

Kearney, Nebraska
May 12, 2009
6:15 p.m.

A meeting of the City Council of Kearney, Nebraska, was convened in open and public session at 6:15 p.m. on May 12, 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, Don Kearney, Bruce Lear, and Bob Lammers. Absent: None. Michael Morgan, City Manager; Michael Tye, City Attorney; Wendell Wessels, Director of Finance and Administration; Dan Lynch, Chief of Police; Luke Olson, Management Assistant; Andy Harter, Assistant City Engineer were also present. Some of the citizens present in the audience included: Elaine Wiseman, Barry Sherman, Joyce Lieske, Doug Shada, Gwen Traxler, Maxine Lillis, Rhoda Brown, Rachel Perkins, Deb Mowry, Karen Decker, several parents of the Brownie Troop.

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 Cornerstone Berean Church provided the Invocation.

PLEDGE OF ALLEGIANCE

Eleven girls from Brownie Troop 610 led the Council members and audience in the Pledge of Allegiance.

ANNOUNCEMENT

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

PROCLAMATION – KEARNEY HOUSING AGENCY

Mayor Clouse and Council Members recognized the Kearney Housing Agency and presented a Proclamation celebrating 50 years of service.

RECOGNITION – BROWNIE TROOP 610

Mayor Clouse and Council Members recognized Brownie Troop 610 for participating in the City of Kearney Storm Drain Marking Event. The City is required under state permit to provide public education and public involvement on stormwater pollution issues. As

part of its education and involvement requirements, the City began affixing metal emblems to its storm sewer inlets. The emblems read "NO DUMPING, DRAINS TO RIVER" with an image of a fish in the middle. These emblems are a last line of defense in reminding citizens not to dump anything down the storm sewers. These are very noticeable emblems by people walking or an individual considering dumping a pollutant into the drains. In addition to the last line of defense education, the City wanted to create a program that would involve children and teach them about pollution prevention. As part of the marking program, volunteers distribute informational door hangers to the homes in the area. These hangers provide the citizens with information on how they can help protect water quality by everyday tasks at their homes. It also has a detachable business card that the citizen can keep with the City of Kearney's Illicit Discharge contact phone number.

This was the first volunteer event the City has had and the girls did a phenomenal job. They marked 102 inlets in the Harmon Park area and provided hundreds of homes with a door hanger full of information. Along the way they even collected three sacks full of trash.

ORAL COMMUNICATIONS

There was no Oral Communications.

II. UNFINISHED BUSINESS

There was no Unfinished Business.

III. PUBLIC HEARINGS

CONDITIONAL USE PERMIT FOR DAY CARE; 1416 AVENUE K

Mayor Clouse opened the public hearing on the Application submitted by Rachel Perkins and Vicki Bliven (Applicant) and Starostka Group Unlimited, Inc. (Owner) for a Conditional Use Permit to locate an in-home day care facility on property zoned "District R-1, Urban Residential Single-Family District" and described as Lot 1, Hammer Park Estates Second, an addition to the City of Kearney, Buffalo County, Nebraska (1416 Avenue K). Planning Commission concurred with staffs following conditions: (1) the CUP be issued for a period of 12 months, renewable annually as long as there are no legitimate complaints or concerns; (2) the CUP is for this location and these applicants only, and is non-transferable; (3) at least one adult shall be living in the house as a full-time resident; (4) the hours of operation are limited to 6:00 a.m. to 5:00 p.m. Monday through Friday; (5) the maximum number of children that can be taken care of at any one time is 12; (6) the maximum number of employees is three; (7) the applicants shall build a solid privacy fence around the backyard within 90 days of City Council approval of the CUP; (8) drop-off and pick-up in front of the house, or preferably in the driveway of the daycare; and (9) Applicants shall provide copies of state licensing to the City for the file.

The applicants are requesting a Conditional Use Permit (CUP) to operate a daycare in a residential neighborhood located at 1416 Avenue K. The property is zoned Urban

Residential Single-Family District. The applicants are licensed for a "Daycare Center" with the Nebraska Health and Human Services for a minimum of 13 children and a maximum of 30 children. Their proposed hours of operation are from 6:00 a.m. to 5:00 p.m., Monday through Friday. Vicki Bliven will be living in the house and the house will remain a residential structure, it will not be converted into a "commercial use". The house contains 1,300 square feet upstairs and 1,300 square feet downstairs. Employees will consist of Vicki and daughter Rachel and perhaps one part-time employee in the future. Employee parking will be in the garage or driveway. The applicants plan to build a solid privacy fence around the backyard. Staff encouraged them to speak with their neighbors and explain what they want to do. If the neighbors start to complain that could jeopardize the CUP.

Because of the number of children they want to have at their daycare, a Conditional Use Permit for "Day Care Services – General" is required (more than six children). Staff raised concern over the 30 children upper limit and told them about the recent experience with the Hisey Daycare. They agreed that 13 to 14 would be the most children that they would want under the City CUP, even though the State license would allow more. Staff is thinking that 12 or fewer would be more in keeping with the neighborhood setting. The applicants agreed at the Planning Commission hearing that 12 or fewer would be a comfortable number for them.

