

**Kearney, Nebraska**  
**November 9, 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 November 9, 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; Suzanne Brodine, Assistant City Manager; Kirk Stocker, Director of Utilities; Rod Wiederspan, Director of Public Works; and Dan Lynch, Chief of Police were also present. Some of the citizens present in the audience included: Rhonda Kosmicki, Trenton Snow, Rich Lowe, Judy Lowe, Ed Mach, Mitch Humphrey, Keith Rodehorst, Betty Warren, Jan Rodehorst, Steve Craig, Bill McCracken, Steve Altmaier from KGFW Radio, Kevin Hervert from Kearney Hub.

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**

Pastor David Dickinson from Hope Evangelical Free Church provided the Invocation.

### **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.

### **ORAL COMMUNICATIONS**

There was no Oral Communications.

## **II. UNFINISHED BUSINESS**

There was no Unfinished Business.

### **III. PUBLIC HEARINGS**

#### **CONDITIONAL USE PERMIT TO SYDNEE KOSMICKI FOR DAY CARE FACILITY**

Mayor Clouse opened the public hearing on the Application submitted by Sydnee Kosmicki (Applicant) and Rhonda Kosmicki (Owner) for a Conditional Use Permit to locate an in-home day care facility on property zoned District R-1, Urban Residential Single-Family District (Low Density) and described as Lot 13, Hammer Park Estates, an addition to the City of Kearney, Buffalo County, Nebraska (1016 East 14th Street). Planning Commission recommend approval of the CUP subject to compliance of the conditions discussed at Planning Commission.

The applicants are requesting a Conditional Use Permit (CUP) to operate a daycare in a residential neighborhood at 1016 East 14th Street. The property is zoned R-1, Urban Residential Single-Family District and is located across the street from Nina Hammer Park. The applicants plan to apply for a license for a "Daycare Center" with the Nebraska Health and Human Services once they gain City approval for the CUP. They expect to have a maximum of 15 children ages 18 months to five years old. Their proposed hours of operation are from 6:30 a.m. to 6:00 p.m., Monday through Friday. Rhonda Kosmicki will be living in the house and the house will remain a residential structure, it will not be converted into a "commercial use". The basement of the house will be used for the daycare and will meet all requirements of the Nebraska State Fire Marshal's Office. Employees will consist of three family members, Sydnee, Kim, and Rhonda Kosmicki. Employee parking will be in the garage or driveway. Drop-off will be in the driveway or in front of the house. The presence of the park on the other side of the street reduces the amount of houses in the immediate area. There is a six-foot high solid privacy fence around the back yard. Staff encouraged the applicants to speak with their neighbors and explain what they want to do. A sheet with eight neighborhood signatures indicates that some of the neighbors were approached with the idea and all that signed the sheet are in support.

Staff offered the following proposed conditions and the Planning Commission concurred:

- a) The CUP be issued for a period of 12 months, renewable annually as long as there are no legitimate complaints or concerns.
- b) The CUP is for this location and these applicants only, and is non-transferable.
- c) At least one adult shall be living in the house as a full-time resident.
- d) The hours of operation are limited to 6:30 a.m. to 6:00 p.m. Monday through Friday.
- e) The maximum number of children that can be taken care of at any one time is 15.
- f) The maximum number of employees is three.
- g) Drop-off and pick-up in front of the house, or preferably in the driveway of the daycare.
- h) Applicant shall provide copies of state licensing and State Fire Marshal approval to the City for the file.

Planning Commission agreed that these conditions are appropriate for this use and asked the applicants if they were comfortable with items a through h. The applicants agreed to abide by these conditions.

Rhonda Kosmicki, 1016 East 14th Street, presented this matter to the Council. As soon as they get their permit, they intend to open a day care in the basement of her residence. They will have 15 children with approximately three employees, not always at the same time, depending on the number of children present. Her understanding is that they have to have one adult for every five children, so depending on the day and hour they would have coverage according to State requirements. She believes this is an ideal setting for a day care facility because it is right across the street from the park. There is ample parking in front of the house and they have a 2-car garage and driveway that could be used for parking. They did consult with the Fire Marshall and although they have two egress windows, but only one has a ladder so they will have to get another ladder installed to be in compliance with an escape route.

The Planning Commission at first suggested that they check with the neighbors and after walking around and visiting with her neighbors, they were all in favor of it. Some of them have children they would like to attend the day care center. Ms. Kosmicki stated that they agree with all the requirements of the Conditional Use Permit.

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 Sydnee Kosmicki (Applicant) and Rhonda Kosmicki (Owner) for a Conditional Use Permit to locate an in-home day care facility on property zoned District R-1, Urban Residential Single-Family District (Low Density) and described as Lot 13, Hammer Park Estates, an addition to the City of Kearney, Buffalo County, Nebraska (1016 East 14th Street) subject to compliance with the following conditions: (1) The CUP be issued for a period of 12 months, renewable annually as long as there are no legitimate complaints or concerns; (2) The CUP is for this location and these applicants only, and is non-transferable; (3) At least one adult shall be living in the house as a full-time resident; (4) The hours of operation are limited to 6:30 a.m. to 6:00 p.m. Monday through Friday; (5) The maximum number of children that can be taken care of at any one time is 15; (6) The maximum number of employees is three; (7) Drop-off and pick-up in front of the house, or preferably in the driveway of the daycare; and (8) Applicant shall provide copies of state licensing and State Fire Marshal approval to the City for the file. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

### **REZONING 4965 BISON ROAD**

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

Mayor Clouse opened the public hearing on the Application submitted by Trenton Snow (Applicant) for Josh Frizzell (Owner) to rezone from District AG, Agricultural District to District RR-1, Rural Residential District (Rural Standards) property described as a tract of land being part of the Southeast Quarter of the Northwest Quarter of Section 29, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (4965 Bison Road). Planning Commission recommend approval as presented.

Trenton Snow presented this matter to the Council.

