

Kearney, Nebraska
January 12, 2010
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 12, 2010, 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; Kirk Stocker, Director of Utilities; Rod Wiederspan, Director of Public Works; Dan Lynch, Chief of Police; Suzanne Brodine, Assistant to the City Manager; and Luke Olson, Management Assistant were also present. Some of the citizens present in the audience included: James Karins, Kevin Heese, Mitch Humphrey, Candy Kuntz, Reed Miller, Craig Bennett, Brad Kernick, Mary Kalb, Ishrat Saif, Seth Denney, Sean Denney, Gerry O'Rourke, Brad Norton, Jim Moranville, Rhoda Brown, Tom Lieske, Anna Fryda, Greg Brown, Sister Rita Beason, Connie Reineker, Kimber Bonner, Marilyn Kile, Barb Poppe, Janiece Wiebusch, Jack McSweeney, Dale Gibbs, Tim Hoffman, David Cantral, Karen Triplett, Margaret Clark, Evelyn Watson, Rodney Bailer, Dave Sokolowski, Steve Loveless, Steve Altmaier from KGFW Radio, Kevin Hervert from Kearney Hub, NTV, KHAS TV, and approximately 150 people.

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 no representation from the Kearney Ministerial Association, the Council held a moment of silent prayer.

PLEDGE OF ALLEGIANCE

Two Boy Scouts from Troop 158 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.

RECOGNITION

Mayor Clouse and Council Members recognized Jack Anderson, a student from Kearney High School. He attended a Youth Conference through the Buffalo County Youth Advisory Board. He is interested in youth being more involved in the community.

ORAL COMMUNICATIONS

There was no Oral Communications.

II. UNFINISHED BUSINESS

There was no Unfinished Business.

III. PUBLIC HEARINGS

WALGREENS LIQUOR LICENSE

Mayor Clouse opened the public hearing on the application for a Class D Liquor License and the Manager Application for James Karins submitted by WALGREENS CO., dba Walgreens #03716 located at 2615 2nd Avenue and to consider Resolution No. 2010-1.

James Karins, District Manager with Walgreens, presented this matter to the Council. Also present was Kevin Heese, Store Manager of the Kearney Walgreens, who lives at 4210 Avenue R. Their application was in response to customer needs which is their number one priority. Customers want the convenience of one-stop shopping. Walgreens has pledged to meet these needs safely and responsibly in compliance with local regulations and in keeping with their overall mission as a retailer. Walgreens takes the responsibility of selling alcoholic beverages very seriously.

Mr. Karins stated they manage beer and wine sales with the same concern as safety as their exceptionally strong history of distributing highly regulated products, like prescription medications. They have detailed sales policies and procedures which are strictly enforced with zero tolerance for non-compliance. Service clerks are required to request identification for any customer purchasing alcohol who appears younger than 40. Their cash registers are already programmed to remind service clerks to verify age whenever an alcoholic beverage is rung up. They provide extensive training to all employees who handle beer and wine sales. Each of them must review their liquor sales policy every single day before beginning their shift at the register. Walgreens policy is that no employee under age 21 will handle beer or wine or be involved in ringing it up. They will be stocking value to moderately priced beer and wine as tailored to our customers taste and lifestyles. They will sell only full sized containers, no single servings. This new limited selection of alcoholic beverage will only comprise about two percent of the sales floor footage.

Council member Kearney asked what kind of security measures are provided at night when there is only a skeleton crew there. How is shoplifting prevented during those hours? Mr. Karins responded that that they have several security cameras in the store

and are adding outside cameras to view the parking lot. They have public view monitors throughout the store. He believed they have a strong ability to keep an eye on the product. Walgreens has been running 24-hour stores for many years and have a good understanding of what happens over night and how to keep an eye on those coming in overnight. Most of them come in as a convenience for a medical emergency.

Council member Lammers asked if there is a manager present in the store during those overnight hours. Mr. Karins stated that managers are always on duty even overnight. Mayor Clouse commented that in the past Walgreens had a business model that provided this service, but then went away from the concept. Mr. Karins stated that in the past there were a lot of locations that carried more than beer and wine to include liquor. It was decided to walk away from that business that caused some significant problems. The point that was brought up about shoplifting and some of those things were problematic. They are attempting to roll back more of the convenient everyday items and leave the hard spirits, etc. that caused a lot of problems behind. The register will not allow purchase of alcohol after hours.

Mayor Clouse asked if the product will be locked up overnight. Mr. Karins responded they would comply with whatever the local regulations are. Chief Lynch stated that he did not have any concerns and there were no incidences with the previous model that Walgreens had.

There was no one present in opposition to this hearing.

Moved by Kearney seconded by Lammers to close the hearing and approve or recommend approval to the Liquor Commission the application for a Class D Liquor License and the Manager Application for James Karins submitted by WALGREENS CO., dba Walgreens #03716 located at 2615 2nd Avenue and approve **Resolution No. 2010-1**. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

RESOLUTION NO. 2010-1

WHEREAS, WALGREENS CO., dba Walgreens #03716 has filed with the Nebraska Liquor Control Commission and the City Clerk of the City of Kearney, Nebraska, an application for a Class D-88636 (Beer, Wine and Distilled Spirits – Off Sale Only) Liquor License to do business at 2615 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, WALGREENS CO., dba Walgreens #03716 also filed with the Nebraska Liquor Control Commission and the City Clerk of the City of Kearney, Nebraska, an application for Corporate Manager of James Karins; and

WHEREAS, a hearing was held relating to said application on January 12, 2010.

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-88636 (Beer, Wine and Distilled Spirits – Off Sale Only) Liquor License to WALGREENS CO., dba Walgreens #03716 located at 2615 2nd Avenue, Kearney, Nebraska, and to approve the application for Corporate Manager of James Karins.

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 JANUARY, 2010.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

HEARING FOR STATE REVOLVING FUNDING

Mayor Clouse opened the public hearing to discuss the construction activities, impact to rates and any needed mitigation measures and to meet clean water and drinking water SRF criteria with regard to sanitary sewer and water main improvements in the area of 16th Street, 30th Avenue and 11th Street, 8th Street, 15th Avenue, 16th Avenue, and 56th Street and to consider Resolution No. 2010-2.

Candy Kuntz from Miller & Associates presented this matter to the Council. On November 30, 2009 the State of Nebraska Department of Environmental Quality (NDEQ) contacted the Utilities Department regarding the possibility of State Revolving Fund (SRF) money being available for loans to finance shovel ready projects that could be contracted within 90 days of fund availability, expected in mid February 2010, if indeed funds became available.

In response to NDEQ, the Utilities Department submitted a list of projects which we believed would qualify for the funding. Those projects are as follows;

- 8th Street, 15th Avenue and 16th Avenue, Parkview Estates 5th Addition water and sanitary sewer including site for the new Elementary School.
- 56th Street water main from the Data Center site east into the Airport water system for redundancy.
- 16th Street, 30th Avenue and 11th Street, 2009 Part 12 Improvements, Southwest Kearney Water and Sanitary Sewer, to serve the Buckle Distribution Center.

State funding requirements have been included or will be included in the contract documents to satisfy SRF requirements. A public hearing must also be held to receive public comment on the proposed projects to satisfy SRF requirements.

The City is not obligated to use SRF funds based on the public hearing and would not be obligated to use SRF Funds until a loan agreement is approved by the City Council at a later date.

There was no one present in opposition to this hearing.

Moved by Lammers seconded by Lear to close the hearing pertaining to meeting clean water and drinking water SRF criteria with regard to sanitary sewer and water main improvements and approve **Resolution No. 2010-2**. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

RESOLUTION NO. 2010-2

WHEREAS, the Nebraska Department of Environmental Quality may have State Revolving Fund (SRF) money available for loans to fund shovel ready projects that could be contracted within 90 days of fund availability; and

WHEREAS, as part of the State funding requirements, a public hearing was held on January 12, 2010.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the City of Kearney conducted the public hearing as required by the Nebraska Department of Environmental Quality.

PASSED AND APPROVED THIS 12TH DAY OF JANUARY, 2010.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

FINAL PLAT FOR UNIVERSITY HEIGHTS ADDITION

Mayor Clouse opened the public hearing on the Application submitted by Mitch Humphrey from Buffalo Surveying (Applicant) for Norman Dean Smith as Trustee of The Norman Dean Smith Trust (Owner) for the Final Plat for University Heights Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as Lot 8, Country Club Plaza (to be vacated), a subdivision to the City of Kearney, Buffalo County, Nebraska (1815 University Drive Circle) and to consider Resolution No. 2010-3. Planning Commission recommended approval.

The applicant is requesting approval to vacate an existing lot and replat it into four lots. The property is developed with a four-unit townhouse building. The property is zoned R-3/PD. Lot 8, Country Club Plaza, part of Lots 16, 20, and 21, Frank's Park Addition and part of Lot 25, Wheaton Place must be vacated in order to replat this land into a four-lot subdivision to be known as University Heights Addition.

The Preliminary and Final Plat for University Heights Addition consists of four lots, each containing a single living unit from the four unit townhouse building. The Preliminary Plat was approved by the Planning Commission on December 18, 2009. The property is being subdivided in this manner so that each living unit can be on a separate lot and separately owned. Each unit is separately connected to sanitary sewer and municipal water. The lots meet the minimum lot width requirement of 25-feet. City Code requires common areas to be maintained by a Homeowner's Association when townhouses are developed on individually owned lots. In this case, there are no common areas that would require an Association for maintenance. Staff assumes that each property owner will take care of his or her lot. If the owners decide to hire mowing and snow removal services collectively, that is their option.

Mitch Humphrey presented this matter to the Council. This lot originally contained a house which was converted into a duplex. At an earlier Planning Commission and Council meeting, it was approved to rezone the property to accommodate a 4-plex on the property. The property was rezoned to R3/PD (Planned Development). They are now requesting to divide this property using current zoning regulations into four tracts

with each tract being divided right down the party wall line of the 4-plex that he is building. They are asking for approval of the subdivision plat which shows the 4-plex and vacation of all the parts of lots that have been created and platted over according to the standard in the day when the lots were created

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 Mitch Humphrey from Buffalo Surveying (Applicant) for Norman Dean Smith as Trustee of The Norman Dean Smith Trust (Owner) for the Final Plat for University Heights Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as Lot 8, Country Club Plaza (to be vacated), a subdivision to the City of Kearney, Buffalo County, Nebraska (1815 University Drive Circle) and approve **Resolution No. 2010-3**. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried.

RESOLUTION NO. 2010-3

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of University Heights Addition, an addition to the City of Kearney, Buffalo County, Nebraska for a tract of land being all of Lot 8, now vacated, Country Club Plaza, a subdivision of the west 320 feet of Lot 16 of Frank's Park Addition and the west 320 feet of Lot 25 in Wheaton Place, Wheaton Place being a subdivision of Lots 19, 20 and 21 of Frank's Park Addition, and the west 320 feet of the north 25 feet (vacated) of 26th Street lying immediately south of and adjoining said Lot 25, all being in the City of Kearney, Buffalo County, Nebraska, with said Lot 8, now vacated, being located in the Southeast Quarter of the Southeast Quarter of Section 34, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Referring to the southeast corner of Section 34 and assuming the east line of the Southeast Quarter of Section 34 as bearing N00°55'47"W and all bearings contained herein are relative thereto; thence N00°55'47"W and on the east line of the Southeast Quarter of said Section 34 a distance of 893.81 feet to a point on the south line of the vacated north 25.0 feet of 26th Street (Minneapolis Avenue), if extended easterly, as shown on the plat Wheaton Place, a subdivision of Lot 19, Lot 20 and Lot 21 of Frank's Park Addition to Kearney, Nebraska; thence leaving the east line of the Southeast Quarter of said Section 34 and on said south line of the vacated north 25 feet of 26th Street (Minneapolis Avenue), if extended easterly, and on the south line of said Country Club Plaza S89°58'44"W a distance of 420.90 feet to the southeast corner of said Lot 8, Country Club Plaza to the point of beginning; thence continuing S89°58'44"W and on the south line of said Lot 8, Country Club Plaza a distance of 69.73 feet to the southwest corner of said Lot 8, Country Club Plaza; thence NORTH on the west line of said Lot 8, Country Club Plaza a distance of 157.0 feet to the northwest corner of said Lot 8, Country Club Plaza; thence N89°58'44"E and on the north line of said Lot 8, Country Club Plaza a distance of 70.0 feet to the northeast corner of said Lot 8, Country Club Plaza; thence S00°06'36"W and on the east line of said Lot 8, Country Club Plaza a distance of 157.0 feet to the place of beginning, all in the City of Kearney, Buffalo County, Nebraska duly made out, acknowledged and certified, and the same hereby is approved in accordance with the provisions and requirements of Section 19-916 of the Nebraska Revised Statutes, be accepted and ordered filed and recorded in

the Office of the Register of Deeds of Buffalo County, Nebraska; said addition is hereby included within the corporate limits of said City and shall be and become a part of said City for all purposes whatsoever, and the inhabitants of such addition shall be entitled to all the rights and privileges and shall be subject to all laws, ordinances, rules and regulations of said City.

