs; Bike Shed \$89.99 smcs; Blessing Construction \$94,904.83 smcs,co; Bluecross Blueshield \$114,235.83 smcs; Bonner,K \$16.46 smcs; Bosselman \$35,573.23 smcs; Brewerm Marty \$34.84 smcs; Brilliance Audio \$121.50 smcs; Broadfoot's \$100.00 smcs; Brodart Co \$118.32 smcs; Buckle \$7.00 smcs; Buffalo Co Court \$842.03 smcs,ps; Buffalo Co Economic \$10,000.00 smcs; Buffalo Co Reg Deeds \$27.00 smcs; Buffalo Co Treasurer \$20.00 co; Builders \$2,269.16 smcs,co; Bumblebees \$7.33 smcs; Cabela's \$235.73 smcs; Callahan,R \$15.31 smcs; Capper's \$38.97 smcs; Carquest \$1,576.19 smcs; Casarino Christman Shalk \$10,386.98 smcs; Cash-Wa \$5,354.40 smcs; CBA Lighting \$770.55 smcs; CDW Govt \$902.00 smcs,co; CED Enterprise \$49.78 smcs; Central Contracting \$82,197.70 co; Central District Health Dept \$2,730.00 smcs; Central Hydraulic Systems \$461.78 smcs; Central NE Bobcat \$260.75 smcs; CH Diagnostic \$730.00 smcs; Chally,A \$60.00 smcs; Charter \$230.11 smcs; Christensen,M \$25.00 smcs; City of Ky \$204,998.88 smcs,ps; Cold Spring Granite \$358.20 smcs; College Savings Plan of NE \$75.00 ps; Companion Animal Pet \$129.00 smcs; Construction Rental \$2,508.75 smcs; Copycat Printing \$1,091.13 smcs; CR Toys \$26.97 smcs; Craven,K \$27.88 smcs; Creative Teacher \$12.27 smcs; Crossroads Ford \$452.55 smcs; Crown Awards \$126.18 smcs; Culligan \$210.00 smcs; Cummins Central Power \$147.76 smcs; Cygnus Expositions \$440.00 smcs; D&S Lighting \$56.37 smcs; Danko Emergency \$131.36 smcs; Dash Medical Gloves \$89.80 smcs; Dawson Co PPD \$24,869.57 smcs; Daylight Donuts \$31.50 smcs; Dell \$8,254.85 smcs,co; Demco \$324.38 smcs; Dmilaco Sports \$35.80 smcs; Dollar General \$18.40 smcs; Domino's Pizza \$136.43 smcs; Double M Farms \$2,000.00 smcs; Douglas Co Sheriff's Office \$200.00 smcs; DPC Industries \$10,331.34 smcs; Dreyer,D \$111.18 smcs; Duane Svec Advertising \$322.45 smcs; Dultmeier Sales \$182.15 smcs; Dutton-Lainson \$1,398.96 smcs; Eakes \$2,606.72 smcs,co; Earl May \$94.98 smcs; Eastern Library System \$30.00 smcs; Ecolab \$30.00 smcs; Ed Broadfoot & Sons \$455.50 co; EDU Academic Superstore \$49.95 co; ESU \$1,771.25 co; Eggert,L \$20,000.00 co; Eileens Cookies \$14.50 smcs; Eirich,T \$50.00 smcs; Electronic Contracting \$12,610.00 co; EMC Ins \$214.00 smcs; Enterprise RAC \$70.00 smcs; Eustis Body Shop \$150.00 smcs; Excel Systems Software \$6,540.00 co; Expedia \$28.00 smcs; Expression Wear \$100.00 smcs; Fairbanks Int'l \$769.16 smcs; Farm Plan \$134.32 smcs; Farmers Union \$17.00 smcs; Fastenal \$1,048.30 smcs; Fiddelke Heating \$122.50 smcs; Fireguard \$13,764.91 smcs,co; Fleming Farms \$90.00 smcs; Fleshman,T \$40.00 smcs; Foote Convenience Plaza \$130.88 smcs; Footjoy \$175.27 smcs; Fort Bend Services \$4,331.25 smcs; Foss,A \$33.00 smcs; Frontier \$8,341.25 smcs; Fuller,T \$70.15 smcs; Gale \$416.83 smcs; Galeton Gloves \$671.50 smcs; Galls \$37.49 smcs; Gangwish Turf \$270.00 smcs; Garnick,M \$39.42 smcs; Garrett Tires \$1,664.98 smcs; Gaylord Brothers \$42.44 smcs; GE Money Bank \$847.80 smcs; Gear For Sports \$360.47 smcs; General Traffic Controls \$1,580.44 smcs; George,M \$21.97 smcs; GI Family Radio \$1,670.00 smcs; Girl Scouts \$28.16 smcs; Grabast, Amanda \$4.75 smcs; Graham Tire \$610.00 smcs; Grainger \$416.08 smcs,co; Grand Central IGA \$317.52 smcs; Granrud,A \$12.00 smcs; Green-Save \$410.99 smcs; Greg Larson