The applicant is requesting approval to plat a one-lot subdivision for an existing rural residence outside City limits in the two-mile extra-territorial jurisdiction (ETJ). The existing home was moved onto a larger metes and bounds described property at some time in the past. Pieces of the property have been sold off and there is no longer enough land available to meet the minimum lot size in Agricultural zoning (the property consists of 1.957 acres). The applicant wants to erect an outbuilding and when he applied for a building permit the City realized that the project requires rezoning and a subdivision plat to meet Code requirements.

The parcel is currently zoned AG, Agricultural District. The Future Land Use Map of the City of Kearney Comprehensive Development Plan shows this area designated as "Rural Estates." The proper zoning for the proposed use is RR-1, Rural Residential District (Rural Standards) which is in conformance with the land use designation of "Rural Estates." The surrounding property is zoned Agricultural. As previously mentioned, the property consists of 1.957 acres while three acres is the minimum lot size in the RR-1 zoning district. Staff recommended the Planning Commission allow this lot size deviation since the parcel that contains the house and will contain the outbuilding is pre-existing as a separately described property by metes and bounds. The location of the outbuilding will meet minimum setback requirements of the RR-1 zone.

The Preliminary and Final Plat for this tract consists of a single lot approximately 1.957 acres in size to be known as Frizzell Subdivision. The Preliminary Plat was approved by the Planning Commission on October 15, 2010. A Public Works Plan is not required. The house will be served by individual well and septic systems. No subdivision agreement is required.

The owner is proceeding with site grading and foundation prior to final approval at his own risk after obtaining proper NPDES permits.

There was no one present in opposition to this hearing.

Moved by Lammers seconded by Lear to close the hearing and approve the Application submitted by Trenton Snow (Applicant) for Josh Frizzell (Owner) to rezone from District AG, Agricultural District to District RR-1, Rural Residential District (Rural Standards) property described as a tract of land being part of the Southeast Quarter of the Northwest Quarter of Section 29, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (4965 Bison Road). Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

### **FINAL PLAT FOR FRIZZELL SUBDIVISION; 4965 BISON ROAD**

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

Mayor Clouse opened the public hearing on the Application submitted by Trenton Snow (Applicant) for Josh Frizzell (Owner) for the Final Plat for Frizzell Subdivision, a subdivision of a tract of land being part of the Southeast Quarter of the Northwest Quarter of Section 29, Township 9 North, Range 16 West of the 6th P.M., Buffalo

County, Nebraska (4965 Bison Road) and consider Resolution No. 2010-212. Planning Commission recommend approval as presented.

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 Trenton Snow (Applicant) for Josh Frizzell (Owner) for the Final Plat for Frizzell Subdivision, a subdivision of a tract of land being part of the Southeast Quarter of the Northwest Quarter of Section 29, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (4965 Bison Road) and adopt **Resolution No. 2010-212**. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried.

### **RESOLUTION NO. 2010-212**

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of Frizzell Subdivision of Buffalo County, Nebraska for a tract of land being part of the Southeast Quarter of the Northwest Quarter of Section 29, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Referring to the northeast corner of the Northwest Quarter of Section 29, Township 9 North, Range 16 West and assuming the north line of said Northwest Quarter as bearing N89°54'W and all bearings contained herein are relative thereto; thence N89°54'W a distance of 39.0 feet; thence S00°12'54.4"E a distance of 1359.85 feet to the ACTUAL PLACE OF BEGINNING; thence continuing S00°12'54.4"E a distance of 582.1 feet; thence N83°17'33.3"W a distance of 492.24 feet; thence N06°42'27"E a distance of 352.84 feet; thence N68°38'42"E a distance of 478.3 feet to the place of beginning; EXCEPT a tract of land being part of the Southeast Quarter of the Northwest Quarter of Section 29, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Referring to the northeast corner of the Northwest Quarter of Section 29, Township 9 North, Range 16 West and assuming the north line of said Northwest Quarter as bearing N89°54'W and all bearings contained herein are relative thereto; thence N89°54'W a distance of 39.0 feet; thence S00°12'54.4"E a distance of 1359.85 feet to the ACTUAL PLACE OF BEGINNING; thence continuing S00°12'54.4"E a distance of 384.51; thence N87°58'07"W a distance of 469.99 feet to a point on the east property line of an existing road; thence N06°42'27"E a distance of 195.0 feet; thence N68°38'42"E a distance of 478.3 feet to the Place of Beginning, all in Buffalo County, Nebraska, duly made out, acknowledged and certified, and the same hereby is approved in accordance with the terms and requirements of Sections 16-901 through 16-904 inclusive, R.R.S. 1943 (as amended) be accepted and ordered filed and recorded in the Office of the Register of Deeds, Buffalo County, Nebraska.

BE IT FURTHER RESOLVED that the 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 9TH DAY OF NOVEMBER, 2010.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

## **CONDITIONAL USE PERMIT TO KEARNEY RV PARK & CAMPGROUND**

Mayor Clouse opened the public hearing on the Application submitted by North Shore Marina, LLC (Applicant) and O & O Farms Inc., a Nebraska Corporation (Owner) for a Conditional Use Permit to locate a recreational vehicle park and campground on property zoned District AG, Agricultural District and described as a tract of land being part of Government Lots 3 and 4 and part of accretion land adjacent to and abutting said Government Lots 3 and 4, all located in Section 7, Township 8 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska (south of 11th Street east of Avenue M). Planning Commission recommend approval of the CUP subject to compliance of the conditions discussed at Planning Commission.

The applicant is requesting a Conditional Use Permit (CUP) to operate an 80-stall RV Park on a 15.16 acre parcel of land zoned agricultural located along the north side of Turkey Creek east of Avenue M. The property will be developed in phases with Phase One consisting of an office/laundry/shower building and approximately 35 RV pads. The interior circulation drives and individual RV pads will be crushed rock or crushed concrete until such time in the future when they may be paved, dependent on cash flow. The circulation drives are 24 feet wide for two-way traffic and 16 feet wide for one-way traffic. The pad sites are pull-through 30 feet by 100 feet with full services (water hookups, sewer hookups, 50 amp electric). Associated activities and amenities that may be developed over time include bicycle rentals for the hike/bike trail, a nature walk along Turkey Creek, a swimming pool, and tent camping areas by the creek.

