

*Kearney, Nebraska  
January 13, 2009  
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 January 13, 2009 in the Council Chambers at City Hall. Present were: Stanley A. Clouse, President of the Council; Michaelle Trembly, City Clerk; Council Members Randy Buschkoetter, Bruce Lear, and Bob Lammers. Absent: Don Kearney. Michael Morgan, City Manager; Michael Tye, City Attorney; Wendell Wessels, Director of Finance and Administration; Rod Wiederspan, Director of Public Works; and Dan Lynch, Chief of Police were also present. Some of the citizens present in the audience included: Paul Gilroy, Steve Altmaier from KGFW Radio.

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

## **I. ROUTINE BUSINESS**

### **INVOCATION**

Reverend Doug Shada from the Cornerstone Berean Church provided the Invocation.

### **PLEDGE OF ALLEGIANCE**

Nine Boy Scouts from Troop 139 and 158 led the Council members and audience in the Pledge of Allegiance. Troop 139 is working on their Citizenship in the Community badge.

### **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.

### **RECOGNITION**

Mayor Clouse stated that unfortunately, Tom Henning is out of town and unable to attend the meeting tonight. Therefore, the Council will recognize him at a future Council meeting.

### **ORAL COMMUNICATIONS**

There was no Oral Communications.

## **II. UNFINISHED BUSINESS**

There was no Unfinished Business.

## **III. PUBLIC HEARINGS**

### **RIGHT-OF-WAY ACQUISITION AT 39TH STREET AND 17TH AVENUE**

Mayor Clouse opened the public hearing on the proposed acquisition for right-of-way purposes of a tract of land being the south 2.0 feet of Lot 1, C.S. Addition, an addition being a replat of part of Lot 1 of Block 1, Colonial Estates Addition to the City of Kearney, Buffalo County, Nebraska, excepting that part of said Lot 1, C.S. Addition and more particularly described as follows: beginning at the southeast corner of Lot 1 of said subdivision; thence westerly on the south line of said lot a distance of 19.28 feet; thence northeasterly a distance of 27.27 feet, more or less, to the point of intersection with the east line of said lot, said point being 19.04 feet northerly of the southeast corner of said lot; thence southerly and on the east line of said Lot 1 a distance of 19.04 feet to the place of beginning, containing 263.47 square feet, more or less, all in Buffalo County, Nebraska (39th Street and 17th Avenue) and to consider approval of Resolution No. 2009-1.

City Attorney Michael Tye presented this matter to the Council. The Public Works Department intends to do some work on the intersection of 39th Street and 17th Avenue this upcoming construction season which will involve expanding this intersection. In order to complete this construction work, it is necessary for the City to acquire additional right-of-way from the property owner adjacent to this intersection.

The City Engineer has negotiated an agreement for the acquisition of the necessary right-of-way and also additional matters that are of interest to the property owner while construction is in process. The Agreement for Acquisition of Right-of-Way and staff would request the Council approve and authorize this Agreement so that Public Works can move forward with the project and the City can appropriately compensate the property owner. The City would be paying \$2,239.50 for the acquisition of right-of-way in question.

There was no one present in opposition to this hearing.

Moved by Lammers seconded by Lear to close the hearing and approve the proposed acquisition for right-of-way purposes of a tract of land being the south 2.0 feet of Lot 1, C.S. Addition, an addition being a replat of part of Lot 1 of Block 1, Colonial Estates Addition to the City of Kearney, Buffalo County, Nebraska, excepting that part of said Lot 1, C.S. Addition and more particularly described as follows: beginning at the southeast corner of Lot 1 of said subdivision; thence westerly on the south line of said lot a distance of 19.28 feet; thence northeasterly a distance of 27.27 feet, more or less, to the point of intersection with the east line of said lot, said point being 19.04 feet northerly of the southeast corner of said lot; thence southerly and on the east line of said Lot 1 a distance of 19.04 feet to the place of beginning, containing 263.47 square feet, more or less, all in Buffalo County, Nebraska (39th Street and 17th Avenue) and

approve **Resolution No. 2009-1**. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Buschkoetter. Nay: None. Kearney absent. Motion carried.