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

PASSED AND APPROVED THIS 12TH DAY OF JANUARY, 2010.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

REZONING SOUTH OF 11TH STREET BETWEEN 13TH AVENUE AND 16TH AVENUE

Public Hearings 4, 5 and 6 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Kelly J. Rapp and Laureen Striker-Rapp (Owner) to rezone from District AG, Agricultural District to District R-1, Urban Residential Single-Family District (Low Density) for property described as a tract of land being part of the West Half of the Northwest Quarter of Section 11 and part of the West Half of the Southwest Quarter of Section 2, all in Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (south of 11th Street between 13th Avenue and 16th Avenue). Planning Commission recommended approval.

The applicant is requesting approval to rezone, subdivide and annex property located south of 11th Street between 13th Avenue and 16th Avenue. Part of the property is zoned AG and part R-1. The proposed use is for single-family housing and an elementary school site. The applicant is requesting R-1 zoning for 18.62 acres including a 9.80 acre lot for the school site with the remainder of the property proposed for 12 single-family residential lots.

The Preliminary Plat for Park View Estates Fifth Addition encompasses a larger area than the area that is proposed for rezoning, final platting and annexation. The Preliminary Plat depicts 67 lots on 40.50 acres. One of the lots is the site for the elementary school while the remainder of the lots is to be developed with single-family homes. There are two 20-foot wide pedestrian easements that allow pedestrian access between Lots 11 and 12 of Block 4 and between Lots 5 and 6 and Lots 7 and 8 of Block 3. This pedestrian path will allow children easier access through the neighborhood to the school. The Preliminary Plat also depicts street layout and future extensions for the street network in this area. The Planning Commission approved the Preliminary Plat on December 18, 2009.

The Final Plat for Park View Estates Fifth corresponds to the area that is being rezoned. There are 12 single-family lots and the school site shown on the Final Plat. A blanket easement that traverses the site from northwest to southeast contains a high pressure

natural gas main. This easement is shown on the Preliminary and Final Plat. Building envelopes are shown on the residential lots that are affected by the easement; Lots 2, 3, and 4 of Block 1. There is a one foot offset from the 50-foot gas line easement such that a structure cannot be built up to the easement line. A detail of this offset is blown up for clarification on the plat. A Public Works Plan has been submitted showing how the public services in this area can be extended to serve the site. Seventeen feet of right-of-way has been dedicated along 11th Street for a 100-foot wide street right-of-way. A Subdivision Agreement has been prepared for this subdivision. The Planning Commission had some questions regarding the improvement financing sections of the agreement. As per state law the school has twenty years to pay for paving improvements and ten years to pay for water and sewer improvements. They are not required to provide a fifty percent deposit. Also, there is a special clause in the agreement dealing with future zoning that requires the school system to sign off on any commercial zoning of surrounding property.

The property contained within the limits of the Final Plat is contiguous to existing City limits and can be served with public improvements. Therefore, Park View Estates Fifth Addition shall be annexed into the corporate boundary of the City of Kearney.

Craig Bennett presented this matter to the Council. The final plat is for 18 acres within a 40-acre area for which there is a preliminary plat. The 18 acres is bound on the north by 11th Street and to the east is a residential subdivision which was created in several different phases. The proposed use in the Comprehensive Plan shows low density residential. The existing zoning map shows part already being zoned as R-1 and they are asking for the entire 18 acres to be rezoned to R-1. The preliminary plat for the 40.5 acres shows the master plan for future phases after this first phase is developed.

The proposed school is to be located in a 9-acre lot within the 18 acres. There will be 12 residential lots that border the east side of the subdivision. These residential lots will be consistent with the same size and type of development as in the Rapp Addition, Park View Estates, Park View Estates Second, Third and Fourth. The owner and developer of this property wanted to keep the same continuity along 15th Avenue.

This first phase would have 8th Street along the south as platted right-of-way. It would have 16th Avenue along the west that would connect and allow circulation to continue to 11th Street. It would also allow 15th Avenue to be developed. They plan to have circulation go around the entire school lot. They have marked some proposed pedestrian walk ways for future development. Looking at the distance from 11th Street to 8th Street as children migrate from east to west across these lots and residential area to access the school, they will need some access points. They have also allowed for some potential pedestrian access that would have a future bridge crossing over the canal. This would be a nice amenity, so that residents would not have to go to 11th Street to cross the tailrace canal to enter the park.

17th Avenue north of 11th Street was platted and orientated in anticipation of a potential viaduct that was looked at to go across the railroad at this location and was designed for the width and circulation. They want to continue 17th Avenue through the preliminary plat portion and allow circulation to come back on 8th Street. In future phases, this would not be a bypass but more of a collector street. 17th Avenue would continue

south and tie up with 4th Street which is where the Cash-Wa development is now. There is a 21 inch sanitary sewer already in place from 2nd Avenue along the south side of 17th Avenue which they will build over the top of. Mr. Bennett wanted to bring a plan to the table to show what this subdivision would look like in the future and how it ties in with some of these streets that seem to have terminus points in this particular phase.

The school would be located on 9.4 acres with 12 residential lots. One challenge they found in terms of developing, not only this property, but any of the property east of there is a high pressure gas line that goes through there. The plan has made provisions for this gas line and they have worked with Kinder Morgan. They have also provided a public works plan for the final plat showing 8-inch water that abuts the property on 8th Street and sanitary sewer with a 16-inch water main along 11th Street. In this first phase, they will extend that infrastructure throughout 15th Avenue, 16th Avenue and 8th Street. Sanitary sewer presently has a terminus point located at the end of 8th Street which would be extended into this subdivision to serve these lots. Storm water detention would be done very similar to the previous four phases of the subdivision. The detention would go into an outfall and detention cell that would ultimately fall into the north channel of the Platte River.

Mr. Bennett presented a conceptual plan of what the school is proposing to build at this time, but it is still being refined. With 15th Avenue along the west and 16th Avenue along the west, there would be an orientation of the school which would allow circulation to come off of 8th Street on a one-way north that would allow parents to drop off (also some parking) and enter back onto 16th Avenue. The architects have allowed a secondary access coming off 15th Avenue for pick up. On the far end would be an employee and staff parking lot. This would be a great asset to provide over a block long 2-lane with a bypass of stacking on the school property; which would not create school traffic congestion like some schools have located in residential neighborhoods.

Regarding the gas line, there are some restrictions about building over the top of it. It is basically planned to be a green area. The gas line easement is a 25-foot separation from either side of the center line of the pipe. The closest it can be to the gas line is 25 feet. One of the things they did to help work through that issue with Kinder Morgan is on the final plat they provided for a 1-foot building setback outside of the easement so technically it is 26 feet so it cannot accidentally be missed.

Mayor Clouse asked how big of an area the new school will include. Mr. Bennett confirmed with Jim Moranville that the district will be basically from the railroad to 2nd Avenue including the current neighborhood and the area covered by the old Kenwood School.

Mr. Bennett stated they are considering a crossing light for pedestrian students crossing from the north side of 11th Street to get to school. This crossing light would be similar to the one located to the east of this location closer to 5th Avenue. That crossing light would be moved to the middle of the block. City Manager Michael Morgan stated there are sidewalks in place on the north side of 11th Street, but the south side has some areas that are deficient that will need to be provided. Although the City returned the one grant for sidewalks, they will do the in-fills with the remaining funds. They weighed pros

and cons of putting the crossing light at the intersection of 15th Avenue or 16th Avenue, but since 11th Street is an arterial street they are looking at locating that light between 15th Avenue and 16th Avenue. This will be similar to what is on Avenue N and on 39th Street. This would be a walk up and push the button type light.

Director of Public Works Rod Wiederspan stated they are looking to work with the schools right now to find out what they project for students who would be crossing at that location. As part of the building process, they might be able to work with the schools to project the number of students and through those projections get a full pedestrian activated signal installed at that location. At the present time, they are looking at one like at other locations. They have found that the mid-block works better for driver awareness and vehicle movement. When turning at an intersection, drivers tend to look for other vehicles rather than pedestrians. They have found that a light placed mid-block that vehicles are looking for pedestrians and not other vehicles. This is the reason they like to have enough students who use the signal so that drivers are aware of it. If the light is hardly used and continually green when it does turn red, motorists are not looking for it. Mr. Bennett stated the proposed crossing spaces in the neighborhood that were discussed earlier would be like a paved sidewalk. These walkways would not be an easement that the adjacent land owners would own and not able to develop. These would actually be a platted out lot that would be a part of that subdivision. Property owners would not be allowed to put a fence up or block access in that right-of-way.

There was no one present in opposition to this hearing.

Moved by Buschkoetter seconded by Clouse to close the hearing and approve the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Kelly J. Rapp and Laureen Striker-Rapp (Owner) to rezone from District AG, Agricultural District to District R-1, Urban Residential Single-Family District (Low Density) for property described as a tract of land being part of the West Half of the Northwest Quarter of Section 11 and part of the West Half of the Southwest Quarter of Section 2, all in Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (south of 11th Street between 13th Avenue and 16th Avenue). Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried.

FINAL PLAT FOR PARK VIEW ESTATE FIFTH ADDITION

Public Hearings 4, 5 and 6 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Kelly J. Rapp and Laureen Striker-Rapp (Owner) for the Final Plat and Subdivision Agreement for Park View Estates Fifth Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as a tract of land being part of the West Half of the Northwest Quarter of Section 11 and part of the West Half of the Southwest Quarter of Section 2, all in Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (south of 11th Street between 13th Avenue and 16th Avenue) and to consider Resolution No. 2010-4. Planning Commission recommended approval.

There was no one present in opposition to this hearing.

Moved by Clouse seconded by Kearney to close the hearing and approve the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Kelly J. Rapp and Laureen Striker-Rapp (Owner) for the Final Plat and Subdivision Agreement for Park View Estates Fifth Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as a tract of land being part of the West Half of the Northwest Quarter of Section 11 and part of the West Half of the Southwest Quarter of Section 2, all in Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (south of 11th Street between 13th Avenue and 16th Avenue) and approve **Resolution No. 2010-4**. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

RESOLUTION NO. 2010-4

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of Park View Estates Fifth Addition, an addition to the City of Kearney, Buffalo County, Nebraska for a tract of land being part of the Northwest Quarter of the Northwest Quarter of Section 11, and part of the Southwest Quarter of the Southwest Quarter of Section 2, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska being more particularly described as follows: Referring to the Northeast corner of the West Half of said Northwest Quarter and assuming the East line of said West Half (also being the west line of Block Four, Rapp Addition and the West line of Blocks Three and Four, Park View Estates Addition, both as platted in the City of Kearney, Buffalo County, Nebraska) as bearing S 00°28'15" W and all bearings contained herein are relative thereto; thence S 00°28'15" W on said East line a distance of 138.58 feet to the ACTUAL POINT OF BEGINNING; thence continuing S 00°28'15" W on said East line a distance of 1013.77 feet to the Northwest Corner of Lot 1, Block Three, of said Park View Estates; thence N 89°19'33" W on the South line of 8th Street as platted in said Addition extended Westerly, a distance of 715.21 feet; thence N 00°40'27" E a distance of 1170.19 feet to the South right-of-way line of 11th Street as platted in said City of Kearney and entering into the Southwest Quarter of the Southwest Quarter of said Section 2; thence S 89°20'16" E on said South right-of-way line a distance of 560.87 feet; thence S 00°37'49"E a distance of 160.17 feet; thence N 89°16'56" E a distance of 147.27 feet to the Point of Beginning, containing 18.62 acres, more or less, all in Buffalo County, Nebraska duly made out, acknowledged and certified, and the same hereby is approved in accordance with the provisions and requirements of Section 19-916 of the Nebraska Revised Statutes, be accepted and ordered filed and recorded in the Office of the Register of Deeds of Buffalo County, Nebraska; said addition is hereby included within the corporate limits of said City and shall be and become a part of said City for all purposes whatsoever, and the inhabitants of such addition shall be entitled to all the rights and privileges and shall be subject to all laws, ordinances, rules and regulations of said City.