The only place RV Parks and Campgrounds are allowed in the City Code is in Agricultural zoning and in C-2, Community Commercial District with either zoning category requiring a CUP as well. Supplemental Use Regulations in Chapter 46 require a minimum of one acre for any campground, a 50-foot front setback, a 25-foot buffer on all other sides of the property, and acceptable water and waste water disposal systems. Staff and the applicant discussed possible alternatives for zoning and initially the consensus was to zone the property C-2 because the overall site at 15.16 acres does not meet the minimum 20-acre lot area required for Agricultural uses. After further discussion, staff believed it would be preferable to allow a deviation to the 20-acre minimum since C-2 zoning does not make sense at this rural location. The area is surrounded by agricultural uses and zoning. The applicant could purchase enough additional land to meet the 20-acre minimum requirement but does not need any more land to operate the proposed business. Therefore, staff supports this deviation given the proposed use and the location of the property. Planning Commission agreed and recommends approval of this deviation.

The applicant is also requesting a deviation from the Code requirement requiring 25-foot bufferyard on all sides of the property except the 50-foot front yard. The natural trees and vegetation provide an existing buffer and screening along Turkey Creek. The north side of the proposed RV Park abuts a farm field that is currently in row crops. The applicant has shown the 25-foot bufferyard and associated tree plantings in this area but would like to defer the tree planting to a later date when some other use develops abutting the RV Park that requires screening and buffering. The applicant would rather

plant a shade tree on each of the RV pad sites to provide shade for customers. Staff is in agreement with this deviation as well and Planning Commission concurred.

The RV Park will be served with municipal water and sanitary sewer services. An adjacent water main and sanitary sewer lift station provide access to these utilities and the water and sewer systems on-site shall be considered a private system. As such, the systems must comply with Nebraska Department of Environmental Quality (NDEQ) requirements of Title 123, Chapter 5, and "Construction Standards for Private Sewers for Mobile Home Parks, RV Parks and Campgrounds." Also, as part of the CUP agreement, the applicant agrees that the private water and sewer cannot be used in the future for another use, such as a mobile home park or single-family or commercial development, without coming back to the City for proper approvals.

Since the parcel exceeds 10 acres in size it is not required to be placed in a subdivision by State law. However, since the applicant will be connecting to City services and is contiguous to the City limits, the City will require annexation. The City Attorney has developed an Annexation Agreement based on metes and bounds property description that has been executed. The Annexation Agreement is on the Regular Agenda for consideration and approval. The applicant will not be allowed to connect to City services until the property is annexed.

Staff offered the following proposed conditions for the CUP and the Planning Commission concurred:

(1) The CUP shall be issued for a period of three years, renewable annually as long as there are no legitimate complaints or concerns.

(2) The CUP is for this location and this applicant only, and is non-transferable.

(3) The CUP is for the use of this property as an RV Park and Campground and the private water and sewer system that is proposed cannot be used to connect any other uses in the future without City approval.

(4) No connection to City owned and operated water and sanitary sewer systems will be allowed until such time as the property is annexed in the corporate boundary of the City.

(5) City staff and applicant agree, if approved by City Council, to waive the 20-acre minimum lot area required for agricultural uses, and that the 15.16 acres described by metes and bounds in the Annexation Agreement is an acceptable size for this RV Park at this location.

(6) If approved by City Council, City staff and applicant agree that the 25-foot bufferyard and associated tree plantings along the north side of the proposed RV Park will not be installed at this time, but the area for said bufferyard will be reserved for future use as a bufferyard and the trees will be installed in the future when the land use to the north abutting the RV Park changes to a use that requires said bufferyard in its completed state.

(7) Applicant shall provide copies of NDEQ State licensing to the City for the file.

(8) At such time as Avenue M is paved, the applicant agrees to pave the entry drive back from the existing street to the property line.

Mitch Humphrey presented this matter to the Council. There is a tower on site of the property and the City's lift station is located in the east corner. There will be about 132 feet of frontage off of Avenue M, north of that tower site. As they get back to the east

side of that tower site, that will open up into the RV Park property. The depth from the east side of the tower site, back over to the street will allow them room to get vehicles off of Avenue M. They want the ability to keep them off the road.

Mr. Humphrey stated the applicant is aware that when Avenue M is paved, he will be required to pave the entry drive back from the existing street to the property line. According to the agreement with Buffalo County, Avenue M will be done in 2013. According to the owner as cash flow permits, they will pay for pads first then they will pave the streets.

With the approval of the Conditional Use Permit, they want to annex this property and realized that process takes three consecutive meetings to accomplish. The electrical will be provided by NPPD because they are in the service area and they have been to the area looking at their infrastructure.

The applicant is aware of the eight conditions and will comply with them.

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 North Shore Marina, LLC (Applicant) and O & O Farms Inc., a Nebraska Corporation (Owner) for a Conditional Use Permit to locate a recreational vehicle park and campground on property zoned District AG, Agricultural District and described as a tract of land being part of Government Lots 3 and 4 and part of accretion land adjacent to and abutting said Government Lots 3 and 4, all located in Section 7, Township 8 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska (south of 11th Street east of Avenue M) subject to compliance with the following conditions: (1) The CUP shall be issued for a period of three years, renewable annually as long as there are no legitimate complaints or concerns; (2) The CUP is for this location and this applicant only, and is non-transferable; (3) The CUP is for the use of this property as an RV Park and Campground and the private water and sewer system that is proposed cannot be used to connect any other uses in the future without City approval; (4) No connection to City owned and operated water and sanitary sewer systems will be allowed until such time as the property is annexed in the corporate boundary of the City; (5) City staff and applicant agree, if approved by City Council, to waive the 20-acre minimum lot area required for agricultural uses, and that the 15.16 acres described by metes and bounds in the Annexation Agreement is an acceptable size for this RV Park at this location; (6) If approved by City Council, City staff and applicant agree that the 25-foot bufferyard and associated tree plantings along the north side of the proposed RV Park will not be installed at this time, but the area for said bufferyard will be reserved for future use as a bufferyard and the trees will be installed in the future when the land use to the north abutting the RV Park changes to a use that requires said bufferyard in its completed state; (7) Applicant shall provide copies of NDEQ State licensing to the City for the file; (8) At such time as Avenue M is paved, the applicant agrees to pave the entry drive back from the existing street to the property line. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried.