**RESOLUTION NO. 2009-1**

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

WHEREAS, the City Council has held a public hearing upon the proposed acquisition for public right-of-way purposes for the widening and reconstruction of 39th Street and 17th Avenue Improvements and voted in favor to proceed with the acquisition; and

WHEREAS, the City Council of the City of Kearney, Nebraska has determined the necessity of acquiring fee simple title for roadway purposes, including any mortgage and leasehold interests on the following tract of property: the south 2.0 feet of Lot 1, C.S. Addition, an addition being a replat of part of Lot 1 of Block 1, Colonial Estates Addition to the City of Kearney, Buffalo County, Nebraska, excepting that part of said Lot 1, C.S. Addition and more particularly described as follows: beginning at the southeast corner of Lot 1 of said subdivision; thence westerly on the south line of said lot a distance of 19.28 feet; thence northeasterly a distance of 27.27 feet, more or less, to the point of intersection with the east line of said lot, said point being 19.04 feet northerly of the southeast corner of said lot; thence southerly and on the east line of said Lot 1 a distance of 19.04 feet to the place of beginning, containing 263.47 square feet, more or less, all in Buffalo County, Nebraska (39th Street and 17th Avenue); and

WHEREAS, the City Council finds and determines that it is necessary for the public health, safety and general interest and welfare of the citizens of Kearney that possession of the property interest as described above be acquired as soon as possible for the widening and reconstruction of 39th Street and 17th Avenue Improvements.

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

1. The City Attorney and City Manager be, and hereby are, authorized on behalf of the City to complete negotiations for possession of and fee simple title to the property set forth above, together with the temporary construction easements; and
2. If the acquisition and possession of such property is not possible through negotiations, the City Attorney be, and hereby is, directed to commence eminent domain proceedings on behalf of the City of Kearney to obtain title, acquisition, and possession of said property interest as soon as legally possible.

PASSED AND APPROVED THIS 13TH DAY OF JANUARY, 2009.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**IV. CONSENT AGENDA**

Moved by Lear seconded by Buschkoetter that Subsections 1 through 6 of Consent Agenda Item IV be approved. Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear. Nay: None. Kearney absent. Motion carried.