There are three reasons that this daycare may be considered for this site as opposed to the situation that occurred with the Hisey daycare.

1. Someone will be living in the home.
2. No overnight, late night or weekend operation is proposed.
3. If the number of children is kept at 12 or fewer it will be less disrupting than the high number of children in the Hisey case.

Rachel Perkins, co-owner of Almost Home Daycare at 1416 Avenue K, presented this matter to the Council. This is a family-owned business by herself and her mother, Vicki Bliven, who will be residing in the home with her father. It is their goal to be an asset to their neighborhood and keep the neighborhood setting. They are a licensed daycare with the State of Nebraska Health and Human Services. They are in process of getting health and fire inspections. They had planned on having all the health and fire inspections done by the end of April and were quoted on having the daycare in home by May, but they are still currently not in the home. They are waiting on the final inspection for the loan to go through. They are hopeful those inspections will be done by the middle of June depending on when they can get into the house.

They will never exceed 12 children at any time and will only be licensed for 12 children. Initially, they thought they would be approved for as many as 30 children but decided they wanted to keep it to a smaller setting. Their hours of operation are Monday-Friday from 6:00 a.m. to 5:00 p.m. There will not be any late nights or weekends because that is family time for them, as well as their neighbors. The house contains 1,300 square feet upstairs, 1,300 square feet downstairs and the entire house will be used for the daycare facility. The backyard will have a privacy fence within 90 days or sooner.

She and her mother will be the full time employees and they might look to hire someone when the school year begins to help with taking kids to and from school. They are going

to try to do everything themselves. Employee parking will be in the driveway or directly in front of the home. The parents will drop off and pick up in the garage or driveway. They do not want anyone parking in the street or dropping kids off in the street. One of their requirements is that parents have to physically bring their children into the house. They are in agreement with all the conditions of the Conditional Use Permit. They are hopeful the inspection will be done by the end of this week and they can move in next week.

Council member Lammers asked why they changed their application for a daycare center for 13-30 to only 12 children. Ms. Perkins stated that at first they wanted to open a daycare center, but the requirements for alarm and sprinkler systems and the amount of work that 30 children would be changed their decision. Their license is for up to 12 children and is called an "In Home II" daycare license.

Council member Lear asked if it was realistic that the hours of operation will only be until 5:00 p.m. Ms. Perkins stated that the latest that a parent can get there is 5:15 p.m. Out of the three parents that she currently has, they all get off work between 2:30 and 3:00 p.m.

Council member Buschkoetter stated that if a parent gets off work at 5:00 p.m. but cannot pick up the child until 5:15 that would be a violation of the CUP. Ms. Perkins stated they actually have all of their 12 children signed up already and are just waiting until school gets out. All of the parents of those children get off between 2:30 p.m. and 3:00 p.m.

City Manager Michael Morgan stated the Planning Commission discussed the hours of operation along with several other items and he did not believe these hours were uncommon for daycares in a neighborhood setting since it generates a certain amount of traffic that shows up at a certain time. The Planning Commission also talked about the staggering of the drop off times and Ms. Perkins confirmed they will not all show up at the same time. Also several of these parents have multiple children who will be attending the daycare.

Council member Kearney asked what steps Ms. Perkins would take if a child was not picked up by the appointed time. Ms. Perkins stated that she does state in her contract that additional fees will be charged for each minute the parents are late. Also, if the child was not picked up for an extended amount of time and she was unable to reach the parent she would contact the police or Health and Human Services. She has not had any reason to do this in her past experiences.

City Manager stated if you read between the lines, the pick up time could be adjusted to 5:30 p.m. to make everyone more comfortable, but on the other hand Ms. Perkins prefers the rule to be 5:00 p.m. A request for a change in the time could always be brought back to the Council to be adjusted in the future. It was suggested to change the pick up time to 5:30 p.m.

Rhoda Brown, 410 Tahoe Drive, stated a few from the neighborhood met with Ms. Perkins on April 8th. They were very impressed with what she had to say. She has a schedule of activities throughout the day. She thought the safety issue of keeping the

kids in an area for drop off and pick up was the neighbor's primary concern. Ms. Perkins told them that the parents could pull into her garage to unload which impressed the neighbors very much. Ms. Perkins seems very structured, well organized and is precise about what she wants done. The neighbors did not see a problem with locating the daycare there or allowing extra time to pick up after 5:00.