**REZONING BETWEEN 10TH AVENUE AND 11TH AVENUE SOUTH OF 48TH STREET**

Public Hearings 5, 6 and 7 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Steven Craig on behalf of Grand West LLC, a Nebraska Limited Liability Company (Applicant and Owner) to rezone from District R-2, Urban Residential Mixed-Density District to District R-2/PD, Urban Residential Mixed-Density/Planned Development Overlay District for a tract of land to be vacated and described as Lots 1 through 10 inclusive of Block 4, Fountain Hills Third Addition to the City of Kearney, Buffalo County, Nebraska (between 10th Avenue and 11th Avenue south of 48th Street). Planning Commission recommended approval of all items as presented with no dissenting votes.

The applicant is requesting approval to vacate a portion of a previously platted subdivision and replat the area as a new subdivision. Fountain Hills Third Addition was approved by City Council on September 9, 2008 consisting of some 19.98 acres. Approximately 15 acres of this subdivision are planned for townhomes and the remaining 4.82 acres was originally zoned and platted for 10 duplexes (20 living units). The owner would now like to develop the 4.82 acres as single-family homes. The project requires vacation, rezoning, subdivision plats, and approval of development plans.

The 4.82 acre tract which consists of Lots 1 through 10 inclusive, of Block 4 of Fountain Hills Estates Third Addition must be vacated in order to replat the lots into a new subdivision to be known as Fountain Hills Fourth Addition.

The land is currently zoned R-2, Urban Residential Mixed-Density District. The applicant had intended at one time to develop these lots as duplex lots. Now, the applicant wishes to build single-family homes which are also allowed by right in R-2 zoning. However, the applicant would like to take advantage of existing Code provisions that allow smaller lot sizes in "planned" development scenarios as compared to "traditional" development scenarios. Therefore, the proposed rezoning is for R-2/PD, Urban Residential Mixed-Density/Planned Development Overlay District, in other words adding the "PD" designation to the existing zoning. The minimum lot width for a single-family home in traditional R-2 zoning is 70 feet but the width can be reduced as low as 45 feet in planned developments.

The Preliminary and Final Plat for this tract consists of 16 R-2/PD lots, most of which will be developed with smaller single-family homes in the 1,200 to 1,600 square foot range of floor area. Lot 5 may accommodate a duplex structure that could later be subdivided with a minor subdivision along the common party wall into two living units. The revised lots are smaller than the original subdivision increasing in number from 10 to 16 lots. However, the overall density of the 4.82 acres will be 16 or 17 living units as opposed to the originally planned twenty living units (10 duplex lots). The Preliminary Plat for Fountain Hills Fourth Addition was approved by Planning Commission on October 15, 2010. A Public Works Plan and Subdivision Agreement were prepared with the original subdivision in 2008. The streets and utilities have been constructed but water and sewer layout at the time was based on ten larger duplex lots, not 16 smaller lots. Staff has requested and the applicant has provided a Revised Public Works Plan

to demonstrate that each individual premise will be separately connected to water and sanitary sewer service.

Staff requests a note be added to the Revised Public Works Plan prior to the City Council meeting that states: "No building permits will be issued for any houses or duplexes until municipal water and sanitary sewer service lines are extended to each lot as shown on this plan."

The utility companies have been invited to review the new plat of Fountain Hills Fourth for any required easements as the lot lines have been revised and the utility easements on the plat for Fountain Hills Third may no longer be accurate. NPPD requires a 10-foot wide utility easement to be shown on the final subdivision plat for Fountain Hills Fourth prior to being filed at the Buffalo County Register of Deeds office.

A conceptual Development Plan has been submitted for the 16-lot subdivision. A deviation to the required side yards is being requested for every lot. Code requires a minimum interior side yard of 7 feet or 14 feet between the two buildings but the applicant is requesting that all interior side yards be reduced to 5 feet or 10 feet between buildings. If approved, the reduced side yard will allow the buildings to be closer together yet still provide space between them for access. This deviation is proposed in combination with the reduced lot width allowance in planned districts to achieve small, tighter lots. The applicant does not intend to reduce the lot width to the minimum of 45 feet because the size of the proposed houses will not fit on that small of a lot width. The average lot width is probably somewhere around 55 feet. The lot width is measured as a tangent line at the 25-foot front setback line.

If the reduced side yards are approved, the builders may need to construct a higher grade of fire wall assembly in those areas where the structures are closer together than Code requires.

Staff has mixed opinions regarding a recommendation for the proposed layout. Some staff members believe that the 7-foot interior side yard requirement should be upheld. They believe five feet is too tight and that if the setback is reduced to five feet for each one of these lots it should be looked at as a potential Code amendment to be applied equally to all residential lots. They would not, however, support such an amendment. They believe that this development is too dense given the reduced lot widths and reduced interior side yards, especially given the proximity to the density of the townhomes proposed on the north side of 48th Street. On the other hand, some staff believe that the deviations are justifiable under the "planned" zoning designation. The purpose of the planned zoning option is to add some flexibility and creativity to the proposed layout. This is not a concept that they would support at all locations around town, but in a smaller context such as this, it may be acceptable. Although the lots are smaller and the number of lots has increased from 10 to 16, or possibly 17, the overall unit density has decreased from 20 units to 16 or 17 units. As one staff member put it: "Why would you want to live in a duplex and share a common wall when you could have a small amount of space (in this case 10 feet) between the two buildings?" As staff differs in opinion on the 5-foot setback question, so did the Planning Commission. There was quite a bit of discussion among the Planning Commission members about this

topic, but in the end the Planning Commission recommended approval of all the agenda items associated with this project as presented. There were no dissenting votes.