1. Approve Minutes of Regular Meeting held December 23, 2008.

2. Approve the following Claims:

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

Abood,J \$7,500.00 co; Ace Hardware \$176.41 smcs; Advanced Auto Parts \$88.77 smcs; Advisors Marketing \$420.30 smcs; Aflac \$2,604.74 ps; Agri Co-op \$15,419.84 smcs; Allied Electronics \$37.38 smcs; Alltel \$1,208.73 smcs; Amazon \$24.51 smcs; Amer Electric \$685.59 smcs; Amer First Aid \$172.33 smcs; Anderson Brothers \$101.50 smcs; Apple Market \$42.91 smcs; Ask Supply \$224.82 smcs; Aurora Co-op \$148.06 smcs; B&B Bendfeldt Farms \$2,232.00 co; Baker & Taylor Books \$3,924.27 smcs; BBC Audiobooks \$281.05 smcs; Becker,G \$30.50 smcs; Beisheim,S \$301.87 smcs; Bennett,T \$513.75 smcs; Blessing \$169,764.17 smcs,co; Bluecross Blueshield \$30,979.90 smcs; Bobs Super Store \$18.96 smcs; Bosselman Energy \$947.97 smcs; Brodine,S \$821.12 smcs; Buffalo Co Court \$267.20 ps; Buffalo Co Reg Deeds \$47.00 smcs; Buffalo Co Sheriff \$119,138.00 smcs; Buffalo Outdoor Power \$471.42 smcs; Builders Warehouse \$2,057.27 smcs,co; Cabela's \$269.35 smcs; Carquest \$1,099.31 smcs; CED Enterprise Electric \$252.25 smcs; Center Point Large Print \$26.41 smcs; Central Contracting \$21,876.00 co; Central Hydraulic Systems \$529.25 smcs; Central Ne Bobcat \$473.00 smcs; Central States Industrial \$714.33 smcs; CH Diagnostic & Consulting \$445.00 smcs; Charter \$565.59 smcs; Chief Construction \$113,808.93 co; Chiefs Choice \$122.75 smcs; City of Ky \$187,569.83 smcs,ps; Clevenger Petroleum \$1,873.55 smcs; Cold Spring Granite \$178.35 smcs; College Savings Plan of NE \$100.00 ps; Comark Distributors \$106.60 smcs; Comfort Inns \$79.00 smcs; Conoco \$36.45 smcs; Construction Rental \$1,758.95 smcs,co; Control Masters \$105.75 smcs; Copycat Printing \$593.25 smcs; Corey's Complete Detailing \$50.00 smcs; Creative Product Sourcing \$654.00 smcs; Creighton Online \$85.00 smcs; Culligan \$150.00 smcs; D&M Security \$64.50 smcs; D&S Lighting \$26.96 smcs; Davis Equipment \$293.79 co; Dell \$4,061.15 smcs,co; Delta Medical Systems \$166.80 smcs; Depository Trust \$155,680.00 ds; Diamond Vogel \$939.05 smcs; Dmilaco Sports \$451.00 ps; DPC Industries \$6,087.14 smcs; Duering,C \$17.28 smcs; Dugan Business \$364.26 smcs; Dultmeier Sales \$106.71 smcs; Dutton-Lainson \$72.64 smcs; Eakes \$1,066.12 smcs; Ed Broadfoot & Sons \$3,864.00 co; Eddys Galvin \$33.00 smcs; Edwards,J \$35.35 smcs; Eirich,T \$50.00 smcs; Emerson Network \$214.00 smcs; Eriksen Construction \$10,767.00 co; Eustis Body Shop \$681.26 smcs; Excel Systems Software \$31.25 smcs; Experts Exchange \$99.95 smcs; Expression Wear \$410.00 smcs; Fairbanks Int'l \$788.65 smcs; Fastenal \$910.48 smcs; FBINAA-NE Chapter \$90.00 smcs; Fiddelke Heating \$612.28 smcs; Firestore \$203.49 smcs; Furby,D \$18.50 smcs; Fur-Fish-Game \$15.95 smcs; Gale \$167.02 smcs; Galeton Gloves \$739.50 smcs; Galls \$162.98 smcs; Gangwish Turf \$35.00 smcs; Garrett Tires \$1,441.84 smcs; Gathje,R \$12.79 smcs; Gaylord Brothers \$1,066.02 smcs; Gear for Sports \$3,419.01 smcs; General Traffic Controls \$106.10 smcs; Gilg,A \$30.63 smcs; Gooch Brake \$572.96 smcs; Gotomypccom \$371.25 smcs; Graham Tire \$228.08 smcs; Grainger \$2,393.49 smcs; Grimes,J \$5.35 smcs; HW Wilson \$420.00 smcs; Hach \$467.86 smcs; Hawthorne