Sports \$116.67 smcs; Guideposts \$17.24 smcs; H&H Distributing \$3,320.17 smcs; Hach \$811.14 smcs; Hansen,J \$20.89 smcs; Harshbarger,K \$222.30 smcs; Hastings \$35.00 smcs; HD Supply \$2,408.73 smcs; Heartland Scuba \$82.40 smcs; Heartland Transmission \$15.00 smcs; Hernandez,A \$16.93 smcs; Highsmith \$274.81 smcs; Hilkemeier,J \$40.71 smcs; Hobby-Lobby \$135.72 smcs; Hodges,A \$26.14 smcs; Hofer,J \$20.65 smcs; Holiday \$203.14 smcs; Holmes Plumbing \$1,485.73 smcs,co; Hometown Leasing \$248.23 smcs; Hotelscom \$1,094.86 smcs; Hydrologic \$701.33 smcs; IAET \$75.00 smcs; ICMA \$300.00 smcs; ICMA RC \$3,033.24 ps; IRS \$111,615.99 ps; ITT Sanitare \$747.00 smcs; J&A Handy Crafts \$77.65 smcs; Jack Lederman \$1,560.59 smcs,co; Jacobsen Orr Nelson \$3,803.98 smcs; James,D \$2,997.00 smcs; Johnson,S \$50.00 smcs; Johnstone Supply \$696.43 smcs; Judd Brothers Construction \$78,100.25 co; Just Blinds \$538.00 co; K&K Parts \$588.32 smcs; K&W Enterprises \$522.05 smcs; Ky Crete \$116.78 smcs; Ky Girls Softball \$131.91 smcs; Ky Hub \$642.16 smcs; Ky Humane Society \$2,400.00 smcs; Ky Implement \$1,295.43 smcs; Ky Towing \$150.00 smcs; Ky United Way \$559.90 ps; Ky Warehouse \$6,062.97 smcs; Ky Winlectric \$487.54 smcs; Ky Winnelson \$222.38 smcs; Ky Yamaha \$1,168.18 smcs; Kelley Tree Service \$19,812.00 smcs; Kelly Electric \$1,201.51 smcs; KGFW \$260.00 smcs; KHGI \$685.00 smcs; Killion Motors \$75.11 smcs; King,B \$28.76 smcs; Kmart \$77.94 smcs; Knispel,C \$14.05 smcs; Knox Co \$170.00 smcs; Konica Minolta \$476.15 smcs; Laser Art Design \$195.90 smcs; Lawn Builders \$5.50 smcs; Lawson Products \$926.48 smcs; Lear,M \$35.00 smcs; Lesco \$165.00 smcs; Lewis,R \$5.00 smcs; Lind Electronics \$95.95 smcs; Linweld \$165.56 smcs; Little Caesars \$15.75 smcs; LocatePlus \$1,259.28 smcs; Lockmobile \$5.00 smcs; Luke,D \$266.45 smcs; Lundeen,D \$25.00 smcs; Mail Express \$21.88 smcs; Marlatt Machine Shop \$998.33 smcs; McCarty,D \$40.39 smcs; McDonald's \$48.50 smcs; McFarland,A \$36.62 smcs; McLaughlin,P \$256.80 smcs; Menards \$3,923.95 smcs; Metlife \$5,944.18 ps; Michael Todd \$177.49 smcs; Mid Amer Signal \$560.00 smcs; Mid Amer Specialties \$180.80 smcs; Mid State Engineering \$850.00 smcs; Mid-Amer Courtworks \$40,990.10 co; Midlands Contracting \$80,365.60 smcs,co; Mid-State Units \$420.00 smcs; Midway Chevrolet \$43.91 smcs; Midway Chrysler \$15.44 smcs; Midwest Turf \$1,327.53 smcs; Milks,K \$25.00 smcs; Miller & Associates \$23,870.83 co; Miller Signs \$845.00 smcs,co; Mims,G \$14.00 smcs; Misko Sports \$24.00 smcs; Moonlight Embroidery \$1,029.00 smcs; MPH Industries \$3,750.00 co; Muff,L \$23.00 smcs; Municipal Emergency \$3,224.53 smcs; Municipal Pipe Tool \$231.93 smcs; Municipal Supply \$8,494.67 smcs; NAFI \$45.00 smcs; NAPA Auto Parts \$1,420.11 smcs; Nat'l Crime Prevention \$471.63 smcs; Nat'l Fire Protection \$50.35 smcs; Nat'l Hole In One \$204.00 smcs; NE Child Support \$2,707.13 ps; NE Dept of Environmental \$17,208.28 smcs; NE Dept of Revenue \$101,769.33 smcs,ps; NE Golf Ass'n \$3,418.00 smcs; NE Law Enforcement \$175.00 smcs; NE Machinery \$1,029.47 smcs,co; NE Plastics \$2,119.68 smcs; NE Salt & Grain \$7,657.45 smcs; NE State Treasurer \$372.79 smcs; NE Truck Center \$795.72 smcs; NE Volunteer Firefighters \$4,061.50 ps; NEland Distributor \$2,450.90 smcs; Neopost \$16,000.00 smcs; Netknacks Tennis \$171.00 smcs; Nicol,S \$35.00 smcs; Northgate Veterinary \$158.00 smcs; Northwest Electric \$1,278.62 smcs,co; Northwestern Energy \$5,406.40 smcs; Nuttelman Fencing \$7,057.55 co; NWA Air \$546.00 smcs; O'Connor,K \$25.00 smcs; Office Depot \$739.21 smcs; Office Max \$1,260.92 smcs,co; Officenet \$382.80 smcs; Omaha Truck Center \$111.18 smcs; OMB's Express Police \$76.93 smcs; On Site Mobile Sharpening \$77.00 smcs; O'Neill Wood Resources \$56,572.50 smcs; O'Reilly Auto \$806.75 smcs; Oriental Trading \$187.48 smcs; Orscheln \$1,309.14 smcs; Ott,V \$203.30 smcs; Overhead Door \$567.76 smcs; Paulsen \$350,641.35 co; Paulsen,T \$25.00 smcs; Payflex Systems \$476.00 ps;