Steven Craig, developer of the Fountain Hills Subdivision, presented this matter to the Council. They are requesting to move the boundary lines of ten lots within the center lines to make more lots. The zoning will remain R-2, but they are adjusting the width of the lot lines by a Planned District Development Plan. They will increase from ten lots to 16 lots. The front and rear setbacks have basically remained the same. The only change is the lot lines within the structures themselves. They are asking for a sideyard deviation. They are doing a 5-foot side yard, which will give them about a 12-foot separation within the structures. So they are deviating by making them two feet narrower. They are building single family patio homes. So the lots and homes are narrower and they are using the depth to increase the square footage of the homes. Most homes are going to be from 1,200 to roughly 1,600 square feet with 2-car attached garages and basements.

Bill McCracken, builder and partner for the development, stated they hope to build these homes in an affordable price range. They are using the envelope method versus the normal home built according to City Code with a 7-foot sideyard. In the envelope plan, the structure including the overhang must stay within the envelope that is proposed. They would have approximately a 6-foot sideyard on each side. They are asking for the 42 foot because with the envelope the roof overhang would be included. That necessitates the 5-foot sideyard.

Mitch Humphrey stated these lots are not atypical because some are larger and some are smaller in comparison to other developments in Kearney. Square footage wise these are very similar to others around town. Some of the lots in older neighborhoods are 50 X 130 feet. These lots range from 131 to 168 feet deep. This little corner of Fountain Hills was put together in a rather unique way with the cul-de-sac and the eyebrow. There was some consideration for putting some rather large duplexes with the common wall line being right down that property line. He knows of one duplex development in the north part of town with that configuration, which has not sold in a long time because there is not a demand for that type of structure in the City of Kearney. In appearance, it will not affect the density that much.

Betty Warren, realtor for the property, stated the lot size and the lot price is not the only consideration. There is a need in Kearney for people who do not want to go to a condo because they are difficult to get financing for anymore. They want to go to a townhouse which is easier to get financing for and smaller yards to take care of. This splits the lot right down the middle if you were going to build a duplex. At the present time, there really is no other housing like this in Kearney. It is not just about reducing the cost of these lots; people do not always want a large yard to take care of. This makes it more appealing to retired people, young professionals and people who travel a lot. She anticipated that these lots would be priced about \$30,000 to \$32,000. The proposed larger lots were estimated at about \$45,000.

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 Steven Craig on behalf of Grand West LLC, a Nebraska Limited Liability Company (Applicant and Owner) to rezone from District R-2, Urban Residential Mixed-Density District to District R-2/PD, Urban Residential Mixed-Density/Planned Development Overlay District for a tract of land to be vacated and described as Lots 1 through 10 inclusive of Block 4, Fountain Hills Third Addition to the City of Kearney, Buffalo County, Nebraska (between 10th Avenue and 11th Avenue south of 48th Street). Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

### **FINAL PLAT FOR FOUNTAIN HILLS FOURTH ADDITION**

Public Hearings 5, 6 and 7 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Steven Craig on behalf of Grand West LLC, a Nebraska Limited Liability Company (Applicant and Owner) for the Final Plat for Fountain Hills Fourth Addition to the City of Kearney, Buffalo County, Nebraska for a tract of land to be vacated and described as Lots 1 through 10 inclusive of Block 4, Fountain Hills Third Addition to the City of Kearney, Buffalo County, Nebraska (between 10th Avenue and 11th Avenue south of 48th Street) and to consider Resolution No. 2010-213. Planning Commission recommended approval of all items as presented with no dissenting votes.

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 Steven Craig on behalf of Grand West LLC, a Nebraska Limited Liability Company (Applicant and Owner) for the Final Plat for Fountain Hills Fourth Addition to the City of Kearney, Buffalo County, Nebraska for a tract of land to be vacated and described as Lots 1 through 10 inclusive of Block 4, Fountain Hills Third Addition to the City of Kearney, Buffalo County, Nebraska (between 10th Avenue and 11th Avenue south of 48th Street) and adopt **Resolution No. 2010-213**. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

### **RESOLUTION NO. 2010-213**

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat for Fountain Hills Fourth Addition to the City of Kearney, Buffalo County, Nebraska for a tract of land described as Lots 1 through 10 inclusive of Block 4, Fountain Hills Third Addition to the City of Kearney, Buffalo County, Nebraska (now vacated) as laid out on tract of land being part of the Northeast Quarter of the Southwest Quarter and part of the Southeast Quarter of the Northwest Quarter of Section 26, Township Nine 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, and more particularly described as follows: beginning at the northeast corner of the Southwest Quarter of said Section 26, and assuming the east line of said Southwest Quarter as bearing S00°21'57"E, and all bearings contained herein being relative thereto, thence S00°21'57"E and along the said east line a distance of 480.98 feet to the northeast corner of Lot 1, Block 1, Fountain Hills Addition to the City of

Kearney, Buffalo County, Nebraska as platted and recorded; thence N77°42'53"W and along the north line of said Fountain Hills Addition, a distance of 66.55 feet; thence N58°4'27"W and along the said north line of said Fountain Hills Addition, a distance of 541.19 feet; thence north 84°00'48"W and along the said north line of said Fountain Hills Addition a distance of 199.79 feet to the northwest corner of Lot 9, Block 1 of said Fountain Hills Addition, said point also being located on the east line of Outlot "A" of said Fountain Hills Addition; thence N05°59'12"E along the said east line of said Outlot "A" a distance of 158.05 feet to a point located 2.35 feet north of the north line of the said Northeast Quarter of the Southwest Quarter, said point being a point of curvature, said point of curvature also being located on the southerly right-of-way line of 48th Street, as platted and recorded, and as dedicated and accepted as a public street by the City of Kearney, Buffalo County, Nebraska, running thence east-southeasterly and along the southerly right-of-way line of said 48th Street and along the arc of a 533.00 foot radius curve to the left, said curve having a long chord bearing of S87°49'18"E and a long chord distance of 50.08 feet, an arc distance of 50.10 feet to a point of tangency, thence running N89°29'22"E and along the said southerly right-of-way line of 48th Street, a distance of 99.86 feet to a point of curvature; running thence southeasterly and then northeasterly and along the said southerly right-of-way line of 48th Street, and along the arc of a 50.00 foot radius curve to the left, said curve having a long chord bearing of N89°29'22"E and a long chord distance of 100.00 feet, an arc distance of 157.08 feet to a point of tangency, said point being located on the said southerly right-of-way line of 48th Street; thence N89°29'22"E and along the said southerly right-of-way line of 48th Street, and along the said north line of the said Northeast Quarter of the Southwest Quarter a distance of 454.95 feet to the POINT OF BEGINNING; (excepting therefrom all of platted 10th Avenue Place lying south of said 48th Street, said 10th Avenue Place all dedicated to and accepted as a public street by the City of Kearney, Buffalo County, Nebraska, and as recorded as a part of Fountain Hills Third Addition to the City of Kearney, Buffalo County, Nebraska), said tract containing a calculated net area of 4.4058 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 9TH DAY OF NOVEMBER, 2010.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**DEVELOPMENT PLAN APPROVAL FOR FOUNTAIN HILLS FOURTH ADDITION**