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 Rachel Perkins and Vicki Bliven (Applicant) and Starostka Group Unlimited, Inc. (Owner) for a Conditional Use Permit to locate an in-home day care facility on property zoned "District R-1, Urban Residential Single-Family District" and described as Lot 1, Hammer Park Estates Second, an addition to the City of Kearney, Buffalo County, Nebraska (1416 Avenue K) subject to compliance with the following conditions: (1) said Permit is granted specifically to Rachel Perkins and Vicki Bliven, shall be limited to this location only, and shall not be transferable; (2) Applicants agree that at least one adult shall be living in the house as a full-time resident; (3) the hours of operation shall be limited to 6:00 a.m. until 5:30 p.m., Monday through Friday; (4) Applicants agree the maximum number of children in the facility at any one time is twelve; (5) Applicants agree the maximum number of employees shall be three; (6) Applicants agree to construct a solid privacy fence around the backyard within 90 days after approval of said Permit (no later than August 12, 2009); (7) Applicants agree the drop-off and pick-up shall be in front of the house and/or preferably in the driveway of the permitted facility; (8) Applicants agree to provide copies of state licensing to the City; and (9) said Permit is approved for a period of one year at which time said permit may be renewed annually. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

IV. CONSENT AGENDA

Moved by Lammers seconded by Lear that Subsections 1 through 11 of Consent Agenda Item IV be approved. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

1. Approve Minutes of Regular Meeting held April 28, 2009.

2. Approve the following Claims:

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

4Imprint \$7,232.85 Smcs; Alltel \$61.19 Smcs; Amer First Aid \$81.47 Smcs; Anderson,D \$28.77 Smcs; Apple Books \$43.90 Smcs; Arens,S \$14.69 Smcs; Ask Supply \$255.46 Smcs; Bailar,B \$19.92 Smcs; Baker & Taylor \$2,686.63 Smcs; BBC Audiobooks \$283.80 Smcs; Berggren,M \$39.00 Smcs; Bluecross Blueshield \$111,717.48 Smcs; Bootlegger \$210.00 Smcs; Bosselman \$2,261.15 Smcs; Brilliance Audio \$332.75 Smcs; Bruce Furniture \$730.00 Smcs; Brungardt Engineering \$39,362.14 Co; Buchta,M

\$69.24 Smcs; Buffalo Co Comm Partners \$108.00 Smcs; Buffalo Co Court \$287.44 Ps; Buffalo Co District Court \$744.40 Ps; Buffalo Co Reg Deeds \$137.00 Smcs; Buffalo Co Treasurer \$20.00 Smcs; Buffalo Outdoor Power \$11,670.00 Co; Builders \$380.02 Smcs,co; Burking,L \$50.00 Smcs; Carcia Chicoine Enterprises \$4,222.86 Smcs; Cargill,R \$175.00 Smcs; Carrizales,M \$39.23 Smcs; Central District Health Dept \$2,494.00 Smcs; Central Fire & Safety \$33.30 Smcs; Central States Wire Products \$2,625.08 Smcs; CH Diagnostic \$445.00 Smcs; Charter \$766.35 Smcs; Charter Media \$205.00 Smcs; City of Ky \$18,141.25 smcs,ps; College Savings Plan of NE \$100.00 Ps; Copycat Printing \$358.33 Smcs; Credit Management Services \$240.93 Ps; Crow,S \$34.93 Smcs; Cullen,M \$52.52 Smcs; D&D Industries \$550.00 Smcs; Dandee Concrete \$17,672.00 Co; Deeter Foundry \$979.00 Smcs; Deforge,M \$7.81 Smcs; Development Council \$745.39 Smcs; Dish Network \$27.42 Smcs; DPC Industries \$13,290.00 Smcs; Dreyer,D \$110.35 Smcs; Driver's License Guide \$28.95 Smcs; Dutton-Lainson \$1,244.98 Smcs; E&D Enterprises \$280.00 Smcs; Eakes \$1,153.36 Smcs; Eirich,T \$50.00 Smcs; EJ's Outdoor Sports \$408.00 Smcs; Enterprise \$259.00 Smcs; Eustis Body Shop \$75.00 Smcs; Excel Systems Software \$260.00 Smcs; Fiddelke Heating \$15,997.00 Co; Fingerprint America \$1,427.50 Smcs; Florida Micro \$3,277.74 Smcs; Freedom Pump \$790.52 Smcs; Frontier \$7,422.33 Smcs; Fry & Associates \$25,055.00 Co; Gale \$193.23 Smcs; Garcia Chicoine Enterprises \$5,000.00 Smcs; Garrett Tires \$4,395.25 Smcs; GE Money Bank \$1,694.15 Smcs; General Binding \$925.14 Smcs; Gorecke,L \$8.91 Smcs; Great Plains Safety \$300.00 Smcs; Great Plains Welcoming \$300.00 Smcs; Gronewoller,S \$35.10 Smcs; H&H Distributing \$1,016.45 Smcs; Haolong,N \$9.63 Smcs; Harms,S \$20.38 Smcs; Havermann,M \$5.68 Smcs; HD Supply \$204.39 Smcs; Hendrickson,D \$1.25 Smcs; Hohn,A \$38.95 Smcs; Holiday \$38.36 Smcs; Hometown Leasing \$207.71 Smcs; Hydrologic \$700.00 Smcs; ICMA RC \$4,735.90 Ps; Independent Insurance \$100.00 Smcs; Infinisource \$30.00 Smcs; IRS \$96,284.34 Ps; Interstate All Battery \$95.70 Smcs; Jack Lederman \$2,379.26 Smcs; Jenkins,S \$16.56 Smcs; Judds Brothers Construction \$185,420.00 Co; Junkman's Recycling \$8.00 Smcs; Ky Clinic \$70.00 Smcs; Ky Hub \$400.00 Smcs; Ky Humane Society \$4,000.00 Smcs; Ky Towing \$65.00 Smcs; Ky Visitors Bureau \$75,142.86 Smcs; KGFV-AM \$48.00 Smcs; KHAS-TV \$1,975.00 Smcs; KHGI/KWNB TV \$1,495.00 Smcs; Kirkham Michael \$5,227.78 Co; Klimek,D \$41.79 Smcs; Konica Minolta \$224.38 Smcs; Korus,S \$60.00 Smcs; Krepel,J \$476.00 Smcs; Lang,L \$250.00 Smcs; Larson,H \$84.99 Smcs; Lefever,R \$29.34 Smcs; Lindner,S \$40.52 Smcs; Linweld \$26.30 Smcs; Lockmobile \$14.00 Smcs; Magic Cleaning \$2,450.00 Smcs; Mail Express \$229.50 Smcs; Marshall Cavendish \$23.95 Smcs; Masek,K \$39.61 Smcs; Maul,E \$67.49 Smcs; M-B Co \$428.83 Smcs; McElhinney Builders \$100.00 Smcs; Menards \$4.47 Smcs; Messersmith,J \$31.37 Smcs; Midlands Contracting \$94,287.95 Co; Mid-State Engineering \$1,550.00 Co; Miller & Associates \$63,675.18 smcs,co; Moyer,O \$41.15 Smcs; NE Business Banking \$16,258.60 Ds; NE Child Support \$2,797.89 Ps; NE Crime Commission \$21.00 Smcs; NE Fire Administrative \$15.00 Smcs; NEland Distributors \$676.00 Smcs; Neopost \$624.89 Smcs; Niemann,C \$35.00 Smcs; Nikkila,J \$11.15 Smcs; Northwest Electric \$1,949.90 Smcs; Northwestern Energy \$5,457.10 Smcs; Nossek,V \$30.80 Smcs; Nova Fitness Equipment \$354.50 Ps; Office Depot \$98.14 Smcs; O'Keefe Elevator \$185.00 Smcs; Overhead Door \$300.80 Smcs; Paramount \$486.63 Smcs; Patterson,B \$50.70 Smcs; Ping \$1,428.73 Smcs; Plains Tree Farm \$3,109.70 Smcs; Platte Valley Comm \$11,816.75 Smcs; Presto-X \$195.00 Smcs; Pulliam,R \$40.00 Smcs; Random House \$152.00 Smcs; Recorded Books \$5.95 Smcs; Reineke,B \$29.61 Smcs; Reinke,L \$11.68 Smcs; Resource Management \$755.10