Paypal \$85.99 smcs; Pepsi \$4,062.29 smcs; PGA Member Info \$471.00 smcs; Pioneer Revere \$490.50 smcs; Pizza Hut \$327.63 smcs; Platte Valley Comm \$1,674.10 smcs,co; Platte Valley Glass \$686.60 smcs; Platte Valley Medical Group \$515.00 smcs; Poff,C \$8.57 smcs; Presenta Plaque \$186.34 smcs; Presto-X \$136.00 smcs; Public Agency Training \$1,485.00 smcs; Public Risk Management \$350.00 smcs; Pump & Pantry \$35.72 smcs; Purdy,J \$44.86 smcs; Quill \$344.98 smcs; Radioshack \$8.99 co; Random House \$831.20 smcs; Reams \$111.43 smcs; Recorded Books \$255.40 smcs; Redman's Shoes \$200.00 smcs; Reinke's Heating \$234.28 smcs; Reynolds,B \$25.00 smcs; Rheome Tree \$180.00 smcs; Rhode Island Novelty \$63.19 smcs; Ritter,C \$25.00 smcs; RNDC-Eagle Division \$532.54 smcs; RNDC-Falcon Division \$99.75 smcs; RT Corp \$120.00 smcs; RTI \$134.95 smcs; Russell's Appliance \$79.95 smcs; Sahling Kenworth \$192.89 smcs; Sam's Club Direct \$2,359.07 smcs; Sanitation Products \$1,185.70 smcs; Sara Lee Bakery \$43.12 smcs; Sargent Drilling \$9,527.50 co; Schaaf,K \$13.59 smcs; Schulte,S \$11.00 smcs; Schultz,D \$24.00 smcs; Schwan's \$2,533.71 smcs; See Clear Cleaning \$4,600.00 smcs; Seier,J \$15.00 smcs; Sesna,D \$58.50 smcs; Sherwin Williams \$294.01 smcs,co; Shop EZ \$45.30 smcs; Sign Center \$50.00 smcs; Sirchie Finger Print \$144.16 smcs; Sixth Street Self Storage \$82.50 smcs; Smith,C \$27.53 smcs; Smith,J \$12.00 smcs; Solid Waste Agency \$51,514.33 smcs; Spare Time Investments \$63.94 smcs; Stamper,J \$27.44 smcs; Staples Direct \$374.48 smcs; Starostka Group \$92,351.82 co; St of NE/AS Central \$4,271.65 smcs; St of NE/Credentialing \$51.00 smcs; St of NE/DAS Comm \$18.51 smcs; St of NE/HHS Lab \$1,594.00 smcs; Steinbrink Landscaping \$4,650.02 smcs,co; Strawhecker,J \$33.00 smcs; Sun Life Financial \$24,446.57 smcs; Sunmart \$287.50 smcs; Super Shine Auto \$32.25 smcs; Superior Signals \$146.50 smcs; Sydow,J \$40.00 smcs; Tap Publishing \$177.48 smcs; Target \$105.76 smcs; Technical Maintenance \$311.25 smcs; Tee's Plus \$2,045.40 smcs; TerraScan \$14,895.76 smcs; Theis,J \$60.00 smcs; Thermo Electric Lab \$476.34 smcs; Third Party Environmental \$3,200.00 co; Thirsty's \$19.70 smcs; Tielke Enterprise \$352.81 smcs; Tigerdirectcom \$261.20 co; Titleist \$1,406.55 smcs; Tom Dinsdale Chevrolet \$368.33 smcs; Tool Doctor \$122.05 smcs; Tractor-Supply \$985.26 smcs,co; TRC Irrigation Remotes \$140.00 smcs; Trembly,M \$68.59 smcs; Tri City Outdoor Power \$1,668.36 smcs,co; Tripe,J \$35.00 smcs; TruGreen Chemlawn \$152.00 smcs; Turner Body Shop \$926.50 smcs; UAP \$105.50 smcs; United Air \$803.00 smcs; United Rentals \$53.38 smcs; Upbeat \$956.66 smcs; UPS Store \$56.09 smcs; Urbanek,G \$159.50 smcs; US Toy Co \$59.51 smcs; USA Bluebook \$701.76 smcs; USDA License Fee \$85.00 smcs; USPS \$88.78 smcs; Van Diest Supply \$46.51 smcs; Video Service of America \$1,767.84 smcs; Village Uniform \$309.44 smcs; Wagner,M \$15.00 smcs; Walgreens \$24.35 smcs,co; Walmart \$4,167.11 smcs,co; Walton,T \$512.70 smcs; Ward Lab \$563.00 smcs; West Payment Center \$1,369.81 smcs; West Villa Animal Hospital \$128.59 co; Westbrooks,B \$8.66 smcs; Wheeler,J \$135.00 smcs; Wilke Donovans True Value \$31.15 smcs; Williams,M \$96.53 smcs; Wittek Golf Supply \$399.80 smcs; Woodis,R \$34.02 smcs; wwwneweggcom \$419.94 smcs,co; Yanda's Music \$1,138.70 co; Yant Equipment \$568.84 smcs; Young,M \$108.00 smcs; Zimmerman Printers \$639.97 smcs; Payroll Ending 7-19-2008 -- \$338,319.98; and payroll ending 8-2-2008 -- \$335,222.34. The foregoing schedule of claims is published in accordance with Section 19-1102 of the Revised Statutes of Nebraska, and is published at an expense of \$_____ to the City of Kearney.