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

BE IT FURTHER RESOLVED that the President of the Council be and is hereby

authorized and directed to execute the final plat on behalf of the City of Kearney, Nebraska.

PASSED AND APPROVED THIS 12TH DAY OF JANUARY, 2010.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

ANNEXATION OF PARK VIEW ESTATES FIFTH ADDITION

Public Hearings 4, 5 and 6 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Kelly J. Rapp and Laureen Striker-Rapp (Owner) for the annexation of Park View Estates Fifth Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as a tract of land being part of the West Half of the Northwest Quarter of Section 11 and part of the West Half of the Southwest Quarter of Section 2, all in Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (south of 11th Street between 13th Avenue and 16th Avenue) and to consider Resolution No. 2010-5. Planning Commission recommended approval.

There was no one present in opposition to this hearing.

Moved by Kearney seconded by Lammers to close the hearing and approve the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Kelly J. Rapp and Laureen Striker-Rapp (Owner) for the annexation of Park View Estates Fifth Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as a tract of land being part of the West Half of the Northwest Quarter of Section 11 and part of the West Half of the Southwest Quarter of Section 2, all in Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (south of 11th Street between 13th Avenue and 16th Avenue) and approve **Resolution No. 2010-5**. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

RESOLUTION NO. 2010-5

WHEREAS, an Application has been submitted by Craig Bennett from Miller & Associates (Applicant) for Kelly J. Rapp and Laureen Striker-Rapp (Owner) for the inclusion of Park View Estates Fifth Addition, an addition within the corporate boundaries of the City of Kearney said property described as a tract of land being part of the Northwest Quarter of the Northwest Quarter of Section 11, and part of the Southwest Quarter of the Southwest Quarter of Section 2, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska being more particularly described as follows: Referring to the Northeast corner of the West Half of said Northwest Quarter and assuming the East line of said West Half (also being the west line of Block Four, Rapp Addition and the West line of Blocks Three and Four, Park View Estates Addition, both as platted in the City of Kearney, Buffalo County, Nebraska) as bearing S 00°28'15" W and all bearings contained herein are relative thereto; thence S 00°28'15"

W on said East line a distance of 138.58 feet to the ACTUAL POINT OF BEGINNING; thence continuing S 00°28'15" W on said East line a distance of 1013.77 feet to the Northwest Corner of Lot 1, Block Three, of said Park View Estates; thence N 89°19'33" W on the South line of 8th Street as platted in said Addition extended Westerly, a distance of 715.21 feet; thence N 00°40'27" E a distance of 1170.19 feet to the South right-of-way line of 11th Street as platted in said City of Kearney and entering into the Southwest Quarter of the Southwest Quarter of said Section 2; thence S 89°20'16" E on said South right-of-way line a distance of 560.87 feet; thence S 00°37'49"E a distance of 160.17 feet; thence N 89°16'56" E a distance of 147.27 feet to the Point of Beginning, containing 18.62 acres, more or less, all in Buffalo County, Nebraska; and

WHEREAS, the Kearney City Planning Commission has received and held a public hearing on December 18, 2009 on the inclusion of Park View Estates Fifth Addition within the corporate limits and recommended the Kearney City Council approve said application; and

WHEREAS, said application to include the land within the corporate limits was duly signed by the owners of the land affected with the express intent of platting the land as Park View Estates Fifth Addition, an addition to the City of Kearney, Buffalo County, Nebraska;

WHEREAS, a public hearing was held by the Kearney City Council relating to said application on December 18, 2009 who deemed the said addition to be included within the corporate limits to be advantageous to and in the best interests of the City.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the land to be platted as Park View Estates Fifth Addition shall be included within the corporate limits of the City of Kearney, Buffalo County, Nebraska, that the inhabitants of such addition shall be entitled to all the rights and privileges, and shall be subject to all the laws, ordinances, rules and regulations of the City of Kearney.

BE IT FURTHER RESOLVED that the inclusion of Park View Estates Fifth Addition within the corporate limits of the City of Kearney is subject to the final plat being filed with the Buffalo County Register of Deeds.

PASSED AND APPROVED THIS 12TH DAY OF JANUARY, 2010.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

FINAL PLAT FOR SOUTHPPOINT ADDITION

Mayor Clouse opened the public hearing on the Application submitted by Craig Bennett from Miller & Associates (Applicant) for YB Southside Properties, LLC (Owner) for the Final Plat for Southpoint Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as a tract of land located in part of Government Lots 5 and 6 and accretions thereto, all located in Section 13, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (south of I-80 between Central Avenue and 2nd Avenue) and to consider Resolution No. 2010-6. Planning Commission recommended approval.

Council member Kearney vacated his chair and abstained from discussion and voting on this matter.

The applicant is requesting approval to subdivide property located south of Interstate 80 on the east side of 2nd Avenue. The property contains 27.78 acres and is zoned C-2, Community Commercial District. The applicant has not identified any specific uses for the land.

The existing road alignment of Platte Road is less than desirable as it enters the property from Highway 44 bends south and then curves back to the north as Central Avenue to pass in front of Grandpa's Steakhouse and connect to Tahoe Drive, which is the entrance to Lake Villa Estates residential subdivision. The existing right-of-way width along Platte Road is excessive. The applicant is requesting vacation of a strip of right-of-way that varies from about 44 feet to 102 feet in width. After vacation, the remaining right-of-way for Platte Road will still be 103 feet wide. All utilities are within the proposed right-of-way. The vacated property can become part of proposed Lot 2 of Block 2.

The Preliminary Plat for Southpoint Addition was approved by Planning Commission on December 18, 2009. The Preliminary and Final Plats for Southpoint Addition depicts ten commercial lots on 27.78 acres. The proposed lots range in size from 1.49 acres to 4.53 acres. Lots could be combined to accommodate larger developments. The general layout of this subdivision shows Platte Road entering the site at its existing location, but primary access is carried to the east, turning northeast and then back east to line up with and tie into Tahoe Drive. Platte Road ties in at 90 degrees by Kearney Yamaha and turns south on its existing alignment to Central Avenue. The addition of the westward extension of Tahoe Drive provides much improved access to Lake Villa Estates. A cul-de-sac road to be known as "1st Avenue Place South" extends north from Tahoe Drive in about the middle of the field. An existing drainage way known as Walker Channel traverses the site from west to northeast. The plat depicts a 50-foot wide storm sewer easement to carry the water in Walker Channel. This drainage may be conveyed in an open channel or buried underground in storm sewer piping. A Public Works Plan has been submitted showing how the public services will serve the site. A 50-foot building setback is shown along Interstate 80 and Highway 44. Stormwater detention will be provided on each individual parcel. An Infrastructure Agreement will obligate the developer to install all public improvements including stormwater detention and will also specify maintenance responsibility for the stormwater facilities is the obligation of the owner(s).

Planning Commission discussed stormwater management and Walker Channel, whether there will be adequate stormwater detention during wet years when Walker Channel is full of water.

Craig Bennett presented this matter to the Council. This property is located at the southeast corner of Interstate I-80 and 2nd Avenue. It is east of the Viareo Event Center and Kearney Yahama. This is an open area that is undeveloped. There is a residential area to the east of it as well. The south part of the property has access onto 2nd Avenue. This property is currently within the City limits so they are not requesting annexation. It will have access along the east side to Central Avenue extending from north to south. The reason the right-of-way exists is because years ago the access into Kearney used the Central Avenue location when the bridge crossed the river. When the Interstate was built, the bypass then came in and went to the current on-ramp.

In the comprehensive plan, the area that is zoned as a Mixed Use 2 is consistent with the current zoning that is already in place. The other area is zoned as an agricultural reserve which was primarily done because of the Walker Channel that goes through the middle of this property. The area currently is zoned C-2. The parcel is unplatted and the final plat consists of ten lots. They want to maintain the access off of 2nd Avenue as Tahoe Drive on the north and Platte Road on the south and to allow circulation to go through this subdivision and intercept the traffic that Tahoe Drive collects for the residential neighborhood. This is their only point of ingress/egress out of that neighborhood. Their current traffic circulation is to go down Central Avenue south until they hit Platte Road and then come back out. This would allow recirculation in a more efficient way across this property and also allow access and subdividing this parcel.

The vacation part of this property is a separate item, but the reason that the right-of-way (200 feet) is so large in width is because of that bypass. They looked at the center line of the existing asphalt and the center of the right-of-way. The collector width of right-of-way is 33 feet on both sides for a total of 66 feet. They looked at how vacating this portion would affect existing utilities or existing development. The current utilities that exist there are within the right-of-way and not in the portion to be vacated.

North of Tahoe Drive will consist of at least six lots, but the developer does not have a particular business in mind to build there. They are requesting to have it platted so they can sell these lots. They also know that buyers might want to combine some of these lots. These acres range in size from 1½ acres to around four acres. There are utilities that intersect this property.

In the mid 1990's, there was a 15-inch sanitary sewer line that was brought along and parallel to the drainage area (Walker Channel). There is also a 12-inch water main parallel to it and that infrastructure was extended westerly to serve everything south of the Interstate and west of the highway. They have made provisions to allow those common lines to exist in a water and sewer easement and allow this to be part of a storm water drainage easement. Currently, there are four 48RCPs that allow storm water drainage to come from the west side of the highway to the east, cross this property and go underneath Central Avenue. What they are doing is protecting that area so people do not develop in it. Sanitary sewer will be extended throughout this subdivision to serve the rest of the lots. There is water and sewer and water that goes to Kearney Yamaha where it would be tied and looped back on Central Avenue. That infrastructure is available and would be able to service this particular subdivision. This parcel does exist in a 100-year flood plane. The area just outside of it is in the 500-year flood plane. The developers have talked about raising the development above the flood plane which means that storm water channel easement would be left in place and the parking lots or building pads would be raised above that 100-year flood plane.

Council member Lammers asked if the storm drainage way that goes across at Central Avenue flowing east goes toward the residential. Mr. Bennett stated that from the trees, the drainage way goes east/northeasterly until a point it eventually parallels the Interstate and continues easterly. Those residential homes are actually higher in elevation than the flow line because they were raised in elevation because of the sand pit operation. The raising of the other ground even by four feet is not going to impact

that storm drainage. The City Code required them to detain the increase storm water run off for a 10-year storm. The onsite detention for this subdivision will happen within each lot.

Rhoda Brown, 410 Tahoe Drive, stated that she lives at the end of Tahoe Drive (1 foot above flood plane) and when there are heavy rains, she has water that comes almost all the way up to her patio because the Walker Channel is plugged. Her concern is if someone does not clean out Walker Channel the flooding will continue and will get worse with the new development. Everything from the west flows to her one acre and flows east to the lower area and back to the Walker Channel. Ms. Brown asked if the Corps could fix it because there are a lot of dead trees in the Channel. Although the soil is sandy, large amounts of rain causes flooding even though they have put dry creeks in the back and down their property.

City Manager stated her challenge would be that Walker Channel was there first and the Corp might not be interested in the impact to private property. He did state that the Army Corp does projects from time to time so it might be worth a call to them. In accordance with the City Code, this development must detain water that they create.

Mr. Bennett stated that on the proposed development, there are no trees across it. The area that Ms. Brown was referring to that is flooding is not owned by these developers and is downstream of this development. This development is upstream of the flooding area and the Channel is not part of it.

Moved by Lammers seconded by Lear to close the hearing and approve the Application submitted by Craig Bennett from Miller & Associates (Applicant) for YB Southside Properties, LLC (Owner) for the Final Plat for Southpoint Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as a tract of land located in part of Government Lots 5 and 6 and accretions thereto, all located in Section 13, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (south of I-80 between Central Avenue and 2nd Avenue) and approve **Resolution No. 2010-6**. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney abstain. Motion carried.