Smcs; Reyes,D \$13.19 Smcs; Richardson,J \$157.32 Smcs; Rinker \$480.00 Smcs; Riverside Mfg \$556.15 Ps; Robertson,A \$9.35 Smcs; Salinas,C \$29.86 Smcs; Sapp Brothers \$16,792.32 Smcs; Scamehorn,D \$85.49 Smcs; Sid Dillion Wahoo \$24,901.00 Co; Snap-On Tools \$57.05 Smcs; Snow,T \$50.00 Smcs; Solid Waste Agency \$44,447.49 Smcs; Solid Waste Equipment \$5,888.03 Smcs; Sonetics Corp \$128.95 Smcs; St of NE/AS Central \$3,933.62 smcs,co; St of NE/DAS Comm \$18.33 Smcs; Statewide Collection \$25.02 Smcs; Sun Life Financial \$29,319.22 Smcs; Sutton,P \$225.00 Smcs; Sydow,J \$40.00 Smcs; Taylor Made \$1,085.25 Smcs; Theis,G \$49.65 smcs,ps; Theis,J \$60.00 Smcs; Thome,B \$35.10 Smcs; Thompson,J \$19.21 Smcs; Titleist \$235.21 Smcs; Tool Doctor \$25.00 Smcs; TruGreen \$190.00 Smcs; Tye & Rademacher \$11,486.46 Smcs; Van Wall \$27,950.00 Co; Village Uniforms \$481.76 Smcs; Walsh,C \$30.53 Smcs; Watco Metal Works \$77.00 Smcs; Wilke Contracting \$9,444.41 Co; Wilkins Hinrichs Stober \$23,909.97 Co; Winslow,C \$22.19 Smcs; Wooden,T \$550.00 Co; Payroll Ending 4-25-2009 -- \$306,255.99. The foregoing schedule of claims is published in accordance with Section 19-1102 of the Revised Statutes of Nebraska, and is published at an expense of \$_____ to the City of Kearney.