3. Approve the Agreement between the City of Kearney and Li'l Red Aero for storage space in Hangar T-419 and approve **Resolution No. 2008-135**.

RESOLUTION NO. 2008-135

BE IT RESOLVED by the President and Council of the City of Kearney, that the President be and is hereby authorized and directed to execute the Agreement on behalf of the City of Kearney, Nebraska, with Li'l Red Aero for an area measuring 1,900 square feet of cold storage area located in the southeast corner of Hangar T-419, a copy of the Agreement, marked Exhibit "1", is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 12TH DAY OF AUGUST, 2008.

ATTEST:
CATHY M. VOGT
ACTING CITY CLERK

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

4. Approve the Elizabeth Stratton Memorial 5K Run/Walk scheduled for August 23, 2008 beginning at the Archway Monument, west on 1st Street, north on Avenue M, and east back to the Archway Monument starting at 8:00 a.m.

5. Approve Application and Certificate for Payment No. 1 in the amount of \$186,497.28 submitted by Blessing, LLC and approved by Brungardt Engineering for the construction of the E.K. & Mary Yanney Heritage Park North Parking Lot Addition and approve **Resolution No. 2008-136**.

RESOLUTION NO. 2008-136

WHEREAS, Blessing, LLC has performed services in connection with the construction of the E.K. & Mary Yanney Heritage Park North Parking Lot Addition and the City's engineer, Brungardt Engineering, has filed Application and Certificate for Payment No. 1 in the amount of \$186,497.28 as shown on Exhibit "A", attached hereto and made a part hereof by reference:

Original Contract Sum	\$1,004,396.00
Change Order No. 1 (4-8-2008)	- 136,500.00
Contract Sum to Date	867,896.00
Total Completed and Stored to Date	207,219.20
Retainage	20,721.92
Amount Due to Date	186,497.28
Less Previous Certificates for Payment	.00
Current Payment Due	\$ 186,497.28

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 12TH DAY OF AUGUST, 2008.

ATTEST:
CATHY M. VOGT
ACTING CITY CLERK

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

V. CONSENT AGENDA ORDINANCES

None.

VI. REGULAR AGENDA

ORDINANCE NO. 7455 – REZONE WEST OF 17TH AVENUE NORTH OF 56TH STREET (PERTAINS TO PUBLIC HEARING 2)

Council Member Kearney introduced Ordinance No. 7455, being Subsection 1 of Agenda Item VI to rezone 7.17 acres, more or less, from “District AG, Agricultural District” to “District C-0, Office District” AND to rezone 32.05 acres, more or less, from “District AG, Agricultural District” to “District C-2, Community Commercial District” property described as a tract of land being part of the Southeast Quarter of Section 22, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (west of 17th Avenue north of 56th Street), and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Lammers seconded the motion to 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. 7455 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 Lammers seconded by Lear that Ordinance No. 7455 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. 7455 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. 7456 – AMEND CHAPTER 50 OF CITY CODE (PERTAINS TO PUBLIC HEARING 5)

Council Member Lear introduced Ordinance No. 7456 being Subsection 2 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 delete the definition of Computerized Message Posting Sign; to delete the sentence “Signs whose information is limited to time and temperature are not considered electronic information signs” from subparagraph O “Electronic Information Signs”; to delete the sentence “This definition specifically excludes electronic information signs” from subparagraph R “Flashing Sign”; to amend Section 50-103 “General Sign and Street Graphics Regulations” to delete

subparagraph 3 pertaining to banners, balloons and posters; to require illumination levels controlling brightness and minimum required hold time for electronic information signs shall comply with Section 50-104 of Chapter 50; to allow political campaign signs to be placed no sooner than 45 days prior to an election; to provide requirements for inflatable balloons, posters, pennants, ribbons, streamers, spinners; to amend Section 50-104 "General Regulations; Basic Design Elements for Signs" to delete the requirement that no electronic information sign shall be located within 500 feet of another electronic information line, measured from the points of the 2 signs nearest each other; to provide no more than one electronic information sign is permitted per property; to provide requirements regarding programming and illumination of electronic information signs; and to provide electronic information signs shall be deducted from the total sign budget allowed for the premises subject to staff review Section 50-103 F2 with regard to the inflatable balloons, posters, pennants, ribbons, streamers, spinners to allow the citizens and Planning Commission to come up with a compromise, and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Buschkoetter seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Buschkoetter, 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. 7456 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 Buschkoetter seconded by Clouse that Ordinance No. 7456 to be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Buschkoetter. Abstain: Kearney. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7456 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.