RESOLUTION NO. 2010-6

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of Southpoint Addition, an addition to the City of Kearney, Buffalo County, Nebraska for a tract of land located in part of Government Lots 5 and 6 and accretions thereto, all located in Section 13, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, being more particularly described as follows: Referring to the Northwest Corner of said Section 13 and assuming the West line of said Section as bearing S 00°01'22" W and all other bearings shown hereon relative thereto; thence S 00°01'22" W on said West line a distance of 1557.70 feet; thence S 89°40'15" E leaving said West line a distance of 53.58 feet to the ACTUAL POINT OF BEGINNING, said point being on the South Right-of-Way line of U.S. Interstate Highway No. 80 and the East Right-of-Way line of Nebraska State Highway No. 44; thence N 00°17'51" E on said South Right-of-Way line a distance of 47.94 feet; thence N 42°52'08" E continuing on said South Right-of-Way line a distance of 531.90

feet to the beginning of and on a tangent curve to the right, having a central angle of $31^{\circ}27'18''$, a radius of 1045.92 feet, and an arc length of 574.20 feet to the West Right-of-Way line of Central Avenue as platted in the City of Kearney, Buffalo County, Nebraska; thence $S 00^{\circ}25'53'' W$ on said West Right-of-Way line a distance of 1572.84 feet; thence $S 07^{\circ}51'00'' W$ continuing on said West Right-of-Way line a distance of 476.15 feet; thence leaving said West Right-of-Way line $S 65^{\circ}52'26'' W$ a distance of 102.38 feet; thence Northwesterly on a non-tangent curve to the left, having a central angle of $18^{\circ}28'06''$, a radius of 982.90 feet, an arc length of 316.82 feet and a chord bearing $N 33^{\circ}21'36'' W$ a distance of 315.45 feet; thence $N 42^{\circ}35'39'' W$ tangent to said curve a distance of 220.22 feet to the beginning of and on a tangent curve to the right, having a central angle of $19^{\circ}26'22''$, a radius of 167.00 feet, and an arc length of 56.66 feet to a point of compound curvature; thence on a curve to the right, having a central angle of $93^{\circ}15'23''$, a radius of 25.00 feet, an arc length of 40.69 feet and a chord bearing $N23^{\circ}28'24'' E$ a distance of 36.35 feet to a point of reverse curvature; thence on a curve to the left, having a central angle of $01^{\circ}02'22''$, a radius of 233.00 feet, an arc length of 4.23 feet and a chord bearing $N 69^{\circ}34'55'' E$ a distance of 4.23 feet to a point on the Original East Right-of-Way line of Platte Road (A portion now vacated); thence $N 42^{\circ}34'43'' W$ on said East line a distance of 37.34 feet to a tangent curve to the right, having a central angle of $01^{\circ}27'59''$, a radius of 1198.24 feet, and an arc length of 30.67 feet to the North Right-of-Way line of said Platte Road; thence $S 89^{\circ}58'45'' W$ on said North Right-of-Way line a distance of 300.95 feet to the East Right-of-Way line of said Nebraska State Highway No. 44; thence $N 00^{\circ}19'45'' E$ on said East Right-of-Way line a distance of 270.45 feet; thence $N 56^{\circ}54'32'' E$ continuing on said East Right-of-Way line a distance of 112.00 feet to a non-tangent curve to the right, having a central angle of $22^{\circ}42'43''$, a radius of 1198.24 feet, an arc length of 474.98 feet and a chord bearing $N11^{\circ}00'37'' W$ a distance of 471.87 feet to the Point of Beginning, containing 27.78 acres, more or less, Buffalo County, Nebraska duly made out, acknowledged and certified, and the same hereby is approved in accordance with the provisions and requirements of Section 19-916 of the Nebraska Revised Statutes, be accepted and ordered filed and recorded in the Office of the Register of Deeds of Buffalo County, Nebraska; said addition is hereby included within the corporate limits of said City and shall be and become a part of said City for all purposes whatsoever, and the inhabitants of such addition shall be entitled to all the rights and privileges and shall be subject to all laws, ordinances, rules and regulations of said City.

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

PASSED AND APPROVED THIS 12TH DAY OF JANUARY, 2010.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

**AMEND LAND USE MAP; SOUTHWEST CORNER OF 11TH STREET AND KEA
WEST AVENUE**

Public Hearings 8 and 9 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Craig Bennett

from Miller & Associates (Applicant) for Spencer Land Company (Owner) for an amendment to the Land Use Map of the City of Kearney Comprehensive Development Plan from Low Density Residential and Rural Estates to Mixed Use 1 for a tract of land being part of the Northwest Quarter of the Northeast Quarter and part of Government Lot 3 all in Section 10, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (southwest corner of 11th Street and Kea West Avenue) and to consider Resolution No. 2010-7. Planning Commission recommended approval.

City Attorney Michael Tye vacated his chair and abstained from voting on this matter because of a conflict of interest. The City Attorney's replacement for this matter was Attorney Tom Lieske.

The applicant is requesting approval to rezone and conceptually plat property located south of 11th Street on the west side of Kea West Avenue. The entire property contains 80 acres but the applicant is requesting consideration of 31.42 acres. The proposed use for the land is a hospital.

State law requires consideration of amending the Future Land Use Map of the City's Comprehensive Development Plan anytime that a proposed rezoning is not in conformance with the land use designation on the plan. In this case, the subject property is designated for "Low Density Residential" and "Conservation Reserve" on the Future Land Use Map. The requested rezoning to C-0/PD requires an amendment of the land use designation to "Mixed Use 1." The Conservation Reserve designator is due to the 100-year floodplain that traverses the southerly portion of the site. Development is allowable in the floodplain but structures must be constructed so that the lowest floor is at least one foot above the base flood elevation. The more developable land to the north contains the 31.42 acres in question. The current Land Use Map was adopted by the City Council on March 9, 2004. Since that time there have been some significant changes in this area such that an amendment to the Land Use Map may be deemed acceptable.

- 11th Street is the southern leg of the Kearney arterial beltway and as such is designed to carry significant traffic. The street will be widened next construction season to a 4-lane concrete road section from 30th Avenue east to the Yanney Park entrance. Proposed improvements to 30th Avenue along with the viaduct over the Union Pacific Railroad tracks set the stage for growth of a mixture of land uses.
- An application for a Conditional Use Permit for gravel extraction was approved by the City Council on December 13, 2005 for property located south of this tract along Kea West Avenue. This CUP has resulted in increased truck traffic in close proximity to Yanney Park.
- The primary entrance to Yanney Park has been relocated from Kea West Avenue to 11th Street which will result in less traffic congestion between the park and the proposed development.
- Recently, the Planning Commission expressed concerns about Talmadge Street as it dead-ends in the motel district off of 2nd Avenue. Staff was instructed to investigate alternative access options. The most viable option at this time is to extend Talmadge Street as a gravel road west to Kea West Avenue resulting in increased traffic on both roads.

- The Buckle Warehouse that is currently under construction is an example of the mixture of land uses that this area can support. There may indeed be some residential housing that occurs in the area but is low density residential the only and most appropriate use along a major arterial street?
- There is no significant amount of residential housing near the proposed development site at this time. There is one house at the corner of 11th Street and 30th Avenue with the bulk of residential development east of Yanney Park. The NPPD tailrace is a feature that serves to delineate the residential neighborhoods to the east from the undeveloped land north and west of Yanney Park.
- The rezoning application is for C-0/PD. This is commercial office zoning as opposed to commercial retail. Generally speaking, office type uses make better neighbors than retail uses. Even if the hospital is open 24 hours per day there is no reason to believe that it cannot be developed as a stately building on a well landscaped campus with a large amount of open space. The PD designation requires planned zoning procedures. Every phase of this development will require development plans that will depict the style, amenities and details of the development. These plans must be approved by Planning Commission and City Council before any building permits are issued.

For these reasons staff believes that the area around Yanney Park has been changing and will continue to do so. The roadway network and public infrastructure in this area can serve a variety of land uses and Staff believes that this area will develop with a mix of land uses that may include low, medium or high density residential, commercial office, commercial retail, and light industry. In fact, the amount of residential housing that may occur in this area has most likely been reduced from what was contemplated in the 2004 Comprehensive Plan given the amount of traffic and anticipated continued growth of traffic on this arterial street. The proposed land use designation of "Mixed Use 1" can support the mixed use development concept that is anticipated in this area.

Planning Commission expressed some concern over amending the "Conservation Reserve" portion of the site to a commercial land use designation. They discussed the value of preserving this area as a wildlife corridor and also concerns about the floodplain and high water table.

The applicant is requesting rezoning from AG to C-0/PD, Office District/Planned Development Overlay District. Hospitals are allowed by right in this zoning district as are many potential office uses that would compliment a hospital such as medical offices, pharmacies, banks, assisted living, nursing homes, etc. Even though the hospital is the only phase being developed at this time, there is sufficient space around the hospital site to locate facilities such as these in future phases. Once again it is important to distinguish the difference between commercial office and commercial retail development.

The Preliminary Plat shows the conceptual layout of the roads, lots and blocks required for the hospital site and surrounding land. The Preliminary Plat is voted on by the Planning Commission and does not move forward to the City Council. The Planning Commission approved the Preliminary Plat for this subdivision on December 18, 2009. Subsequent phases of development are final platted in substantial conformance with the approved Preliminary Plat or it must be revised. The applicant has made it clear that the

proposed hospital is phase one of the development and the other improvements shown on the Preliminary Plat are subject to change. As requested by the City, there is only one access point off of 11th Street at the northwest corner of the site. This access point will provide shared future access to the property to the west as the City is limiting the number of access points along arterial streets. There are three access points from Kea West Avenue. The middle access point from Kea West Avenue is the primary access for the hospital and other streets tie together with it in a roundabout in front of the hospital building. The radius of the roundabout is 100 feet. Staff worked with the applicant on the roadway layout to insure east-west continuity through the parcel. Proposed public improvements such as municipal water and sanitary sewer are also shown traversing the site. Easements will be provided as necessary on the final plat.

If the Land Use Map Amendment and Rezoning are successfully approved, the applicant will bring the Final Plat, Development Plans and Annexation request forward in the future.

There were several citizens at the public hearing before the Planning Commission that spoke in opposition of the project. Most of these people are employees of Good Samaritan Hospital. Increased traffic on 11th Street, ambulance noise, safety of school children at the proposed elementary school, concern for impacts on Yanney Park, and changing the Land Use Map from residential to commercial were the reasons most cited why these people oppose the rezoning of this property for a hospital.

Craig Bennett presented this matter to the Council. The requests are to amend the use map and to ask for rezoning of a parcel of ground and identify some proposed development in this region. The entire area is comprised of 81 acres which is bordered on the north by 11th Street and on the east by Kea West Avenue. The Comprehensive Plan includes the 81 acres that will be developed over time, but the rezoning is for a smaller portion. Within the 81 acres, there are two proposed land uses. One is the area requested to be low density residential and the other is a conservation reserve. The proposed map is also asking for circulation from west to east from Kea West Avenue. In their preliminary plat, he had shown they have been able to maintain this since 11th Street on the north and the North Channel of the Platte River on the south has no other traffic circulation. The area is currently zoned as AG to CO/PD. The City Code requires if they exceed the four acres they must have the PD designation which this does. Currently, the zoning on the north and west adjacent to the property is AG, south is AG and Yanney Park is zoned as AG. The distance of the development on 11th Street is a quarter of a mile, Yanney Park is a quarter of mile away and the proposed school is a quarter to a half mile away.

There is City infrastructure for water with a 16-inch water main that exists southerly along Kea West Avenue which goes almost the entire length of this property. Currently, the City has bids out to be opened in about ten days for a 16-inch water main that will be extended across 11th Street to help serve southwest Kearney, The Buckle and other developments in that area. There is also an existing sanitary sewer that crosses the tail race canal, Yanney Park, goes up Kea West Avenue northerly to 11th Street and easterly. That also is out to bid and will be a continuation of a 21-inch sanitary sewer across the north side of that. This area currently has water and sewer along the east side, concrete paving on the east side, 36-foot concrete curb and gutter, storm water,

asphalt on the north, water and sewer to be extended along the north side of the property. The City and County are looking at an interlocal agreement to widen 11th Street to 30th Avenue. From 30th Avenue, there is already a design to make that 4-lane.