3. Approve Change Order No. 8 showing an increase in the amount of \$3,072.00 and Application and Certificate for Payment No. 5 in the amount of \$240,480.00 submitted by Hausmann Construction and approved by Wilkins Hinrichs Stober Architects for the construction of the Peterson Senior Activity Center located at the E.K. and Mary Yanney Heritage Park and approve **Resolution No. 2009-60**.

RESOLUTION NO. 2009-60

WHEREAS, Hausmann Construction of Lincoln, Nebraska has performed services in connection with the construction of the Peterson Senior Activity Center located at the E.K. and Mary Yanney Heritage Park, and the City's engineer, Wilkins Hinrichs Stober Architects, have filed with the City Clerk Change Order No. 8 showing an increase in the amount of \$3,072.00, as shown on Exhibit "A" attached hereto and made a part hereof by reference; and

WHEREAS, Hausmann Construction and the City's engineer have filed with the City Clerk Application and Certificate for Payment No. 5 in the amount of \$240,480.00 as shown on Exhibit "B" attached hereto and made a part hereof by reference as follows:

Original Contract Sum	\$2,879,000.00
Change Order No. 1 (11-25-2008)	- 21,081.00
Change Order No. 2 (11-25-2008)	- 40,000.00
Change Order No. 3 (11-25-2008)	- 25,000.00
Change Order No. 4 (11-25-2008)	+ 4,900.00
Change Order No. 5 (2-24-2009)	- 1,959.00
Change Order No. 6 (3-10-2009)	- 7,226.00
Change Order No. 7 (4-14-2009)	+ 3,667.00
Change Order No. 8 (5-12-2009)	<u>+ 3,072.00</u>
Contract Sum to Date	\$2,795,373.00
Total Completed and Stored to Date	1,157,679.00
Retainage	115,767.90

Amount Due to Date	1,041,911.10
Less Previous Certificates for Payment	<u>801,431.10</u>
Current Payment Due	\$ 240,480.00

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, and hereby find and determine that Change Order No. 8 as shown on Exhibit "A", and Application and Certificate for Payment No. 5, as shown on Exhibit "B", be and are hereby accepted and approved.

PASSED AND APPROVED THIS 12TH DAY OF MAY, 2009.

ATTEST:
 MICHAELLE E. TREMBLY
 CITY CLERK

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

4. Approve **Resolution No. 2009-39A** accepting the Final Plat for McCan Subdivision of Buffalo County, Nebraska for property located at 5785 Cottonmill Avenue correcting a typographical error in the filing of the final plat.

RESOLUTION NO. 2009-39A

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of "McCan Subdivision" of Buffalo County, Nebraska for a tract of land being the north 330.0 feet of the west 368.0 feet of the Southwest Quarter of the Southwest Quarter of Section 20, Township 9 North, Range 16 West of the 6th P.M., containing 2.788 acres, more or less, 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 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 MAY, 2009.

ATTEST:
 MICHAELLE E. TREMBLY
 CITY CLERK

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

5. Approve **Resolution No. 2009-41A** accepting the Final Plat for Young Estates of Buffalo County, Nebraska for property located at 7143 17th Avenue correcting a typographical error in the filing of the final plat.

RESOLUTION NO. 2009-41A

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of "Young Estates" of Buffalo County, Nebraska for a tract of land being part of the South Half of the South Half of the Southwest Quarter of Section 14, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, described as follows: Beginning at the southwest corner of the

Southwest Quarter of said Section 14; thence easterly along the south line of said Quarter Section a distance of 297 feet to a point on said south line; thence northerly a distance of 330 feet along a line parallel to the west boundary line of said Southwest Quarter to a point; thence westerly a distance of 297 feet to a point on the west boundary line of said Southwest Quarter; thence southerly along said west boundary line of said Southwest Quarter a distance of 330 feet to the place of beginning, containing 2.25 acres, more or less, 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 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 MAY, 2009.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

6. Approve **Resolution No. 2009-42A** accepting the Final Plat for Sorensen Acres of Buffalo County, Nebraska for property located north of Highway 30, west of the Little USA Store correcting a typographical error in the filing of the final plat.

RESOLUTION NO. 2009-42A

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of "Sorensen Acres" of Buffalo County, Nebraska for a tract of land being part of Tract 10, Little Ponderosa Acres, a subdivision of the East Half of the Southeast Quarter of the Southeast Quarter of Section 31, and the Southwest Quarter of the Southwest Quarter of Section 32, all in Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska and a tract of land being part of the Southeast Quarter of the Southwest Quarter of Section 32, Township 9 North, Range 16 of the 6th P.M., Buffalo County, Nebraska, and all more particularly described as follows: Referring to the southwest corner of the Southeast Quarter of the Southwest Quarter of said Section 32 and assuming the south line of said Southeast Quarter of the Southwest Quarter of said Section 32 as bearing N89°57'50"E and all bearings contained herein are relative thereto; thence N00°13'01"E a distance of 33.0 feet to the Actual Place of Beginning, said place of beginning being on the north right-of-way line of U.S. Highway No. 30; thence N89°57'50"E and on the aforesaid north right-of-way line a distance of 372.13 feet to the southwest corner of Lot 4, Little U.S.A. Addition; thence N00°02'23"W and on the west line of Little U.S.A. Addition (if extended) a distance of 863.6 feet to a point that intersects on the south right-of-way line of NPPD's Kearney Canal; thence S87°11'28"W and on the aforesaid south right-of-way line a distance of 76.0 feet; thence N77°47'14"W a distance of 110.0 feet; thence N62°27'32"W a distance of 112.0 feet; thence N50°07'56"W a distance of 111.7 feet to a point that intersects on the east line of said Tract 10, Little Ponderosa Acres; thence continuing on the south right-of-way of NPPD's Kearney Canal N50°07'56"W a distance of 42.5 feet; thence N37°50'01"W a distance of 271.71 feet to a point of intersection with the south right-of-