CASH-WA SECOND ADDITION SUBDIVISION AGREEMENT

Mayor Clouse opened for discussion the Subdivision Agreement between the City of Kearney and Cash-Wa Distributing Company of Kearney, Inc. for Cash-Wa Second Addition, property located 401 West 4th Street and to consider approval of Resolution No. 2008-137.

A Subdivision Agreement has been prepared 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 and the cul-de-sac is constructed at the terminus of 6th Avenue. The agreement initiates the paving improvement district for 4th Avenue and the agreement allocates the cost of the paving as follows; 25 percent City of Kearney, 37.5 percent CRA and 37.5

percent abutting property owners in the 4th Avenue corridor. If winter weather stops the construction of the paved street, a gravel all-weather street between 4th Street and 8th Street, built to City standards, may be installed as long as the district has been created and the Owner commences work on the paving no later than April 15, 2009.

- To request paving and water improvement districts for 4th Street from 6th Avenue to the west boundary of Cash-Wa Second Addition and to allocate the cost of these districts as follows; City of Kearney 25 percent, CRA 37.5 percent and Cash-Wa 37.5 percent.
- To construct, through Developer Constructed Infrastructure Agreement, 6th Avenue from the existing public improvements south to the terminus of the proposed cul-de-sac. To agree not to protest future improvement districts in 6th Avenue south of 4th Street.
- Vacated 6th Avenue shall be retained as a utility easement.
- No protest of future districts for 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.

City Planner Lance Lang presented this matter to the Council. The subdivision agreement prepared with Cash-Wa Distributing addresses the fact that before 6th Avenue can be closed to public traffic, 4th Avenue needs to be opened. The proposal is to create a paving district for 4th Avenue. Water and sewer districts were considered in this area, but after some protests from the property owners the agreement just addresses the paving of 4th Avenue. The CRA and City contributions will be applied to that 4th Avenue paving. There is also a paving district on 4th Street from vacated 6th Avenue extending west to the west property line of the Cash-Wa project. Contributions from the CRA and the City will go towards that paving. There will also be a water district included in this area. The sanitary sewer is already in place. The 6th Avenue improvements which are a short extension into the cul-de-sac will be the terminus of the public right-of-way. The rest will be vacated and will be done through developer constructed infrastructure. There will be no districts created for that particular portion of the public improvements.

City Manager Michael Morgan stated that Council had previously requested that Mr. Henning meet with the other affected property owners which he did. City staff did work with those property owners to try to find some compromises with reference to the water and sewer which ultimately reduced the cost that would be spread among the property owners. He believed that they had done due diligence with respect to the property owners who were pleased with the outcome. City Planner stated that water and sewer could be put in the 4th Avenue area in the future, but would require tearing up some of the existing street to do it. This seemed to be the best compromise to meet the desires of the property owners and moving forward with the project. If the water and sewer districts were to be added, they will be assessed at the full cost with no contributions from the City or the CRA available in the future.

City Manager stated the connection districts are there for the most part for the water and sewer and Mr. Henning is aware of those costs which he will pay out of pocket. Some of the adjacent property owners did not believe that they needed the access to

the services so that is where the compromise was reached. As a financial item, the City's special sales tax will need to be amended and will be brought forward in a few weeks or during the budget process to reflect the City's contribution of the adjusted cost of approximately \$150,000.00 which is a lower amount because the cost of the entire project was lowered. Mr. Lang noted that even though the Cash-Wa expansion is a significant economic development project, they are seeing other development in the area; such as the theater and the significant road improvements due to the traffic study. These public infrastructure improvements that the CRA and City are participating in are for community benefit not only for the Cash-Wa project and the adjacent property owners businesses.