The south portion of this parcel is in the 100-year flood plane. The area on the north is in the 500-year flood plane. The preliminary plat has been taken to Planning Commission. Mr. Bennett believed that it would be good to show how those rezoning boundaries line up with the proposed plat. For these 81 acres, there would be access on the northwest corner of the property off 11th Street. All of the right-of-way would exist on this particular property so the future land owner to the west would be able to capitalize on this and have an access on the west. Arterial streets in Kearney require that the access locations onto arterial streets be kept to a minimum. The proposed access locations would be a quarter of a mile apart on 11th Street to meet that regulation. There would also be proposed accesses off Kea West Avenue, one on the north and a main access that would be utilized by a round about that would access the proposed hospital area which is a part of this plat. Another access within the property would allow 6th Street to go through there. They are looking at three east/west streets; 6th Street would continue across this property, 8th Street would go into a roundabout, 10th Street would continue westerly and 24th Avenue would go to 11th Street and 22nd Avenue. 6th Street is the east/west circulation that he referred to in the comp plan. The preliminary plat indicates 25 acres for the first part of the development. From an infrastructure standpoint, they would be able to service this area by extending the existing 12-inch water main throughout the subdivision and in future extend that 21-inch sanitary sewer across this property to serve all the area south of 11th Street. The current infrastructure and the infrastructure that will be built on the north side will greatly service this property. There is a total of 31.7 acres to be rezoned from AG to CO/PD.

A conceptual plan of a vision of this particular portion as far as they know at this point was presented. There would be two main portions of this particular project, a hospital and a medical office building which would be phased in later. The access for the first stage would be off 11th Street and 8th Street. The first phase would include paving and allowing circulation to happen. It is a requirement to have a plan in development before they try to acquire a building permit, but all they are requesting now is to have the property rezoned. If a particular development were to move forward, they would have to submit a detailed development plan with building facades, elevations, etc. to the Planning Commission.

Mayor Clouse asked Attorney Tom Lieske how binding is the submission of a Comprehensive Plan and a Land Use Map Amendment. What is the best description of our Land Use Map. Is it a projection of how we think it is going to develop or is it binding if the Council approves it. Mr. Lieske responded that it is a projection of how the City views the use and can be binding, at least into the future unless the Council chooses to change it. Approval determines the direction that the Council agrees to go and is binding.

Mayor Clouse asked what the recommended spacing for driveways on an arterial street according to City Code. Director of Public Works stated that on the new arterials they try to leave at least a quarter mile access which allows traffic to keep the speeds up and

the traffic flow a little higher. This is the south leg of our beltway so traffic volumes will be a little higher than on 39th Street or some of the other arterials in the City. Mr. Bennett stated they are within the recommended quarter mile with their plan.

Mayor Clouse asked why the entire parcel was not rezoned at the same time. Mr. Bennett stated that primarily the entire parcel was not rezoned because from a building or conceptual layout, it best fits their plan to have a buffer of areas that have collector and arterial roads with potential higher uses which they would want to capitalize on. These could be smaller office types of buildings or potential uses that would want to capitalize on circumventing around the exterior of the hospital. If they built the hospital in the middle of the property, they allow development to happen around it and utilize existing infrastructure. They also know that they are building additional infrastructure to circumvent it as well. This will allow to have circulation off of Kea West Avenue and 11th Street and to have some buffer between those two streets and this particular development.

Council member Buschkoetter stated if that is the plan, it will still have to be rezoned anyway so questioned why not do it all at one time. Mr. Bennett responded that at this time, this could be rezoned as a CO/PD or requested to be rezoned to something else that is consistent with this type of development. A business might request something that would not fit the CO but still capitalize on the arterial road, meaning high circulation and visibility. For example, a convenience store or other development that would have to come before the Council to request a different type zoning. Their opinion is to rezone this 15½ acres and not use it, is something they do not have a need for at this time.

In answer to the question of why this site was selected since it did not meet the zoning, Mr. Bennett stated that typically a developer will look at new parcels if there is not a development that allows great circulation and visibility and also has access to a beltway of some sort. In Kearney for these types of areas, you are looking at areas that are primarily AG to encompass a parcel that is this large in size (27-30+ acres). They took some time to look at other areas, but believed this one best met their criteria. When looking at a hospital site, it must have fire protection flows.

Mayor Clouse stated that by zoning it the way it is being presented, they would be getting away from paying for the assessments for the paving that the rest of the citizens are paying. They would be taking advantage of infrastructure that is there, but playing games with the way it is being rezoned. Mr. Bennett stated that was not the intent of the developers to "play games". It happens to be part of their master plan. From an assessment standpoint because this property is rezoned this parcel, the assessment would be based on this front footage and its contiguous to a connection district, paving, sewer or water. The assessment would be based on the 115 feet frontage. From a value standpoint, this particular placement on their property is what they want to have and maintain as part of their phasing. It was not intentionally set up to bypass any assessments by not zoning. They just do not physically know what particular zone might go in there and be cohesive to this area. From an assessment standpoint, if it was a deal breaker, they would look at trying to exercise some of those assessments from 8th Street north.

Mayor Clouse stated the reason the City grants those AG deferrals is because at the time they recognize it as AG land and the value is not increased because of the paving, until it is developed. This Council, as well as previous Councils, has granted AG deferrals for that purpose. This does not set well with him at all. When he looked at this layout, it appears to him that this is a blatant attempt to circumvent what the Council has done with AG deferrals. Mr. Bennett stated, on behalf of the developer, they have had that conversation explicitly about this portion. From a zoning standpoint, they would choose not to rezone these 15½ acres, but are willing to come to the table and say as a good neighbor, they would be willing to step forward and take care of these assessments from 8th Street north. They know full well that this property is going to utilize Kea West Avenue from 8th Street north as a circulation because it is not just an access point. They would be willing to attach that to this agenda item. Mr. Bennett agreed this is the affect, but was definitely not their intent. According to his calculations, the assessments for this portion of the area would be approximately \$150,000. City Manager stated that there is a significant portion of this site in this area that will never be recovered unless the entire site is rezoned because it is in the conservation area and the flood plane.

Council member Lammers stated that one of the concerns that he has is there is a \$15 million park that is right across from the proposed site of the hospital. According to the plan as presented, they do not have any control over what is going to go in there at this stage. The exit for the Senior Center was specifically put off to 11th Street so they would minimize the traffic on Kea West Avenue. He has a concern about the entrance to the hospital coming on to Kea West Avenue at that point. He would like to see some kind of a buffer zone between Yanney Park and any planned development for a hospital. When we have the kind of an investment in Yanney Park as the City has, we need to determine how much traffic is on Kea West Avenue.

Council member Lear stated when there are big events at Yanney Park, Kea West Avenue serves as kind of an overflow parking lot with families and children traversing in the street. That might not mix well with emergency type vehicles. So he proposed that it might be better to have emergency traffic coming off 11th Street rather than Kea West Avenue. Mr. Bennett stated it is approximately the same distance to the facility coming in off Kea West Avenue as it would be coming in from 11th Street.

Council member Lammers asked if the access points on 11th Street could be 1/8 of a mile rather than ¼. Director of Public Works stated that accesses can be added, but their preference is ¼ mile. By staggering these accesses with a ¼ mile between them, signals would be allowed at those locations with warrants to do so. It is also easier to synchronize signals if they are ¼ mile apart which they have found is what the Kearney citizens like. They are just trying to eliminate some of the problems they have had with some of their existing signals.

Council member Buschkoetter stated this plan is being presented in an unusual way, usually the annexation, land use map, the final plat and rezoning all at one time. He did not understand why this plan is being presented in this way. Mr. Bennett responded that this is for a large facility; the details are still in the mix. To try to help expedite the process, it was decided this would be the best way to a step ahead and keep the ball rolling with their project. Coming to the Planning Commission and Council with land use

and rezoning, helps them identify if this site can work. To go through the expense and detail of having the plan development on 30 acres at this time with their fairly aggressive timeframe that they want to accomplish this particular building. This helps the developer keep ahead of the ball.

Council member Buschkoetter stated that what helps him is to see the project in its entirety to see if it will fit. He stated that Mr. Bennett had presented a development plan for some housing along 56th Street for over 300 acres that was developed over time. So it can be done, but this seems pretty piecemeal. They do not know what the four lots that are actually going to be on the arterial are going to be used for. There are a lot of basic questions about how this is going to grow and develop. Mr. Bennett stated that is why he presented the conceptual plan to show how this is going to be utilized and what their vision is for 60 acres.

Before allowing public comment, Mayor Clouse stated that the matter before the Council is the issue to amend the Land Use Map and the rezoning. It has nothing to do with the approval of a second hospital. He requested the citizens that speak to refrain from comments on the second hospital and to speak in favor or opposition to the rezoning.

Anna Fryda, 1008 12th Avenue, stated as a resident of southeast Kearney, she was opposed to the rezoning. She has two children who will be within walking and biking distance of the new Kenwood School. They chose their neighborhood seven years ago and want to see it remain a neighborhood. She does not want the commercial enterprises to change that. If the hospital is built there, it will prompt more industrial and commercial developments in that area. She is opposed to their neighborhood growing in this way. The school, a park and a church all lend themselves well to more residential growth. Even agricultural use of the land is acceptable.

Greg Brown, 1515 14th Avenue, stated that he uses Yanney Park three to five days a week and frequently commutes to work along 11th Street. The geese and sandhill cranes bring in bird watchers from all over the United States and abroad that can be viewed from the park. His concern is that this habitat be preserved for generations to come as an asset to Kearney.

Hugo Gonzalez, 4100 Country Club Lane, stated he has lived in Kearney for three years. When he moved here he was impressed by the hospital and schools in this area. He also enjoys the peace and quiet here like in very few other places in the United States and other countries. His concerns are that he has heard that services might be lost because of this new facility. As a concerned citizen, he asked the Council to make sure that they make their decision under the best circumstances and with the best information available. He would ask also for a contingency plan. One of the things that impressed him about Kearney is that they have a strategic plan and plan things carefully. His concern is how they are going to deal with 911 and ambulance services. He is concerned for the future and the consequences for whatever decision is made.

Sister Rita Beason, 1507 East 44th Street, stated she is an employee of Good Samaritan and also a member of the Sisters of St. Francis who were the founding sisters of Good Samaritan. She commented on the statement made that some of the local residents of the sited area expressed concern about the added traffic and activity

that would probably impact the area if it were rezoned. Good Sam is in a residential area. That is true now, but if you look at Kearney's history, it is interesting to see how it ended up there. When Good Sam was built, it was virtually in a cornfield with a few residential homes south, but hardly anything north. As Kearney grew, people began to build north and chose knowing there was a hospital there. She believed this is different from that situation and needs to be considered. She also asked if there have been feasibility studies done or community needs assessments done or actuarial studies done. It does not seem there have been due to some of the questions raised at this meeting. We have heard a lot about the land development and infrastructure. She knows from being here and from history that they have a great medical staff and a lot to be thankful for there. She believed that the thing that we all can agree upon, including the City, the hospital and the medical staff that they want to provide optimum health care for the people of Kearney, middle and western Nebraska. The best way to meet those needs is more discussion for the common good.

Connie Reineker, 1419 14th Avenue, stated she has lived in that neighborhood for 28 years. She moved there when there was no development west of 14th Avenue or south of 11th Street. Southwest Kearney is a quiet area with Centennial Park and Yanney Park. She now drives to Yanney Park because she believes crossing 11th Street has become unsafe with traffic. Kenwood School is moving into the area which will bring an increase of small children. Opening or rezoning the area would only bring more activity and the drive bys in that area. The Senior Center brings another concern about drivers who might have slower reaction times. She believes rezoning the proposed area brings a dangerous situation for the City and the welfare of the children in the neighborhood and the citizens who chose to be part of the activities.

Kimber Bonner, 4111 22nd Avenue, stated she has been employed by GSH for 13 years and has been president of the nursing staff for three terms. After speaking with her staff they started a grassroots group which they named "United for Health Care". United because they want the investor physician group and Good Samaritan Hospital to work together to continue to provide the best health care facility in our region. They want to be able to continue healthcare such as their Level 2 EMS, Cancer and Richard Young Hospital to Kearney and surrounding communities. United for Health Care has the goal of educating our community. A few of her group members went out Sunday and contacted the residents of southwest Kearney speaking to them and giving them information. Ms. Bonner stated what was an eye opener for her was that many believed they did not have enough information to make a decision and some believed they could not sign due to the chance of them losing their jobs on speaking out. There were a few in support which was expected. In a few hours, they gathered 106 signatures for a petition to oppose the rezoning. This indicated there is a need for more information and education to our community members which she proposed to the leaders of GSH. They also obtained 300 signatures on a petition from staff and concerned community members in support of GSH. She urged the Council take their time in voting on something that will affect the community for many years to come.