Public Hearings 5, 6 and 7 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Steven Craig on behalf of Grand West LLC, a Nebraska Limited Liability Company (Applicant and Owner) for Planned District Development Plan Approval for residential/duplex development on property to be zoned District R-2/PD, Urban Residential Mixed-Density/Planned Development Overlay District and described as a tract of land to be vacated and described as Lots 1 through 10 inclusive, Fountain Hills Fourth Addition to the City of Kearney, Buffalo County, Nebraska (between 10th Avenue and 11th Avenue south of 48th Street) and to consider Resolution No. 2010-214. Planning Commission recommended approval of all items as presented with no dissenting votes.

There was no one present in opposition to this hearing.

Moved by Lammers seconded by Lear to close the hearing and approve the Application submitted by Steven Craig on behalf of Grand West LLC, a Nebraska Limited Liability Company (Applicant and Owner) for Planned District Development Plan Approval for residential/duplex development on property to be zoned District R-2/PD, Urban Residential Mixed-Density/Planned Development Overlay District and described as a tract of land to be vacated and described as Lots 1 through 10 inclusive, Fountain Hills Fourth Addition to the City of Kearney, Buffalo County, Nebraska (between 10th Avenue and 11th Avenue south of 48th Street) and adopt **Resolution No. 2010-214**. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried.

#### **RESOLUTION NO. 2010-214**

WHEREAS, Steven Craig on behalf of Grand West LLC, a Nebraska Limited Liability Company (Applicant and Owner) has applied for Planned District Development Plan Approval for residential/duplex development on property to be zoned District R-2/PD, Urban Residential Mixed-Density/Planned Development Overlay District and described as Lots 1 through 10 inclusive, Fountain Hills Fourth Addition to the City of Kearney, Buffalo County, Nebraska (between 10th Avenue and 11th Avenue south of 48th Street).

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the application of Steven Craig on behalf of Grand West LLC, a Nebraska Limited Liability Company (Applicant and Owner) for Planned District Development Plan Approval for residential/duplex development on property to be zoned District R-2/PD, Urban Residential Mixed-Density/Planned Development Overlay District and described as Lots 1 through 10 inclusive, Fountain Hills Fourth Addition to the City of Kearney, Buffalo County, Nebraska (between 10th Avenue and 11th Avenue south of 48th Street) be approved subject to compliance with the following terms and conditions: (1) No building permit shall be issued for any houses or duplexes until municipal water and sanitary sewer service lines are extended to each lot as shown on the Revised Public Works Plan; and (2) NPPD requires a 10-foot wide utility easement to be shown on the final subdivision plat for Fountain Hills Fourth Addition prior to being filed at the Buffalo County Register of Deeds office.

PASSED AND APPROVED THIS 9TH DAY OF NOVEMBER, 2010.

ATTEST:  
MICHAELLE E. TREMBLY

STANLEY A. CLOUSE  
PRESIDENT OF THE COUNCIL

CITY CLERK

AND EX-OFFICIO MAYOR

**LAND USE MAP AMENDMENT FOR NORTHEAST CORNER OF THE TERSECTION  
OF HIGHWAY 44 AND HIGHWAY 50A**

Public Hearings 8, 9 and 10 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Trenton Snow (Applicant) for Rich E. and Judy L. Lowe (Owner) for an amendment to the Land Use Map of the City of Kearney Comprehensive Development Plan from Agricultural/Open to Rural Estates for property described as a tract of land being part of the West Half of the Southwest Quarter of Section 24, Township 8 North, Range 16 West of the 6th P.M., Kearney County, Nebraska (northeast corner of the intersection of Highway 44 and Highway 50A) and to consider Resolution No. 2010-215. Planning Commission recommended approval subject to written verification from NDOR allowing the additional access points for rural residential use. The applicant has submitted to the City the required documents from NDOR, so Staff recommends approval.

Trenton Snow presented this matter to the Council.

The applicant is requesting approval to plat a three-lot subdivision for rural residence use on the north side of Ft. Kearney Road (Hwy. 50A) and on the east side of Highway 44. The property is located outside of city limits in the two-mile extra-territorial jurisdiction (ETJ) and consists of 10.05 acres. The property was recently sold on auction. The project requires an amendment to the land use map, rezoning, and subdivision plats. This project was before the Planning Commission in June where the Commission recommended approval subject to the applicant providing written approval from Nebraska Department of Roads (NDOR) for proposed access locations to the state highways on Lots 1 and 3. The project has been delayed at the Council level until now when such written verification has been submitted.

The parcel is currently zoned AG, Agricultural District and contains an old farmhouse and several outbuildings. The Future Land Use Map of the City of Kearney Comprehensive Development Plan shows this area designated as "Agricultural/Open." The proper zoning for the proposed use is RR-1, Rural Residential District (Rural Standards) and the corresponding land use designation is "Rural Estates."