Moved by Clouse seconded by Kearney to approve the Subdivision Agreement between the City of Kearney and Cash-Wa Distributing Company of Kearney, Inc. for Cash-Wa Second Addition, an addition to the City of Kearney, Buffalo County, Nebraska (401 West 4th Street) and approve **Resolution No. 2008-137**. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

RESOLUTION NO. 2008-137

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the Subdivision Agreement for Cash-Wa Second Addition, marked as Exhibit "A" attached hereto and made a part hereof by reference, be and is hereby approved and that the President of the Council be and is hereby authorized and directed to execute said agreement on behalf of the City of Kearney, Nebraska. Said Subdivision Agreement shall be filed with the final plat with the Buffalo County Register of Deeds.

PASSED AND APPROVED THIS 12TH DAY OF AUGUST, 2008.

ATTEST:
CATHY M. VOGT
ACTING CITY CLERK

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

ORDINANCE NO. 7457 – CREATE PAVING DISTRICT NO. 2008-928

Chapter 16 of the Nebraska Revised Statutes sets out the rules by which water, sewer and paving districts may be created by public entities. The Council has the authority to create districts and make improvements and assess the costs to the property that is benefited by the improvements. Item 4 is the paving of 4th Avenue which the costs will be shared – City of Kearney 25 percent, CRA 37.5 percent and 37.5 percent abutting property owners.

Items 5 and 6 create paving and water districts for 4th Street. The City will allocate 25 percent, the CRA will allocate 37.5 percent and the remainder of 37.5 percent will be the responsibility of Cash-Wa.

Council Member Kearney introduced Ordinance No. 7457, being Subsection 4 of Agenda Item VI to create Paving Improvement District No. 2008-928 for 4th Avenue from the north line of 4th Street to the south line of 8th Street, and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon

reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Lammers seconded the motion to 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, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7457 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried. Ordinance was read by number.

Moved by Lammers seconded by Buschkoetter that Ordinance No. 7457 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7457 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. 7458 – CREATE PAVING DISTRICT NO. 2008-929

Chapter 16 of the Nebraska Revised Statutes sets out the rules by which water, sewer and paving districts may be created by public entities. The Council has the authority to create districts and make improvements and assess the costs to the property that is benefited by the improvements. Item 4 is the paving of 4th Avenue which the costs will be shared – City of Kearney 25 percent, CRA 37.5 percent and 37.5 percent abutting property owners.

Items 5 and 6 create paving and water districts for 4th Street. The City will allocate 25 percent, the CRA will allocate 37.5 percent and the remainder of 37.5 percent will be the responsibility of Cash-Wa.

Council Member Kearney introduced Ordinance No. 7458, being Subsection 5 of Agenda Item VI to create Paving Improvement District No. 2008-929 for 4th Street from 6th Avenue to the west boundary of Cash-Wa Second Addition, 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, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7458 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried. Ordinance was read by number.

Moved by Lammers seconded by Buschkoetter that Ordinance No. 7458 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7458 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. 7459 – CREATE WATER DISTRICT NO. 2008-552

Chapter 16 of the Nebraska Revised Statutes sets out the rules by which water, sewer and paving districts may be created by public entities. The Council has the authority to create districts and make improvements and assess the costs to the property that is benefited by the improvements. Item 4 is the paving of 4th Avenue which the costs will be shared – City of Kearney 25 percent, CRA 37.5 percent and 37.5 percent abutting property owners.

Items 5 and 6 create paving and water districts for 4th Street. The City will allocate 25 percent, the CRA will allocate 37.5 percent and the remainder of 37.5 percent will be the responsibility of Cash-Wa.

Council Member Kearney introduced Ordinance No. 7459, being Subsection 6 of Agenda Item VI to create Water District No. 2008-552 for 4th Street from 6th Avenue to the west boundary of Cash-Wa Second Addition, 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, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7459 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried. Ordinance was read by number.

Moved by Lammers seconded by Buschkoetter that Ordinance No. 7459 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7459 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.