way line of NPPD's Kearney Canal and the west line of said Tract 10, Little Ponderosa Acres; thence S00°14'34"W and on the west line of said Tract 10 and leaving said NPPD's Kearney Canal right-of-way a distance of 774.4 feet; thence N89°47'25"E a distance of 171.18 feet; thence S00°03'01"W a distance 435.14 feet to a point on the south line of said Tract 10 in said Little Ponderosa Acres; thence S89°56'27"E and on the aforesaid south line a distance of 28.1 feet to the southeast corner of said Tract 10; thence S00°54'15"E a distance of 39.67 feet to the place of beginning, containing 10.95 acres, more or less, 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 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 MAY, 2009.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

7. Approve the application for a Special Designed License submitted by KEARNEY SHOOTERS INC., dba Shooters in connection with their Class C-67029 liquor license to dispense beer, wine and distilled spirits in the Ag Pavilion located at the Buffalo County Fairgrounds, 3807 Avenue N, on June 20, 2009 from 4:00 p.m. until 1:00 a.m. for a dance/reception.

8. Approve the Plans and Specifications for the 2009 Part 4 Improvements consisting of Paving Improvement District No. 2008-930 for 48th Street from the east right-of-way line of 11th Avenue to the east line of Lot 1, Block Four, Windsor Estates Seventh Addition; Paving Improvement District No. 2008-931 for 10th Avenue Place from 48th Street to end of cul-de-sac; Paving Improvement District No. 2008-932 for 11th Avenue from the north line of 48th Street south to the north lot line of Lot 1 of Block 6, Fountain Hills First Addition; Paving Improvement District No. 2008-933 for 10th Avenue from the north line of 48th Street north to the north a distance of 293.98 feet to the northeast corner of Lot 24 of Block 3, Fountain Hills Third Addition; Water District No. 2008-554 for 48th Street from the east lot line of Lot 10, Block 4 to the west lot line of Lot 10 of Block 4, Fountain Hills Third Addition; Water District No. 2008-555 for 10th Avenue Place from 48th Street to end of cul-de-sac; Water District No. 2008-556 in a 25-foot wide utility easement from the north line of 48th Street northeasterly to the north lot line of Lot 42 of Block 2, Fountain Hills Third Addition; Sewer District No. 2008-495 for 48th Street from the west line of 11th Avenue to the east lot line of Lot 1 of Block 4, Fountain Hills Third Addition; AND in 10th Avenue Place from the south line of 48th Street to its terminus in a cul-de-sac; Sewer District No. 2008-496 in a 25-foot wide utility easement from the north line of 48th Street northeasterly to the north lot line of Lot 42 of Block 2, Fountain Hills Third Addition and set the bid opening date for June 3, 2009 at 2:00 p.m.

9. Approve the Cable Franchise Agreement between the City of Kearney and the Board of Regents of the University of Nebraska for and on behalf of the University of Nebraska at Kearney to maintain a cable system serving UNK and its students on the main campus and the Right-of-Way Easement Cable and Other Telecommunications Lines approve **Resolution No. 2009-61.**

RESOLUTION NO. 2009-61

WHEREAS, the City of Kearney and the University of Nebraska at Kearney (UNK) are entering into an agreement to allow UNK to provide cable services only to the main campus of UNK; and

WHEREAS, the City of Kearney will grant an easement to UNK for the construction and maintenance of coaxial lines, data lines, telephone wiring and other general lines crossing 15th Avenue, 19th Avenue and University Drive as described in the Right-of-Way Easement Cable and Other Telecommunications Lines.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the Mayor be and is hereby authorized and directed to execute the Cable Franchise Agreement, marked as Exhibit "A", attached hereto and made a part hereof.

BE IT FURTHER RESOLVED that the Mayor be and is hereby authorized and directed to execute the Right-of-Way Easement Cable and Other Telecommunications Lines, marked as Exhibit "B", attached hereto and made a part hereof.