Marilyn Kile, 4612 Avenue E, stated she has lived in Kearney for 36 years and has been employed by GSH for 29 years. She is a nurse practitioner in the Cancer Center. This is the most divisive issue that she has seen in relation to the medical healthcare in Kearney and in the surround area. She knows and respects many of the physicians that

are involved with this second hospital. She had just learned of the medical office building proposal at this meeting. Her concern is that we already have a large residential area, a park and now we are going to have a significant increase in traffic along 11th Street. She asked that the Council vote against the rezoning of this property or at least to table it. The investors have not divulged the full extent of their plans to the community as we have seen in this plan.

Barb Poppe, 3807 Avenue D, stated her prime concern is good health care. She does not care how many hospitals are as long as they continue the service. She believed the distance from Park School on one side of the hospital and Northeast Elementary on the other is the same as the distance from 15th Avenue, 16th Avenue, 17th Avenue to 11th Street to cross to the new school. It is not any different than the traffic in the Good Samaritan hospital area. She wanted them to stop and get all the facts and make a decision based on making the best decision. She is for the new hospital coming in because she believes it will challenge GSH to improve what they have and make the City a better thing.

Janice Wiebusch, 2712 Central Avenue, stated she is currently a board member of the Good Samaritan Hospital and the Yanney Heritage Park Foundation. She believed that the Kearney Public School Administration might be having second thoughts about the location of the new Kenwood School. They probably presumed there would be more residential development to the west and northwest of this location. If the CO/PD zoning is approved, Yanney would be the only park in Kearney that is not surrounded by residential development. At the present time and Federal legislation prohibits the development of physician-owned hospitals. If the Council approves the rezoning they are opening that ground to CO/PD without knowing if a hospital could be built. She recommended that the Council postpone their decision until the final health care bill is in effect. She also brought up the question of who will pay for the water, sewer and paving if the hospital is built. Does the developer pay those costs or does it become a taxpayer burden. She also posed the question if the hospital is built and the bill is passed regarding the prohibition of physician-owned hospitals, who specially would own the hospital and what percent of the land and equipment will be owned by someone other than the physicians.

Dale Gibbs, 1112 West 35th Street, stated he has been an employee of GSH for almost 22 years. He is aware that the Council has received some emails from CEOs of hospitals outside of Kearney who transfer patients to Good Sam. This is not a good situation and not good for Kearney to be having these discussions. He requested that the Council table this and admonish the hospital and the investor groups to go back and talk about this some more. He believed this is actually an argument among Good Samaritan and the medical community, not the City Council.

Tim Hoffman, 1708 West 14th Street Place, stated he is currently the EMS manager for Good Samaritan. He and his family have lived in Kearney for about three years and spent a great deal of time deciding on a location they wanted to live in this community. He and his family do utilize Yanney Park and must cross 11th Street. The proposed development in the area is going to greatly increase the traffic along 11th Street. Hospitals do bring emergency traffic. He does not want a commercial owned property, owned by investors, in this neighborhood. Commercial property would prevent the

surrounding area to grow into more residential property. Good Samaritan is the only hospital based ALS ambulance service that provides 911 services within the State of Nebraska. They have done it without any decrease or lapse of service and in addition do it with no cost to the community. This is a tax savings provided to the community. Same size ambulance services operating in the same size communities usually get some kind of subsidy. They utilize Good Samaritan and their profit making departments to help support their ambulance service. Losing that revenue could put their ambulance service in jeopardy and could end up back on the tax rolls of the community.

David Cantral, 16 21st Avenue Place, stated he is a physician at Platte Valley Medical Group and is in support of this project. He is not among the 40 physicians named as investors in this project. The concept of physician-owned healthcare facilities, even hospitals, is not new or foreign to this community. Heartland Surgery Center, Plains Heart Institute Cardiac Cath Lab, Kearney Endoscopies Center, First SurgiCenter, Kearney Eye Institute Surgical Center, Kearney Clinic Urgent Care and First Care Medical are among the for profit physician/investor owned facilities in this community. Despite being physician-owned and for profit or because of that these facilities enjoy extremely high satisfaction rates among the patients who have used them. There is a theme that applies to the physician managed healthcare faculties referenced above which in general is quality, efficiency and cost effectiveness. He was confident that the care given in the proposed hospital would be done with those three qualities. A facility like this would be a driving force in attracting new physicians in this community by filling the need of increased workload and more involved in the facilities decision making processes.

Karen Triplett, 1010 Avenue F, stated she is the Safe Kids coordinator for Good Samaritan Hospital. She has a long family history in Kearney and she has been pleased to see how the neighborhoods have developed to the south and southwest of her home. Her concern is the original intent of the City planners for this area was residential with many amenities to offer to families. Kearney is a place where family and education are valued, and requested that the Council table this matter and find out how the people of Kearney really feel about this.

Margaret Clark, 1617 8th Avenue, stated she is on the board of the Centennial Neighborhood Association. In the discussions about this area, they mentioned a school, a park and a church. Neither Brown Architectural that builds churches nor The Buckle Distribution Center was mentioned. She is quite certain that The Buckle will greatly increase the traffic in the area. They have already approached this with many other projects. The school will be quite some distance from the hospital. She was not here to discuss if we need another hospital or not, but to discuss whether the land can be changed from AG to CO/PD. It could be a beautiful addition to the area. People that go to the park are not going down Kea West Avenue. There is a proposed walkway to school and from the school to Yanney Park. It might finally get the lights that they tried to get a number of years ago. All they have now is a flashing light when school is in session and sometime drivers do not pay attention to it at all. She was not proposing a solid commercial development.

Jack McSweeney, 2712 Central Avenue, stated that he was puzzled about the missing pieces of the zoning. The Council had many good questions with no good answers. He

requested that they either vote no or table until the pieces are put together and see what is going into this project. He stated that he found that physician/investor owned hospitals do not have a good track record. If approved and if it closes who will bear the burden of a huge vacant hospital building which he thought eventually would go to the tax payers.

Evelyn Watson, 34 LaPlatte Road, stated she is an employee of Good Samaritan Hospital. She was speaking as a grandmother and has personally enjoyed Yanney Park with her grandchildren. She did not want the rezoning along Kea West Avenue next to Yanney Park. If they have to build she would suggest that the entrance be flipped coming off 24th Avenue and would be more appropriate for the buffer.

Ricki Stubbs, 10 LaPlatte Road, stated rezoning needs to be consistent with the City's duty to promote health and safety for their citizens. As a mother, she has concerns about the safety and welfare of her children with the increase traffic brought by the proposed hospital. She asked to table or not approve this rezoning.

Rodney Bailer, 519 East 47th Street, stated he has worked at seven different hospitals over 30 years, some for profit, non-profit and military. There are always issues between physicians and hospital administration and ownership. The reason for this meeting is because there are issues. The Council should not be deciding who is right and who is wrong. That is the job of the physicians and hospital governess to solve among themselves. If the Council votes yes or no, they will come down one side or the other. They might not be as well informed about the details as they should be. The sensible thing to do is to table this and let the physicians and hospital work out their differences. If they cannot, there is no rush to build on this location.

Dave Sokolowski, 4250 Dove Hill Avenue, stated he is a physician at Good Samaritan and also an investor. There has been a lot of talk about the traffic. If he recalls correctly, the 30th Avenue overpass was put up to help funnel traffic around to 11th Street. The purpose of that was to increase traffic around 11th Street to help avoid congestion along Highway 30. The Council stated that 11th Street is going to be a 4-lane street so it can handle more traffic. He believed it was hypocritical to say we do not want more traffic when we put an overpass over the railroad track to funnel more traffic that direction. Both of those things were planned, long before the proposal for this hospital.

Steve Loveless, 1704 West 14th Street Place, stated he is the interim president CEO of Good Samaritan Hospital. He would be remiss if he did not express his opposition and concern about what is being proposed. He is opposed to a physician-owned for profit entity in this community. There is a lot of passion around this issue. He lives in this area and has spoken to his neighbors and all have concerns about a hospital going in that area of town. He has heard that the concerns the hospital has expressed are "ridiculous". Those concerns are very real and that as a community do not understand them. The community needs to understand them because they are significant. They will carry forward and carry out for this community and region for years to come. It is important for the Council to step back and study all the implications which will affect events to come. There are many unanswered questions that need answered. This will threaten some of the services at GSH because the cost implications of providing those services. If the revenues are decreased to the extent that they have estimated, it would

be devastating to services that do not generate a profit. They will have to consider what they can and cannot afford. This past year over 2,400 patients received care with no ability to pay. He is confident that will not happen in a for profit physician-owned hospital. There is a bill in Congress that will go back through the House for signing. The president of the American Hospital Association and the president of the Federation of American Hospitals recently praised the proposal on physician-owned hospitals.

Mayor Clouse stated the public hearings are closed and is now open for Council comments only.

Council member Lammers stated the problem regarding the zoning is not having a buffer zone between Yanney Park and the proposed development along Kea West Avenue. He also wants to see an exit to the east onto Kea West Avenue from any proposed development. He wants the whole development plan to be put together at one time and brought back. His intent is to have everything put together before making a decision. People are free to do any kind of business they want as long as the legal process is being followed. He is not opposed to whatever business wants to come in that potentially might hurt another existing business. That is certainly not the Council's intent. He added that Kearney Public Schools were well aware that all of these things were going on there with a 4-lane highway.

Council member Kearney stated he is a free enterpriser and a capitalist. It should not have been brought to Council without communication with a lot of people that are important to this community. He did not believe that the City Council was an appropriate place for the solution, but since it has been presented they have to make that decision. His management style is to talk with his staff and find where the breakdown in communication happened. He wants to see Kearney expand but also is concerned with how decisions they make today impact the future.

Council member Buschkoetter stated he has to agree with several things that were said during the comments. Kearney is a great place to live. 11th Street is designed to move traffic. People of southwest Kearney are impassioned about the wonderful neighborhood they live in and Yanney is his neighborhood park. Mr. Bailer was correct when he said the Council should not be the ones deciding if there is a hospital or not. The matter before the Council is the issue about where and how it fits the land use and the rezoning. It is not for the Council to decide if this hospital gets built or not. Their job is to find the best place that it would fit. The developer tries to get the best land at the best price. It is a matter of capitalism and free enterprise. Many of the people that he has talked to in the last several weeks seem to think the Council has the power to decide what comes in and what does not. He does not want to live in a society where the Council decides what businesses come into our community or not. He believes in limited government. He also agrees that they have not been presented with all the pieces to really know what that is. The issue of Yanney Park not being surrounded by residential warrants looking at what will be next to it. He believed that they should postpone it. He is not making that decision to buy time for the hospital or the doctors. He also thinks the physicians and Good Samaritan need to get together for discussion because it is not for the Council to do.

Council member Lear stated as a community member the Council gets called into a lot of difficult decisions. This is one of the highest he has been involved in because he has such close friends that fall on both sides of the issue. He does not think that it is appropriate for him to decide whether or not this community has a hospital or a grocery store or a convenience store. There are other forces out there that make that decision. He did agree that the development plan needs to be cleaned up and brought back in order to move forward. This is a spot that is close to a park which is troubling. He also knows that 11th Street is designed to handle this kind of traffic. This area of town is developing commercial which will create a border of more commercial development to the west. It is difficult to state that this is a totally inappropriate spot to locate CO zoning which is really the lowest impact commercial development you can possibly have. He thinks it is only fair to all parties to get all the pieces together, but not uncomfortable with the overall location of the project.

Mayor Clouse echoed that sentiment. He saw the conceptual site plan for the first time at this meeting and had some issue with it. This Council has a reputation of how do we make things work. As a Council, their mindset for this project is how they work together with the developer to make this a reality. It is not any different than any other project that has ever come before them. What was presented at this meeting left a lot of questions in his mind on the development plan. As they work forward, those are the things they need to know to work with the developer to find how the developer plans to mitigate some of the impact on the neighborhood and Yanney Park. The City has a vested interest in Yanney Park's development which is an important asset in the community and needs to be protected. He did not see anything in the plan that told him that they are ready to move forward.

Moved by Lear seconded by Kearney to close the hearing and approve the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Spencer Land Company (Owner) for an amendment to the Land Use Map of the City of Kearney Comprehensive Development Plan from Low Density Residential and Rural Estates to Mixed Use 1 for a tract of land being part of the Northwest Quarter of the Northeast Quarter and part of Government Lot 3 all in Section 10, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (southwest corner of 11th Street and Kea West Avenue) and approve Resolution No. 2010-7.