OPEN ACCOUNT CLAIMS: PLATTE VALLEY STATE BANK - \$45,658.65, NPPD -

\$491.57, SCHOOL DISTRICT #7 - \$1,055.33

Moved by Buschkoetter seconded by Kearney that Open Account Claims in the amount of \$45,658.65 payable to Platte Valley State Bank, and in the amount of \$491.57 payable to Nebraska Public Power District be allowed. Roll call resulted as follows: Aye: Lammers, Kearney, Buschkoetter. Abstain: Clouse and Lear. Nay: None. Motion carried.

Moved by Clouse seconded by Kearney that Open Account Claims in the amount of \$1,055.33 payable to School District #7 be allowed. Roll call resulted as follows: Aye: Clouse, Kearney, Lear. Abstain: Buschkoetter, Lammers. Nay: None. Motion carried.

VII. REPORTS**REPORT ON VICIOUS ANIMALS**

City Manager Michael Morgan stated that Mayor Clouse had requested a report on a quick overview on vicious dogs. There are two basic processes that are used across the country. One process is to define what the requirements to determine a vicious dog are. Usually the ordinances are based on type of attacks, severity of the attacks, the frequency of the attacks, and what would occur after an attack. The second process is what has been used in recent years which are a breed specific ban. Pit Bull ban is the most common and is always very controversial. Banning is based on criteria that communities believe substantiate they are a threat to public safety. There can also be a variation of that, where a specific breed is banned but that breed can be grandfathered within the community with specific regulations such as identification, types of restraints, enclosures, liability insurance, muzzles, etc. There are not a lot of communities that do the grandfathering because that can be challenging. That is fairly rare. Most cities today are dealing with the vicious dog definitions and the requirements regarding those or the breeds.

What would make enforcement of those requirements in Kearney difficult is the fact that we do not license dogs. We do not have any idea what breed of dogs or number of dogs are in Kearney. Chief Lynch provided information on the number and breed of dog bites reported. That is not always the best benchmark to use. What happens in a community that gets involved with a specific breed ban is usually after a serious incident, like in Omaha recently. Kearney as a community has been very fortunate since we have not had a serious incident. The most common breed that has been reported in Kearney for dog bites is from Labradors not from Pit Bulls. Most likely we predominately have more Labradors in Kearney than other types of breeds.

City Manager suggested that staff could bring back the various options. Staff could meet with the Humane Society and law enforcement that also need to be involved. He asked for direction from the Council about what they would like researched.

Mayor Clouse stated that he has been approached by citizens who are concerned and that are the reason why he asked the City Manager to put together this information. He asked the Council's opinion if they believed it was important enough to tackle in Kearney. Council member Lear stated that as he has heard before, we either deal with

it before an attack or deal with it after an attack. He believed it was something they should move forward with. Council member Lammers stated they should be pro-active rather than reactive. Council member Kearney expressed concern about putting something on the books that would be difficult to enforce. He wanted more input from the Police Department on the enforceability of such a law.

City Manager stated that in communities that have identified certain breeds, banned them or grandfathered them, the public is fairly adept at contacting law enforcement. He did not think that it would be that difficult to enforce so it can be done.

Chief Dan Lynch stated he spent the last month researching this issue. These approaches fall into two categories. The vicious dog approach deals with an incident by determining how we identify a vicious dog, what is the incident that brought it to their attention. The breed specific ordinances are to deal with the potential. It does not require that an animal produce a problem only on what we know to be statistical realities. The statistical realities according to the CDC 71 percent of all fatal animal bites from dogs fall into two breeds: Pit Bulls and their variations and Rotweilers. These are the two breeds that not only attack, they do so fatally. Chief Lynch stated that Labradors and Lab mixes produce far more bites in the community, but there are far more of those breeds in the community than there are Pit Bulls.

Council member Lear stated the City needs to look into the current dog ordinance needs updated based on input from the Police Department and also if the City should take a proactive breed oriented ban as many other communities have done. The City needs to investigate whether or not banning breed specific is appropriate for this community.

VIII. ADJOURN

Moved by Kearney seconded by Lammers that Council adjourn at 9:10 p.m. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried.

ATTEST:

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

**CATHY M. VOGT
ACTING CITY CLERK**