Jewelry \$1,340.00 ps; Heggemeyer,L \$59.06 smcs; Heiman Fire Equipment \$707.65 smcs,co; Hobby-Lobby \$358.50 smcs; Hogans Sporting Goods \$150.00 ps; Holiday Inn Express \$400.00 smcs; Holiday Inn Restaurant \$459.49 smcs; Holiday Station \$32.18 smcs; Holmes Plumbing \$1,002.27 smcs; Hometown Leasing \$207.71 smcs; Hydrologic \$207.00 smcs; Hydronic Energy \$706.72 co; ICMA RC \$4,199.93 ps; IMS My Binding \$926.16 smcs; Inland Truck Parts \$203.12 smcs; IRS \$104,895.73 ps; Jack Lederman \$555.21 smcs; James W Bell Co \$80.15 smcs; Johnson Controls \$600.31 smcs; Johnson Hardware \$216.00 smcs; Johnson,S \$50.00 smcs; Johnstone Supply \$217.14 smcs,co; Just Blinds \$1,089.00 smcs,co; K&K Parts \$1,464.47 smcs; Ky Clinic \$35.00 smcs; Ky Concrete \$18,543.88 smcs,co; Ky Drive Inn \$79.82 smcs; Ky Glass \$343.40 smcs; Ky Housing Authority \$43.32 smcs; Ky Hub \$8,929.09 smcs; Ky Humane Society \$4,000.00 smcs; Ky Implement \$823.84 smcs; Ky Storytelling \$600.00 smcs; Ky Towing & Repair \$525.00 smcs; Ky United Way \$537.90 ps; Ky Visitors Bureau \$29,498.13 smcs; Ky Warehouse \$4,268.52 smcs; Ky Winlectric \$3,012.20 smcs; Ky Yamaha \$128.48 smcs; Kendall and Son \$150.92 smcs; Kerkman,J \$8.76 smcs; KGFW \$438.00 smcs; Killion Motors \$43.54 smcs; Kirkham Michael \$15,948.80 co; Kittoe,A \$2.59 smcs; Konica Minolta \$94.91 smcs; KRVN \$507.00 smcs; K-State Diagnostic \$10.00 smcs; Label Graphics \$150.59 smcs; Landscape Architecture \$360.00 smcs; Laser Art Design \$682.50 smcs; Lawrey,J \$21.98 smcs; Lawson Products \$151.62 smcs; League of NE Municipalities \$552.00 smcs; Lincoln Journal Star \$315.40 smcs; Lincoln Truck Center \$94.70 smcs; Lind Electronics \$458.75 smcs; Linweld \$203.94 smcs; Lips Printing \$67.50 smcs; Logitech \$17.45 co; LT Navigo Wireless \$734.00 smcs; Magic Cleaning \$250.00 smcs; Mail Express \$3,581.21 smcs; Marlatt Machine Shop \$1,172.31 smcs; McElhinney Builders \$115.83 smcs; Menards \$1,102.29 smcs; Metlife \$6,177.67 ps; Midway Chrysler \$38.00 smcs; Midwest Turf \$14.61 co; Mieth,T \$10.49 smcs; Milco Environmental \$2,500.00 smcs; Miller & Associates \$6,300.00 smcs; Misko Sport \$35.00 smcs; MJ Supply \$94.75 smcs; Moonlight Embroidery \$3,293.00 smcs,ps; Moore Construction \$31.87 smcs; Morgan,M \$58.50 smcs; Mr Basketball \$400.00 smcs; Municipal Emergency \$49.86 co; Municipal Pipe Tool \$856.00 smcs; Municipal Supply \$684.95 smcs; Napa All Makes Auto \$1,989.80 smcs; NCS Equipment \$187.15 smcs; NE Golf Ass'n \$387.26 smcs; NE Aviation Council \$75.00 smcs; NE Child Support \$2,837.74 ps; NE Concrete Paving \$190.00 smcs; NE Dept of Revenue \$31,789.07 ps; NE Dept of Roads \$1,380.00 smcs; NE Library Ass'n \$40.00 smcs; NE Machinery \$7,912.39 smcs,co; NE Regional Library \$30.00 smcs; NE Rural Water Ass'n \$220.00 smcs; NE Truck Center \$60.33 smcs; NE Workforce Dev \$1,192.00 ps; Nelson,A \$4.07 smcs; Neopost \$8,000.00 smcs; Newegg \$1,000.62 co; Newman Signs \$105.70 smcs; NFPA Nat'l Fire \$937.50 smcs; Norm's Plumbing \$498.05 smcs; Northwest Electric \$971.17 smcs; Northwestern Energy \$18,773.50 smcs; Novus \$31.50 smcs; Ocean Systems \$1,295.00 smcs; Office Depot \$176.03 smcs; Office Max \$578.01 smcs; Officenet \$1,403.35 smcs,co; O'Keefe Elevator \$559.01 smcs; On Site Mobile Sharpening \$51.32 smcs; O'Reilly Auto \$628.23 smcs; Oriental Trading \$48.40 smcs; Orscheln \$427.97 smcs; Overhead Door \$93.53 smcs; Palatial Nails \$250.00 smcs; Paramount Linen \$171.04 smcs; Pat's Plumbing \$225.00 smcs; Payflex Systems \$488.75 smcs,ps; Paypal \$1,052.00 smcs,co; Pep Co \$51.10 smcs; Petersen,R \$49.00 smcs; Platte Valley Comm \$13,593.45 smcs; Postmaster \$70.00 smcs; Presto-X \$137.00 smcs; Quill \$726.99 smcs; Random House \$887.00 smcs; Raynor Garage Doors \$235.00 smcs; Ready Mixed Concrete \$840.53 smcs,co; Reams \$28.98 smcs; Recognition Unlimited \$49.62 smcs; Recorded Books \$179.93 smcs; Redmans Shoes \$202.99 smcs; Reinkes Heating \$41.70 smcs; Rheome Tree Service \$580.00 smcs;