Council member Lear explained his reason to approve the Land Use Map. By approving the Land Use Map, he believed they clearly set the tone that the Council does not think that this is an inappropriate spot. They do agree that they need to come back and work on the zoning and the development plan issues. This was his purpose for going ahead with his motion to approve the Land Use Map amendment.

Council member Buschkoetter stated by putting it altogether it puts more tools at their disposal and at the Planning Commissions disposal. By amending the land use map and if the developers find they cannot live with the plans that we require to do the rezoning then a problem is created. So that was his reason for wanting it all done at the same time and have all the tools.

City Manager stated that it is possible to amend the Land Use Map, but the developer could not move forward. The rezoning could still be sent back and all brought back for

approval.

Roll call resulted as follows: Aye: Lear, Kearney. Nay: Clouse, Buschkoetter, Lammers. Motion did not pass.

Moved by Buschkoetter seconded by Clouse that the Land Use Map Amendment and the Rezoning be remanded back to the Planning Commission for the following reasons: (1) it does not conform to the future Land Use Map which designates this land as low density residential and conservation reserve; (2) it does not blend well with Yanney Park and the future elementary school; and (3) a complete site plan should be submitted with a rezoning of the entire parcel, with no access onto Kea West Avenue, and that complies with the city's annexation policy; and further, the site plan must also include a significant buffer area along Kea West Avenue. Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear. Nay: Kearney. Motion carried.

REZONING AT SOUTHWEST CORNER OF 11TH STREET AND KEA WEST AVENUE

Public Hearings 8 and 9 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Spencer Land Company (Owner) to rezone from District AG, Agricultural District to District C-O/PD, Office/Planned Development Overlay District for property described as a tract of land being part of the Northwest Quarter of the Northeast Quarter and part of Government Lot 3 all in Section 10, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (southwest corner of 11th Street and Kea West Avenue). Planning Commission recommended approval.

Moved by Buschkoetter seconded by Clouse that the Land Use Map Amendment and the Rezoning be remanded back to the Planning Commission for the following reasons: (1) it does not conform to the future Land Use Map which designates this land as low density residential and conservation reserve; (2) it does not blend well with Yanney Park and the future elementary school; and (3) a complete site plan should be submitted with a rezoning of the entire parcel, with no access onto Kea West Avenue, and that complies with the city's annexation policy; and further, the site plan must also include a significant buffer area along Kea West Avenue. Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear. Nay: Kearney. Motion carried.

IV. CONSENT AGENDA

Mayor Clouse stated that City staff has requested to postpone until January 26, 2010 Subsection 4 of Consent Agenda.

4. Approve the Non-Owned Corporate Hangar T-925 Lease between the City of Kearney and Otis Air Service and approve Resolution No. 2010-9.

Moved by Clouse seconded by Lammers that Subsection 4 of Consent Agenda Item IV be postponed until January 26, 2010. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

Moved by Kearney seconded by Lammers that Subsections 1 through 8 of Consent Agenda Item IV be approved. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried.

1. Approve Minutes of Regular Meeting held December 22, 2009.

2. Approve the following Claims:

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

Ace Eaton Medals \$258.75 smcs; Ace Hardware \$424.95 smcs; Advanced Auto Parts \$22.05 smcs; Aflac \$2,721.66 ps; Afternooners \$1,075.74 smcs; Ag Express Electronics \$100.00 smcs; Aiken Colon Tool Supply \$391.59 smcs; Airgas North Central \$825.18 smcs; All Makes Office Equipment \$19,247.42 smcs,co; Allen,M \$35.00 smcs; Allied Electronics \$52.36 smcs; Allied Packaging \$21.67 smcs; Amazon \$764.73 smcs; Amer Backflow \$70.00 smcs; Amer Electric \$368.46 smcs,co; Amer First Aid \$165.91 smcs; Amer Library Assn \$195.00 smcs; Amer Red Cross \$49.45 smcs; Amsan \$933.08 smcs; Andersen Wrecking \$10.00 smcs; Andersen,B \$137.06 smcs; Anixter \$1,188.00 co; Apple Market \$11.94 smcs; Appliance Service Center \$714.85 co; Ask Supply \$9,528.78 smcs,co; Aurora Coop \$3,650.58 smcs; Auto Glass Center \$586.29 smcs; Avondale Badge Co \$87.25 smcs; Axmann,J \$75.00 smcs; Baird Holm \$950.78 smcs; Baker & Taylor Books \$3,232.49 smcs; Bamford \$400.00 smcs; BBC Audiobooks \$220.74 smcs; Bennett,T \$800.25 smcs; Blessing \$3,162.50 smcs; Bluecross Blueshield \$109,587.86 smcs; Bobs Super Store \$113.71 smcs,ps; Bosselman \$33,362.15 smcs; Broadfoot's \$2,422.00 smcs; Brodine,S \$800.00 smcs; Brookens,K \$27.61 smcs; Bruce Furniture \$335.00 co; Buffalo Co Reg Deeds \$83.00 smcs; Buffalo Co Sheriff \$122,850.00 smcs; Buffalo Outdoor Power \$233.36 smcs; Builders Warehouse \$1,656.81 smcs; Cables To Go \$26.12 co; Cableties and More \$396.86 smcs; Carquest \$1,645.20 smcs; Caseys \$48.89 smcs; Cash-Wa \$16,028.70 smcs,co; CDW Govt \$1,010.36 co; CED Enterprise Electric \$183.98 smcs; Central Hydraulic Systems \$1,212.33 smcs; Central NE Bobcat \$6,230.00 co; Central Restaurant \$200.49 co; Chad \$8.00 ps; Charter \$809.82 smcs; Chartwells Dining Services \$743.54 smcs; Chemsearch \$431.61 smcs; City of Ky \$183,317.95 smcs,ps; Clipper-Herald \$150.00 smcs; CMI \$188.93 smcs; Cold Spring Granite \$180.00 smcs; College Savings Plan of NE \$150.00 ps; Construction Rental \$1,036.25 smcs,co; Copycat Printing \$46.18 smcs,co; CPS \$147.14 smcs; Crossroads Ford \$1,250.02 smcs; Cruise,A \$40.18 smcs; Culligan \$1,340.00 smcs; Cummins Central Power \$902.00 smcs; D&S Lighting \$51.45 smcs; Dan Roeder Concrete \$162,293.75 co; Dandee Concrete \$5,968.32 co; Danielson Tech Supply \$44.97 smcs; Dawson Co PPD \$14,907.60 smcs; De Los Angeles,R \$30.54 smcs; Decker,K \$60.00 smcs; Depository Trust Co \$441,340.00 ds; DHHS Division of Public \$94.00 smcs; Diamond Vogel Paint \$57.12 smcs; Dmilaco Sports \$127.25 smcs; DPC Industries \$15,552.60 smcs; Dutton-Lainson \$282.00 smcs; Eakes \$16,939.63 smcs,co; Earl May Seed \$17.99 smcs; Ecolab \$31.00 smcs; Eirich,D \$50.00 smcs; Eirich,T \$100.00 smcs; Electric Pump \$8,541.00 co; Elliott Equipment \$6,314.05 smcs; Embassy Suites \$608.44 smcs; EMC Insurance \$986.00 smcs;

Essams \$275.42 smcs; Experts Exchange \$99.95 smcs; Fairbanks Int'l \$679.87 smcs; Farmers Union Coop \$36.00 smcs; Fastenal \$1,318.95 smcs; Fireguard \$584.54 smcs; Fitness Flooring \$1,725.00 co; Flight Light \$504.88 smcs; Floratine Central Turf \$1,150.00 smcs; Fox Print Direct \$698.00 smcs; Frontier \$7,658.18 smcs; Gale \$258.54 smcs; Ganz Title \$681.00 smcs; Garrett Tires & Treads \$1,365.49 smcs; GE Money Bank \$1,931.99 smcs; Gear for Sports \$116.21 smcs; Gensler \$24,756.75 smcs; Gopher \$1,124.04 co; Gotomypccom \$371.25 smcs; Graham Tire \$256.77 smcs; Grainger \$4,660.64 smcs; Graphic Screen Printing \$93.00 smcs; Graybar Electric \$149.28 smcs; Great Plains Safety \$510.00 smcs; Guideposts \$17.24 smcs; Hach Co \$1,382.52 smcs; Hannah's Market \$61.18 smcs; Hastings Equity Grain Bin \$27.20 smcs; Hayward,W \$55.01 smcs; HD Supply \$511.67 smcs; Heiman Fire Equipment \$52.35 smcs; Hertz Rent-A-Car \$65.73 smcs; Historical Society Museum \$63.03 smcs; Hobby-Lobby \$99.83 smcs; Holmes Plumbing \$480.27 smcs,co; Hometown Leasing \$663.01 smcs; Hosfelt Electric \$26.49 smcs; Hydrologic \$207.00 smcs; I-80 Eppley Express \$212.50 smcs; ICMA RC \$4,763.31 ps; IES Industrial \$23,050.00 co; Instawares \$246.90 co; Intermountain Sales \$335.00 smcs; IRS \$104,876.17 ps; Int'l Assn \$712.00 smcs; J&M Rentals \$32.34 smcs; Jack Lederman \$1,068.62 smcs; Jasnoch,M \$2.64 smcs; Jensen Publishing \$26.00 smcs; Johnstone Supply \$751.39 smcs; K&K Parts \$321.54 smcs; Kantaras,K \$21.37 smcs; Ky Centre Vac \$307.00 smcs; Ky Concrete \$5,933.17 smcs,co; Ky Crete & Block \$60.35 smcs,co; Ky Floral \$24.95 smcs; Ky Hub \$9,441.73 smcs,co; Ky Humane Society \$6,500.00 smcs; Ky Implement \$592.99 smcs; Ky Noon Rotary \$105.00 smcs; Ky Storytelling \$600.00 smcs; Ky Towing \$525.00 smcs; Ky United Way \$571.00 ps; Ky Warehouse \$2,058.37 smcs; Ky Winlectric \$98.55 smcs; Kelly Electric \$2,462.00 smcs; KHGI/KWNB/KFXL \$1,050.00 smcs; Killion Motors \$189.65 smcs; Kindle-Denver Post \$5.99 smcs; Kindle-Wall Street Journal \$14.99 smcs; Kirkham Michael \$30,269.84 co; Konica Minolta \$177.63 smcs; Labsafe \$212.85 co; Lawson Products \$476.15 smcs; LCL Truck Equipment \$7,410.00 co; League of NE Municipalities \$541.00 smcs; Linweld \$218.48 smcs; Lips Printing Service \$488.89 smcs; LT Navigo Wireless \$145.00 co; Lunarpages Webhost \$166.80 smcs; LVNV Funding \$368.25 ps; Magic Cleaning \$1,350.00 smcs; Mail Express \$3,066.37 smcs; Marlatt Machine Shop \$226.36 smcs; Matthew Bender \$42.47 smcs; McLeod,C \$53.64 smcs; McMaster-Carr \$1,552.41 smcs; Menards \$2,942.87 smcs; Mercedespub \$240.90 smcs; Metlife \$6,413.72 ps; Midas Auto Service \$74.85 smcs; Midlands Contracting \$216,699.45 co; Mid-NE Garage Doors \$128.00 smcs; Midway Chevrolet \$44.68 smcs; Midway Chrysler \$11.56 smcs; Midwest Radar \$575.00 co; Midwest Turf \$72.56 smcs; Miller Signs \$840.00 smcs; Moonlight Embroidery \$819.50 smcs; Morris Press \$3,101.00 smcs; Mouser Electronics \$41.15 smcs; Mr. Basketball \$425.00 smcs; Murphy Tractor \$5,698.51 smcs; Muzzey,J \$45.78 smcs; Napa All Makes Auto \$1,541.99 smcs; NCS Equipment \$113.27 smcs; NE Assn of Student \$70.00 smcs; NE Child Support \$2,650.20 ps; NE Dept of Revenue \$34,065.96 ps; NE Dept of Roads \$11,461.95 co; NE HHS Lab \$943.00 smcs; NE Machinery \$572.01 smcs; NE Truck & Equipment \$50.44 smcs; NE Truck Center \$280.24 smcs; NE Well Drillers \$225.00 smcs; Nelson's Furniture \$1,677.00 co; Neopost \$7,000.00 smcs; Network Solutions \$86.97 ps; Newegg \$525.57 co; Newman Signs \$267.56 smcs; NFPA National Fire \$937.50 smcs; Nielsen,C \$10.76 smcs; Nielsen,J \$21.14 smcs; Nitrodesk \$10.69 co; Northwestern Energy \$13,372.81 smcs; Novak,C \$51.23 smcs; Office Depot \$43.69 smcs; Office Max \$263.06 smcs,co; Officenet \$697.72 smcs; O'Reilly Auto \$1,098.83 smcs; Oriental Trading \$43.96 smcs; Orscheln \$128.99 smcs; Otis Air Service \$7,945.00 co; Overdrive \$250.00 smcs;