The Preliminary and Final Plat for this tract consists of three lots between 3 and 3½ acres in size to be known as Heartland Estates. The Preliminary Plat was approved by Planning Commission on June 18, 2010. Lot 2 contains an existing house and outbuildings while Lots 3 is currently vacant. An outbuilding that straddles the common lot line between Lots 1 and 2 will be removed. There is an existing pole barn on Lot 1. A 50-foot setback is required from state highways and is shown on the plat. The requirement to show contours on the Preliminary Plat has been waived. A Public Works Plan is not required. The houses will be served by individual well and septic systems. No subdivision agreement is required.

The only access to the site is limited to an existing drive on Lot 2. The applicant desires separate access points for Lots 1 and 3 as well. NDOR has access control on both

roadways as they are both state highways. As previously mentioned, Staff requested that the applicant provide a written letter from NDOR granting individual access for rural residential use on Lots 1 and 3. The letter has now been received and the project is moving forward.

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 Trenton Snow (Applicant) for Rich E. and Judy L. Lowe (Owner) for an amendment to the Land Use Map of the City of Kearney Comprehensive Development Plan from Agricultural/Open to Rural Estates for property described as a tract of land being part of the West Half of the Southwest Quarter of Section 24, Township 8 North, Range 16 West of the 6th P.M., Kearney County, Nebraska (northeast corner of the intersection of Highway 44 and Highway 50A) and adopt **Resolution No. 2010-215**. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried.

### **RESOLUTION NO. 2010-215**

WHEREAS, an application for a revision of the Land Use Map of the Comprehensive Plan has been filed in conjunction with and as a requisite part of its application for a change in the zoning for a tract of land being part of the West Half of the Southwest Quarter of Section 24, Township 8 North, Range 16 West of the 6th P.M., Kearney County, Nebraska, more particularly described as follows: Referring to the southwest corner of the Southwest Quarter of said Section 24 and assuming the south line of said Southwest Quarter as bearing N89°25'37"E and all bearings contained herein are relative thereto; thence N89°25'37"E on the aforesaid south line a distance of 80.0 feet to the east right-of-way line of Nebraska State Highway No. 44 (if extended southerly); thence N00°47'48"W on the aforesaid east right-of-way line (if extended southerly) a distance of 60.0 feet to the ACTUAL PLACE OF BEGINNING, said place of beginning being on said east right-of-way line of Nebraska State Highway No. 44 and the north right-of-way line of Nebraska State Highway Link L50A; thence continuing N00°47'48"W on the aforesaid east right-of-way line and parallel with the west line of said Southwest Quarter a distance of 735.0 feet; thence N88°56'39"E a distance of 396.0 feet; thence S01°25'31"E a distance of 541.17 feet; thence S32°05'40"E a distance of 29.54 feet; thence N89°25'46"E a distance of 816.08 feet to a point on the east line of the West Half of the Southwest Quarter; thence S00°47'21"E on said east line of West Half of the Southwest Quarter a distance of 172.0 feet to a point on the north line of said Nebraska State Highway Link L50A; thence S89°25'37"W on said north right-at-way line and parallel with said south line of the Southwest Quarter a distance of 1233.34 feet to the place of beginning, containing 10.05 acres, more or less, all in Kearney County, Nebraska from Agricultural/Open to Rural Estates, and

WHEREAS, the said application for change in the Comprehensive Land Use Plan has been approved by the City Planning Commission, after a public hearing properly published and held, and

WHEREAS, the City Council has held a public hearing upon the said revision and voted in favor of a motion to approve the change in the Land Use Plan as requested by the applicant.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the

City of Kearney, Nebraska, that the Comprehensive Land Use Plan be and is hereby amended to change from Agricultural/Open to Rural Estates the use classification for a tract of land being part of the West Half of the Southwest Quarter of Section 24, Township 8 North, Range 16 West of the 6th P.M., Kearney County, Nebraska, more particularly described as follows: Referring to the southwest corner of the Southwest Quarter of said Section 24 and assuming the south line of said Southwest Quarter as bearing N89°25'37"E and all bearings contained herein are relative thereto; thence N89°25'37"E on the aforesaid south line a distance of 80.0 feet to the east right-of-way line of Nebraska State Highway No. 44 (if extended southerly); thence N00°47'48"W on the aforesaid east right-of-way line (if extended southerly) a distance of 60.0 feet to the ACTUAL PLACE OF BEGINNING, said place of beginning being on said east right-of-way line of Nebraska State Highway No. 44 and the north right-of-way line of Nebraska State Highway Link L50A; thence continuing N00°47'48"W on the aforesaid east right-of-way line and parallel with the west line of said Southwest Quarter a distance of 735.0 feet; thence N88°56'39"E a distance of 396.0 feet; thence S01°25'31"E a distance of 541.17 feet; thence S32°05'40"E a distance of 29.54 feet; thence N89°25'46"E a distance of 816.08 feet to a point on the east line of the West Half of the Southwest Quarter; thence S00°47'21"E on said east line of West Half of the Southwest Quarter a distance of 172.0 feet to a point on the north line of said Nebraska State Highway Link L50A; thence S89°25'37"W on said north right-at-way line and parallel with said south line of the Southwest Quarter a distance of 1233.34 feet to the place of beginning, containing 10.05 acres, more or less, all in Kearney County, Nebraska.

PASSED AND APPROVED THIS 9TH DAY OF NOVEMBER, 2010.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**REZONING NORTHEAST CORNER OF THE TERSECTION OF HIGHWAY 44 AND HIGHWAY 50A**

Public Hearings 8, 9 and 10 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Trenton Snow (Applicant) for Rich E. and Judy L. Lowe (Owner) to rezone from District AG, Agricultural District to District RR-1, Rural Residential District (Rural Standards) for property described as a tract of land being part of the West Half of the Southwest Quarter of Section 24, Township 8 North, Range 16 West of the 6th P.M., Kearney County, Nebraska (northeast corner of the intersection of Highway 44 and Highway 50A). Planning Commission recommended approval subject to written verification from NDOR allowing the additional access points for rural residential use. The applicant has submitted to the City the required documents from NDOR, so Staff recommends approval.