Rickard,A \$93.38 smcs; S&P Rentals \$154.00 smcs; Sahling Kenworth \$1,119.08 smcs; Sanitation Products \$1,305.42 smcs; Sapp Brothers \$15,293.25 smcs; Schipporeit,J \$53.87 smcs; Schipporeit,M \$52.00 smcs; Schwentker,R \$2,400.00 co; See Clear Cleaning \$4,600.00 smcs; Seminole Construction \$26.53 smcs; Sensus Metering Systems \$1,320.00 smcs; Sentelle,J \$7.66 smcs; Seton Name Plate \$270.15 smcs; Shell Oil \$86.16 smcs; Sherwin Williams \$159.37 smcs; Small,K \$25.30 smcs; Smith Signs \$7,900.00 co; Softchoice \$2,805.41 co; Solid Waste Agency \$94.00 smcs; Sonic Solutions \$99.99 smcs; St Electrical Division \$155.00 smcs; St of NE/AS Central \$5,038.03 smcs; St of NE/DAS Comm \$18.52 smcs; St of NE/Fire Marshal \$240.00 smcs; St of NE/HHS Lab \$2,668.00 smcs; Steinbrinks Landscaping \$193.48 smcs; Story,G \$35.00 smcs; Streff,J \$2.38 smcs; Sun Life Financial \$29,765.16 smcs; Sunmart \$230.50 smcs; Superior Signals \$2,259.75 smcs; Sydow,J \$40.00 smcs; Tessco \$102.84 co; Thies,G \$51.02 smcs; Thunderhead Brewing \$34.03 smcs; Tielke Enterprise \$113.10 smcs; Timko,J \$60.00 smcs; Tractor Supply \$656.76 smcs; Tri City Outdoor Power \$285.07 smcs,co; Ultramax \$4,488.00 smcs; UNK-Athletic Dept \$5,000.00 smcs; Upbeat \$945.00 co; UPS Store \$49.61 smcs; USA Blue Book \$283.89 smcs; USPS \$191.49 smcs; Van Diest Supply \$4,780.83 smcs; Vanderbeek,J \$27.76 smcs; Village Uniform \$426.56 smcs; Visco \$471.92 smcs; Waggoner Plumbing \$350.00 smcs; Wal-mart Supercenter \$559.62 smcs; Warped Sportz \$4.00 smcs; Warren,J \$43.44 smcs; Wellman,P \$10.70 smcs; Wellness Works \$250.00 ps; West Payment Center \$1,294.44 smcs; Wicks Sterling Trucks \$457.09 smcs; Wilke Contracting \$25,640.67 co; Wilke Donovans \$280.40 smcs; Yousendit \$9.99 smcs; Zimmerman Printers \$156.59 smcs; Payroll Ending 1-3-2009 -- \$303,285.49. 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 Plans and Specifications for the Crack Seal, Slurry Seal and Runway/Taxiway Markings Project at the Kearney Regional Airport and set the bid opening date for February 4, 2009 at 11:00 a.m.
4. Approve the application for a Special Designated License submitted by CONCORD NEIGHBORHOOD CORPORATION, dba "Applebee's Neighborhood Grill & Bar" in connection with their Class IK-55213 catering liquor license to dispense beer and distilled spirits in the Ag Pavilion Building and the Exhibit Building located at the Buffalo County Fairgrounds, 3807 Avenue N on February 17, 18, 19, 20, 21, 2009 from 11:00 a.m. until 1:00 a.m. and on February 22, 2009 from 12:00 p.m. until 7:00 p.m. for the Cattlemen's Classic.
5. Accept the report from the City Clerk on the sufficiency of objection/protest filed in connection with Paving Improvement District No. 2008-935 for a 20-foot wide alley lying between 2nd Avenue and 3rd Avenue from 12th Street to 13th Street.
6. Approve **Resolution No. 2008-131A** correcting the legal description 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 38.75 acres, more or less, Buffalo County, Nebraska (west of 17th Avenue north of 56th Street).