PASSED AND APPROVED THIS 12TH DAY OF MAY, 2009.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

10. Approve the Agreement for Mutual Use of Parking and Placement of Sign between the City of Kearney and Countryside Christian Church located at 3203 8th Avenue and approve **Resolution No. 2009-62.**

RESOLUTION NO. 2009-62

WHEREAS, the City of Kearney and the Countryside Christian Church are entering into an agreement to allow Countryside Christian Church to use certain parking areas as well as the placement of a sign on property owned by the City of Kearney and described as Lot 1 of Block 6, Perkins and Harford Addition to the City of Kearney, Buffalo County, Nebraska (corner of 7th Avenue and 33rd Street).

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the City Manager be and is hereby authorized and directed to execute the Agreement for Mutual Use of Parking and Placement of Sign, marked as Exhibit "A", attached hereto and made a part hereof.

PASSED AND APPROVED THIS 12TH DAY OF MAY, 2009.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

11. Approve the application for a Special Designated License submitted by Juan Lazo, dba "El Tropic" in connection with their IBK-37623 catering liquor license to dispense beer and distilled spirits in the Exhibit Building located at the Buffalo County Fairgrounds, 3807 Avenue N, on June 20, 2009 from 6:00 p.m. until 1:00 a.m. for a Mexican dance.

V. CONSENT AGENDA ORDINANCES

ORDINANCE NO. 7520 – PAVING DISTRICT NO. 2009-937

Council Member Lear introduced Ordinance No. 7520, being Subsection 1 of Agenda Item V to create Paving Improvement District No. 2009-937 for 16th Street from a point 131 feet west of vacated Avenue P thence east a distance of 441 feet, 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. 7520 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. 7520 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7520 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. 7521 – WATER DISTRICT NO. 2009-558

Council Member Lear introduced Ordinance No. 7521, being Subsection 2 of Agenda Item V to create Water District No. 2009-558 in 16th Street from a point 131 feet west of vacated Avenue P thence east a distance of 441 feet, 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. 7521 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. 7521 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7521 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. 7522 – SANITARY SEWER DISTRICT NO. 2009-498

Council Member Lear introduced Ordinance No. 7522, being Subsection 3 of Agenda Item V to create Sanitary Sewer District No. 2009-498 in 16th Street from a point 131 feet west of vacated Avenue P thence east a distance of 441 feet, 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. 7522 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. 7522 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7522 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

VI. REGULAR AGENDA

ORDINANCE NO. 7523 – CONDITIONAL USE PERMIT FOR DAY CARE; 1416 AVENUE K (PERTAINS TO PUBLIC HEARING 1)

Council Member Clouse introduced Ordinance No. 7523, being Subsection 1 of Agenda

Item VI to grant a Conditional Use Permit to Rachel Perkins and Vicki Bliven to locate an in-home day care facility on property zoned "District R-1, Urban Residential Single-Family District" and described as Lot 1, Hammer Park Estates Second, an addition to the City of Kearney, Buffalo County, Nebraska (1416 Avenue K) subject to compliance with the following conditions (1) said Permit is granted specifically to Rachel Perkins and Vicki Bliven, shall be limited to this location only, and shall not be transferable; (2) Applicants agree that at least one adult shall be living in the house as a full-time resident; (3) the hours of operation shall be limited to 6:00 a.m. until 5:30 p.m., Monday through Friday; (4) Applicants agree the maximum number of children in the facility at any one time is twelve; (5) Applicants agree the maximum number of employees shall be three; (6) Applicants agree to construct a solid privacy fence around the backyard within 90 days after approval of said Permit (no later than August 12, 2009); (7) Applicants agree the drop-off and pick-up shall be in front of the house and/or preferably in the driveway of the permitted facility; (8) Applicants agree to provide copies of state licensing to the City; and (9) said Permit is approved for a period of one year at which time said permit may be renewed annually, and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Kearney seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, 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. 7523 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 Kearney seconded by Lammers that Ordinance No. 7523 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. 7523 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.

APPEAL ON SITE DEVELOPMENT FOR FIRSTIER EVENT CENTER, 609 PLATTE ROAD

Mayor Clouse opened for discussion the appeal submitted by Geof Cook for FirstTier Event Center on the review and evaluation of site development features by Administration for property zoned "District C-2/PD, Community Commercial District/Planned Development Overlay District" and described as Lot 2, Broadfoot Third Addition to the City of Kearney, Buffalo County, Nebraska as it pertains to cargo containers (609 Platte Road) and to consider approval of Resolution No. 2009-63. Planning Commission recommended approval to allow no more than six containers to remain at their current

location for a period of 12 months allowing the new ownership of the facility time to develop a plan of action to address these issues.

Council member Kearney abstained from discussion and voting for the reason he is employed by FirstTier Bank which owns two of the cargo containers.

The applicant is requesting approval to use temporary self contained portable storage units to store off-season equipment and maintenance supplies at the FirstTier Event Center. There are six of these storage units currently in use at the site, two of which are owned by the former owner of the arena. The property is zoned C-2/PD. Any additions to the site, such as the self contained storage units, require Planning Commission and City Council review and approval. You may recall a similar approach was taken to establish quantity and location of cargo containers at the Kearney Walmart store in 2006.