Paramount Linen \$22.00 smcs; Paul,J \$23.71 smcs; Payflex Systems \$497.25 ps; Paypal \$443.25 smcs,co; PBD Ala-Graph Editions \$74.00 smcs; Pennington,P \$434.25 smcs; Platte Valley Comm \$21.40 smcs; Presto-X \$81.90 smcs; Priority Management \$160.05 smcs; Provantage Corp \$191.79 smcs,co; Pulliam,R \$80.00 smcs; Quality Craft Tools \$110.00 smcs; Random House \$648.00 smcs; Ready Mixed Concrete \$1,179.75 co; Recognition Unlimited \$43.40 smcs; Recorded Books \$2,193.68 smcs; Reinke's Heating \$379.23 smcs; Riverside Mfg \$101.61 ps; RKI Instruments \$396.59 smcs; Safety-Kleen \$302.83 smcs; Sage,P \$7.81 smcs; Sahling Kenworth \$465.52 smcs; Sapp Brothers \$21,101.14 smcs; Scholastic Book Club \$50.00 smcs; Self Service Furniture \$200.00 smcs; Shell Oil \$13.00 smcs; Sherwin Williams \$451.42 smcs,co; Skillpath Seminars \$233.13 smcs; Smith,S \$37.48 smcs; Snap-On Tools \$413.45 smcs; Snow,T \$100.00 smcs; Softchoice Corp \$350.71 smcs; Solid Waste Equipment \$7,844.89 smcs; Sports Court of NE \$2,594.00 co; Sports Village \$210.00 smcs; State of NE HHS Lab \$1,855.68 smcs; State of NE/AS Central \$3,452.44 smcs; Steinbrinks Landscaping \$427.47 smcs; Stocker,K \$15.00 smcs; Suburban Door \$399.00 smcs; Sun Life Financial \$38,429.97 smcs; Sunmart \$10.32 smcs; Super Shine Auto \$8.25 smcs; Sutphen Corp \$302.04 smcs; Swank Motion Pictures \$285.91 smcs; Sydow,J \$80.00 smcs; Target \$6.89 smcs; Technical Maintenance \$461.24 smcs; Tractor-Supply \$547.25 smcs; Trane Co \$269.00 smcs; Trans Iowa Equipment \$934.47 smcs; Tri City Outdoor Power \$19.75 smcs; Tri-County Glass \$8,510.00 smcs; Turner Body Shop \$1,598.20 smcs; UPS \$38.03 smcs; USPS \$60.03 smcs; Van Diest Supply \$2,475.30 smcs; Vanya,K \$25.37 smcs; Varda Silent Alarm \$245.74 smcs; Verizon Wireless \$1,137.89 smcs; Village Uniform \$287.10 smcs; Voss Lighting \$592.50 smcs; Walgreens \$6.41 smcs; Wal-mart \$496.25 smcs; Walsh,C \$108.61 smcs; Walters Electric \$319.76 smcs; Watchguard Video \$71.25 co; Watkins,A \$32.94 smcs; West Payment Center \$1,372.10 smcs; West Villa Animal Hospital \$22.49 co; Wilke Donovans \$122.52 smcs,co; Williams Shuffleboard \$4,395.00 co; Winslow,T \$6.50 smcs; Worldwide Liquidators \$44.36 smcs; Wright Line \$33,498.92 co; Zimmerman Printers \$896.62 smcs; Zumba Fitness \$105.40 smcs; Payroll Ending 12-19-2009 -- \$327,112.47; and Payroll Ending 1-2-2010 -- \$328,227.74. 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 appointment of Mike Suchon to fulfill the term vacated by Marc Loescher on the Downtown Improvement Board and the appointment of Tim O'Dea to fulfill the term vacated by Bob Kennedy on the Senior Services Advisory Board and approve **Resolution No. 2010-8**.

RESOLUTION NO. 2010-8

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

WHEREAS, Marc Loescher has tendered his resignation on the Downtown Improvement Board and the said term needs to be filled; and

WHEREAS, Bob Kennedy has tendered his resignation on the Senior Services Advisory Board and the same term needs to be filled; and

WHEREAS, the City advertised and accepted Expression of Interest forms for persons interested in serving on these advisory boards.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that Mike Suchon be and is hereby appointed to fulfill the term vacated by Marc Loescher on the Downtown Improvement Board, which term will expire in July of 2013.

BE IT FURTHER RESOLVED that Tim O'Dea be and is hereby appointed to fulfill the term vacated by Bob Kennedy on the Senior Services Advisory Board, which term will expire in July of 2012.

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

PASSED AND APPROVED THIS 12TH DAY OF JANUARY, 2010.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

- 5. Approve Amendment No. 2 to the Consultant Agreement dated December 11, 2007 between the City of Kearney and Kirkham Michael & Associates for AIP Project 3-31-0045-20 which consists of the Crack Seal, Slurry Seal and Runway/Taxiway Markings Project at the Kearney Regional Airport and approve **Resolution No. 2010-10**.

RESOLUTION NO. 2010-10

BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the President of the Council be and is hereby authorized and directed to execute Amendment No. 2 to the original Consultant's Agreement with Kirkham Michael & Associates for Airport Improvement Project No. 3-31-0045-20 for the Crack Seal, Slurry Seal and Runway/Taxiway Markings Project at the Kearney Regional Airport.

PASSED AND APPROVED THIS 12TH DAY OF JANUARY, 2010.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

- 6. Accept the bid received from Nebraska Environmental from Lincoln, Nebraska in the amount of \$92,700.00 for the purchase of a loader mounted snow blower to be used by the Public Works/Transportation Division.

- 7. Approve Application and Certificate for Payment No. 12 in the amount of \$375,187.42 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. 2010-11**.

RESOLUTION NO. 2010-11

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 Application and Certificate for Payment No. 12

in the amount of \$375,187.42 as shown on Exhibit "A" 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)	+ 3,072.00
Change Order Nos. 9 and 10 (9-8-2009)	<u>+ 3,466.00</u>
Contract Sum to Date	\$2,798,839.00
Total Completed and Stored to Date	2,798,839.00
Retainage	13,994.20
Amount Due to Date	2,784,844.81
Less Previous Certificates for Payment	<u>2,409,657.39</u>
Current Payment Due	\$ 375,187.42

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. 12, as shown on Exhibit "A", be and is hereby accepted and approved.

PASSED AND APPROVED THIS 12TH DAY OF JANUARY, 2010.

ATTEST:
 MICHAELLE E. TREMBLY
 CITY CLERK

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

8. Accept the bids received for the One-Million Gallon Reservoir Demolition Project located at Memorial Field and approve **Resolution No. 2010-12**.

RESOLUTION NO. 2010-12

WHEREAS, Miller & Associates and the City of Kearney have reviewed the sealed bids which were opened on January 11, 2010 at 2:00 p.m. for the One-Million Gallon Reservoir Demolition Project located at Memorial Field; and

WHEREAS, the Engineer's Opinion of Probable Construction Cost was \$65,000.00; and

WHEREAS, the said engineers have recommended the bid offered by Skeen Construction, Inc. from Kearney, Nebraska in the sum of \$39,410.00 be accepted as the lowest responsible bid for the One-Million Gallon Reservoir Demolition Project located at Memorial Field.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska that the Engineers recommendation is hereby accepted and approved, that Skeen Construction, Inc. be and is the lowest responsible bidder for the One-Million Gallon Reservoir Demolition Project located at Memorial Field to be constructed in accordance with the plans and specifications on file with the City Clerk and that the bid of Skeen Construction, Inc. in the sum of \$39,410.00 be and is hereby

accepted.

BE IT FURTHER RESOLVED the Engineer's Opinion of Probable Construction Cost in the amount of \$65,000.00 be and is hereby accepted.

BE IT FURTHER RESOLVED that the President of the Council of the City of Kearney, Nebraska, be and is hereby authorized and directed to execute contracts for such improvements in accordance with the bid, plans, specifications, and general stipulations pertaining thereto.

PASSED AND APPROVED THIS 12TH DAY OF JANUARY, 2010.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

V. CONSENT AGENDA ORDINANCES

None.

VI. REGULAR AGENDA

ORDINANCE NO. 7562 – VACATE PORTION OF COUNTRY CLUB PLAZA, FRANK'S PARK ADDITION AND WHEATON PLACE (PERTAINS TO PUBLIC HEARING 3)

Council Member Lammers introduced Ordinance No. 7562, being Subsection 1 of Agenda Item VI to vacate Lot 8, Country Club Plaza; part of Lots 16, 20 and 21, of Frank's Park Addition; part of Lot 25 Wheaton Place, a subdivision to the City of Kearney, all in Buffalo County, Nebraska (1815 University Drive Circle), 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 Lear 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. 7562 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 Lear seconded by Buschkoetter that Ordinance No. 7562 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. 7562 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. 7563 – REZONE SOUTH OF 11TH STREET BETWEEN 13TH AVENUE AND 16TH AVENUE (PERTAINS TO PUBLIC HEARING 4)

Council Member Buschkoetter introduced Ordinance No. 7563, being Subsection 2 of Agenda Item VI to rezone from District AG, Agricultural District to District R-1, Urban Residential Single-Family District (Low Density) for property described as a tract of land being part of the West Half of the Northwest Quarter of Section 11 and part of the West Half of the Southwest Quarter of Section 2, all in Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (south of 11th Street between 13th Avenue and 16th Avenue), and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member 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, 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. 7563 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 Clouse seconded by Kearney that Ordinance No. 7563 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. 7563 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. 7564 - VACATE A PORTION OF PLATTE ROAD LOCATED SOUTH OF I-80 BETWEEN CENTRAL AVENUE AND 2ND AVENUE (PERTAINS TO PUBLIC HEARING 7)

Council Member Lammers introduced Ordinance No. 7564, being Subsection 3 of Agenda Item VI to vacate a portion of Platte Road located south of I-80 between Central Avenue and 2nd Avenue, and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Lear 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 abstained. 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. 7564 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 abstained. Motion carried. Ordinance was read by number.

Moved by Lear seconded by Buschkoetter that Ordinance No. 7564 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Buschkoetter. Nay: None. Kearney abstained. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7564 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. 7565 – REZONE SOUTHWEST CORNER OF 11TH STREET AND KEA WEST AVENUE (PERTAINS TO PUBLIC HEARING 9)

Moved by Buschkoetter seconded by Clouse that Ordinance No. 7565 rezoning from District AG, Agricultural District to District C-O/PD, Office/Planned Development Overlay District for property described as a tract of land being part of the Northwest Quarter of the Northeast Quarter and part of Government Lot 3 all in Section 10, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (southwest corner of 11th Street and Kea West Avenue) be denied. Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear. Nay: Kearney. Motion carried.

OPEN ACCOUNT CLAIMS: NPPD - \$51,899.39, PLATTE VALLEY STATE BANK - \$51,168.19, SCHOOL DISTRICT #7 - \$2,603.50, STANLEY CLOUSE - \$161.50

Moved by Kearney seconded by Lammers that Open Account Claims in the amount of \$51,168.19 payable to Platte Valley State Bank, in the amount of \$51,899.39 payable to Nebraska Public Power District, and in the amount of \$161.50 payable to Stanley Clouse be allowed. Roll call resulted as follows: Aye: Buschkoetter, Lammers, Kearney. Nay: None. Clouse and Lear abstained. Motion carried.

Moved by Clouse seconded by Kearney that Open Account Claims in the amount of \$2,603.50 payable to School District #7 be allowed. Roll call resulted as follows: Aye: Clouse, Lear, Kearney. Nay: None. Buschkoetter and Lammers abstained. Motion carried.

VII. REPORTS

CITY MANAGER ANNIVERSARY

City Manager Michael Morgan stated he has approached his 5-year anniversary with the City.

Council members commended the City Manager for a job well done over those years. He has saved the City thousands of dollars and has also brought in thousands of dollars

in revenue.

VIII. ADJOURN

Moved by Kearney seconded by Lammers that Council adjourn at 10:08 p.m. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

ATTEST:

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

**MICHAELLE E. TREMBLY
CITY CLERK**