**RESOLUTION NO. 2008-131A**

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 South Half 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 1833.60 feet; thence N00°50'16"W a distance of 50.0 feet to a point on the Northeast line of Lot 1, Bent Bar C Subdivision East, Buffalo County, Nebraska; thence N52°30'55"W on said Northeast line a distance of 36.35 feet; thence leaving said line N00°20'34"W a distance of 65.62 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 S67°48'25"W a distance of 24.27 feet; thence N00°29'09"E a distance of 15.96 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 feet 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 38.75 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 13TH DAY OF JANUARY, 2009.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**V. CONSENT AGENDA ORDINANCES**

**ORDINANCE NO. 7499 – REPEAL PAVING DISTRICT NO. 2008-935 (PERTAINS TO CONSENT AGENDA ITEM 5)**

The City received a letter from a property owner requesting paving of the alley lying between 2nd Avenue and 3rd Avenue from 12th Street to 13th Street. On December 23, 2008 the City Council passed and approved Ordinance No. 7498 creating Paving Improvement District No. 2008-935 for said alley.

Administration received written objections from the majority property owners within the proposed district. It appears there is approximately 600 feet of assessable footage with 400 feet in objection to the creation of the district which represents 67 percent. Section 16-620 of the Nebraska Revised Statutes states “If the owners of the record title representing more than fifty percent of the front footage of the property abutting or adjoining and continuous or extended street, cul-de-sac, or alley of the district, or portion thereof which is closed at one end, and who were such owners at the time the ordinance creating the district was published, shall file with the city clerk, within twenty days from the first publication of said notice, written objections to the improvements of a district, said work shall not be done in said district under said ordinance, but said ordinance shall be repealed.” Since the objection for the district does represent more than fifty percent, the district will need to be repealed.

Council Member Buschkoetter introduced Ordinance No. 7499, being Subsection 1 of Agenda Item V to repeal Ordinance No. 7498 creating Paving Improvement District No. 2008-935 for a 20-foot wide alley lying between 2nd Avenue and 3rd Avenue from 12th Street to 13th 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 Clouse 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. Nay: None. Kearney absent. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7499 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. Nay: None. Kearney absent. Motion carried. Ordinance was read by number.

Moved by Clouse seconded by Lammers that Ordinance No. 7499 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Buschkoetter. Nay: None. Kearney absent. Motion carried.

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

Ordinance No. 7499 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. 7455A – CORRECT LEGAL DESCRIPTION ON REZONING WEST OF 17TH AVENUE NORTH OF 56TH STREET (PERTAINS TO CONSENT AGENDA ITEM 6)**

Council Member Buschkoetter introduced Ordinance No. 7455A, being Subsection 2 of Agenda Item V to correct the legal description rezoning 7.17 acres, more or less, from “District AG, Agricultural District” to “District C-O, Office District” AND to rezone 31.58 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 Clouse 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. Nay: None. Kearney absent. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7455A 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. Nay: None. Kearney absent. Motion carried. Ordinance was read by number.