The Unified Land Development Ordinance (UDO) treats the storage units as a "temporary" use. Section 46-114, "Temporary Uses" of the UDO states;

- The number of containers shall be limited to what the City Planner will approve and shall not be increased without additional review. (Since this is a Planned District, staff believed that the Planning Commission and City Council should make the final determination).
- Location shall be restricted to the loading area only for commercial uses or in a location approved on the site plan.
- The containers shall be screened from view of any adjacent property and public right-of-way with a solid fence or dense evergreen landscaping.

Staff has met with the applicant who is the General Manager for the facility. The applicant has provided a letter requesting that all six of the containers be allowed at their current location which is on the west end of the building. This area is used for overflow parking and there is a large retaining wall that hides the containers from view from the main parking and arena entrance. The containers should be tucked in as close to the wall as possible to hide them. The applicant stated that future improvements to the building and grounds will consider the lack of storage and hopefully a better solution can be provided with the new ownership of the facility. In the meantime, the six containers are the only way to store the equipment and supplies necessary to support the arena's functions. Perhaps the containers should be allowed to remain as is for another year, at which time the arena representatives can present a plan for future improvements that will address the storage issues. There are parking lots yet to be paved, erosion problems, mechanical and plumbing issues that must also be investigated and a plan of action should address all of these concerns.

Jim Kettner, FirstTier Event Center, presented this matter to the Council. He stated that if you have been to the Event Center in the west parking lot you have seen several vehicle containers or cargo containers on the property used for storage. These are being used for their off-season storage of equipment for Storm Hockey Team equipment, items that pertain to the former basketball team that was here and other maintenance items that are used on a monthly or yearly basis. There is not the storage capacity inside the building for these items. The goal throughout the next year is to develop a plan to either shield those from public view or with a privacy fence of some

sort. They have also considered adding more storage inside the building on the west side. Two of the containers are owned by Joel Weins full of materials from the motel which he owned. Currently, the material is being transferred to some Brown Transfer container trucks and eventually those two containers will be moved off premise.

Moved by Lammers seconded by Lear to approve the appeal submitted by Geof Cook for FirsTier Event Center on the review and evaluation of site development features by Administration for property zoned "District C-2/PD, Community Commercial District/Planned Development Overlay District" and described as Lot 2, Broadfoot Third Addition to the City of Kearney, Buffalo County, Nebraska as it pertains to cargo containers (609 Platte Road) and approve **Resolution No. 2009-63** subject to compliance with the following conditions: (1) No more than six cargo containers shall remain at the current location which is on the west end of the building for a period of twelve months or no longer than May 12, 2010 at which time arena representatives can present a plan for future improvements that will address prior issues and the storage issue; and (2) The containers shall be placed as close to the wall as possible. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney abstained. Motion carried.

RESOLUTION NO. 2009-63

WHEREAS, FirsTier Event Center has submitted an appeal on the review and evaluation of site development features by Administration for property zoned "District C-2/PD, Community Commercial District/Planned Development Overlay District" and described as Lot 2, Broadfoot Third Addition to the City of Kearney, Buffalo County, Nebraska as it pertains to cargo containers (609 Platte Road).

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the appeal submitted by FirsTier Event Center on the review and evaluation of site development features by Administration for property zoned "District C-2/PD, Community Commercial District/Planned Development Overlay District" and described as Lot 2, Broadfoot Third Addition to the City of Kearney, Buffalo County, Nebraska as it pertains to cargo containers (609 Platte Road) be approved subject to compliance with the following conditions:

1. No more than six (6) cargo containers shall remain at the current location which is on the west end of the building for a period of twelve (12) months or no longer than May 12, 2010 at which time arena representatives can present a plan for future improvements that will address prior issues and the storage issue; and
2. The containers shall be placed as close to the wall as possible.

PASSED AND APPROVED THIS 12TH DAY OF MAY, 2009.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

OPEN ACCOUNT CLAIMS: NPPD - \$4,105.50, PLATTE VALLEY STATE BANK - \$45,844.59, SCHOOL DISTRICT #7 - \$9,084.85

Moved by Buschkoetter seconded by Kearney that Open Account Claims in the amount of \$45,844.59 payable to Platte Valley State Bank, and in the amount of \$4,105.50

payable to Nebraska Public Power District be allowed. Roll call resulted as follows: Aye: Buschkoetter, Lammers, Kearney. Nay: None. Clouse and Lear abstained. Motion carried.

Moved by Lear seconded by Clouse that Open Account Claims in the amount of \$9,084.85 payable to School District #7 be allowed. Roll call resulted as follows: Aye: Clouse, Kearney, Lear. Nay: None. Buschkoetter and Lammers abstained. Motion carried.

VII. REPORTS

SEND OFF EVENT FOR TRANSPORTATION TROOP 1195

The Council was reminded that the send off function was set for 7:30 p.m. tonight at the First Tier Event Center.

VIII. ADJOURN

Moved by Kearney seconded by Lammers that Council adjourn at 6:48 p.m. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried.

ATTEST:

MICHAELLE E. TREMBLY
CITY CLERK

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