Moved by Clouse seconded by Lammers that Ordinance No. 7455A be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Buschkoetter. Nay: None. Kearney absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7455A 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. 7500 – ADD ARTICLE 15 ENTITLED “CITY OF KEARNEY ILLICIT DISCHARGE DETECTION AND ELIMINATION CODE” TO THE CITY CODE**

On January 1, 2006 the City of Kearney’s National Pollution Discharge Elimination System (NPDES) storm water permit became active. With that permit, the City began implementing our Storm Water Management Plan to meet the requirements set forth in the permit and by federal regulations. Over the past three years many new programs have been developed and implemented that fulfill our obligations to the state. Many of these programs are directed at public education, construction site compliance, participation in local environmental events and the reduction of pollutant loads from our

own operations. This proposed ordinance is yet another set to meeting the requirements of the City of Kearney's state permit.

As a requirement of the City of Kearney NPDES permit, the following Illicit Discharge Ordinance has been developed. As stated in the Nebraska Department of Environmental Qualities permit issued to the City: "To the extent allowable under State or local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into your storm sewer system and implement appropriate enforcement procedures and actions." This ordinance will meet the requirements of the City of Kearney's state permit and create avenues of action when the problems of illegal dumping and pollution arise.

The Illicit Discharge Ordinance directly addresses the dumping of pollutants like motor oil, grease, detergent laden wash water and hazardous materials. In addition to these commonly thought of pollutants the ordinance also addresses water course protection by prohibiting the dumping of rubbish, garbage, and litters.

Council Member Buschkoetter introduced Ordinance No. 7500, being Subsection 3 of Agenda Item V to amend Chapter 9 "Public Works" by adding a new Article 15 entitled "City of Kearney Illicit Discharge Detection and Elimination Code" to the Kearney City Code by providing a purpose and intent; providing definitions; prohibiting illegal discharges and illicit connections; providing watercourse protection; providing for discharges in violation of industrial or construction activity; providing requirements to prevent, control and reduce storm water pollutants by the use of best management practices; providing requirements to eliminate illegal discharges; providing stream bank protection; providing requirements to monitor and analyze; providing notification of spills; allowing right of entry; authorizing sample and testing; and providing for enforcement, and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Clouse seconded the motion to 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. Nay: None. Kearney absent. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7500 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. Nay: None. Kearney absent. Motion carried. Ordinance was read by number.

Moved by Clouse seconded by Lammers that Ordinance No. 7500 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Buschkoetter. Nay: None. Kearney absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7500 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

**VI. REGULAR AGENDA**

**OPEN ACCOUNT CLAIMS: STAN CLOUSE - \$78.98, PLATTE VALLEY STATE BANK - \$47,066.67, SCHOOL DISTRICT #7 - \$2,391.80**

With the absence of Council member Kearney and the abstention of Council members Buschkoetter and Lammers, the Open Account Claim for School District #7 will be placed on the January 27, 2009 Council Agenda for consideration.

Moved by Lammers seconded by Lear that the Open Account Claim in the amount of \$78.98 payable to Stan Clouse be allowed. Roll call resulted as follows: Aye: Lammers, Buschkoetter, Lear. Nay: None. Clouse abstained. Kearney absent. Motion carried.

Moved by Clouse seconded by Buschkoetter that the Open Account Claim in the amount of \$47,066.67 payable to Platte Valley State Bank be allowed. Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter. Nay: None. Lear abstained. Kearney absent. Motion carried.

**VII. REPORTS**

**CLOSED SESSION**

Moved by Lear seconded by Buschkoetter that Council adjourn into closed session at 7:09 p.m. on for the protection of the public interest to discuss a possible real estate purchase. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney absent. Motion carried.

Mayor Clouse restated the purpose for the closed session is for the protection of the public interest to discuss a possible real estate purchase.

Moved by Buschkoetter seconded by Clouse that Council reconvene in regular session at 8:14 p.m. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Buschkoetter. Nay: None. Kearney absent. Motion carried.

**VIII. ADJOURN**

Moved by Clouse seconded by Lammers that Council adjourn at 8:14 p.m. Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear. Nay: None. Kearney absent. Motion carried.

**ATTEST:**

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

**MICHAELLE E. TREMBLY  
CITY CLERK**