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 Trenton Snow (Applicant) for Rich E. and Judy L. Lowe (Owner) to rezone from District AG, Agricultural District to District RR-1, Rural

Residential District (Rural Standards) for property described as a tract of land being part of the West Half of the Southwest Quarter of Section 24, Township 8 North, Range 16 West of the 6th P.M., Kearney County, Nebraska (northeast corner of the intersection of Highway 44 and Highway 50A). Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

### **FINAL PLAT FOR HEARTLAND ESTATES**

Public Hearings 8, 9 and 10 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Trenton Snow (Applicant) for Rich E. and Judy L. Lowe (Owner) for the Final Plat for Heartland Estates, a subdivision of Kearney County, Nebraska for property described as a tract of land being part of the West Half of the Southwest Quarter of Section 24, Township 8 North, Range 16 West of the 6th P.M., Kearney County, Nebraska (northeast corner of the intersection of Highway 44 and Highway 50A) and to consider Resolution No. 2010-216. Planning Commission recommended approval subject to written verification from NDOR allowing the additional access points for rural residential use. The applicant has submitted to the City the required documents from NDOR, so Staff recommends 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 Trenton Snow (Applicant) for Rich E. and Judy L. Lowe (Owner) for the Final Plat for Heartland Estates, a subdivision of Kearney County, Nebraska for property described as a tract of land being part of the West Half of the Southwest Quarter of Section 24, Township 8 North, Range 16 West of the 6th P.M., Kearney County, Nebraska (northeast corner of the intersection of Highway 44 and Highway 50A) and adopt **Resolution No. 2010-216**. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

### **RESOLUTION NO. 2010-216**

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of Heartland Estates of Kearney County, Nebraska for a tract of land being part of the West Half of the Southwest Quarter of Section 24, Township 8 North, Range 16 West of the 6th P.M., Kearney County, Nebraska, more particularly described as follows: Referring to the southwest corner of the Southwest Quarter of said Section 24 and assuming the south line of said Southwest Quarter as bearing N89°25'37"E and all bearings contained herein are relative thereto; thence N89°25'37"E on the aforesaid south line a distance of 80.0 feet to the east right-of-way line of Nebraska State Highway No. 44 (if extended southerly); thence N00°47'48"W on the aforesaid east right-of-way line (if extended southerly) a distance of 60.0 feet to the ACTUAL PLACE OF BEGINNING, said place of beginning being on said east right-of-way line of Nebraska State Highway No. 44 and the north right-of-way line of Nebraska State Highway Link L50A; thence continuing N00°47'48"W on the aforesaid east right-of-way line and parallel with the west line of said Southwest Quarter a distance of 735.0 feet; thence N88°56'39"E a distance of 396.0 feet; thence

S01°25'31"E a distance of 541.17 feet; thence S32°05'40"E a distance of 29.54 feet; thence N89°2S'46"E a distance of 816.08 feet to a point on the east line of the West Half of the Southwest Quarter; thence S00°47'21"E on said east line of West Half of the Southwest Quarter a distance of 172.0 feet to a point on the north line of said Nebraska State Highway Link L50A; thence S89°25'37"W on said north right-at-way line and parallel with said south line of the Southwest Quarter a distance of 1233.34 feet to the place of beginning, containing 10.05 acres, more or less, all in Kearney County, Nebraska, duly made out, acknowledged and certified, and the same hereby is approved in accordance with the terms and requirements of Sections 16-901 through 16-904 inclusive, R.R.S. 1943 (as amended) be accepted and ordered filed and recorded in the Office of the Register of Deeds, Kearney County, Nebraska.

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

PASSED AND APPROVED THIS 9TH DAY OF NOVEMBER, 2010.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

#### **IV. CONSENT AGENDA**

Mayor Clouse stated the agenda was amended on Monday to include Subsection 12 of the Consent Agenda.

Moved by Kearney seconded by Lammers that Subsections 1 through 12 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 October 26, 2010.

2. Approve the following Claims:

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

Ace Hardware \$2.99 smcs; Ace Irrigation \$38.75 ps; Aflac \$2,927.12 ps; Air Cleaning Technologies \$443.00 smcs; Amax Contracting \$51.84 co; Amer First Aid \$476.54 smcs; Ask Supply \$368.93 smcs; Audio Go \$858.76 smcs; Baer,E \$20.00 smcs; Baker & Taylor Books \$4,011.21 smcs; Bamford \$250.00 smcs; Benesch \$210.00 smcs; Bennett,T \$858.75 smcs; Blackstone Audiobooks \$508.00 smcs; Blessing \$148,860.59 co; Bluecross Blueshield \$61,203.17 smcs; Brilliance Audio \$36.22 smcs; Buffalo Co Treasurer \$16.00 smcs; Butler,J \$31.00 smcs; Cash-Wa \$47.50 smcs; Charter \$129.23 smcs; Chief Industries \$19,985.00 co; City Glass \$164.17 smcs; City of Ky \$321,142.38 smcs,ps; College Savings Plan of NE \$200.00 ps; Conner,D \$62.00 smcs; Cook,I \$75.00 smcs; Copycat Printing \$65.80 smcs; Credit Management Serv \$196.77 ps; Cummins Central Power \$1,257.40 smcs; Curbit \$2,910.00 co; Dave Waggoner

Plumbing \$1,625.00 smcs; Dawson Co PPD \$33,768.91 smcs; Delta XI Alpha Pi \$100.00 smcs; Demco \$1,200.66 smcs; Dutton-Lainson \$8.34 smcs; Eakes \$425.79 smcs; Eirich,T \$50.00 smcs; Fireguard \$23.56 smcs; Footjoy \$59.99 smcs; Gale \$215.97 smcs; Gangwish Turf \$1,589.55 smcs,co; Geotechnical Services \$1,978.75 co; Gough,P \$240.00 smcs; Great Plains Govt \$85.00 smcs; Great Plains One Call \$439.49 smcs; HD Supply \$1,515.20 smcs; Hometown Leasing \$207.71 smcs; Hotsy Equipment \$8,245.00 co; HSBC Bank Nevada \$318.25 ps; ICMA \$5,527.55 smcs,ps; IRS \$100,851.90 ps; Isaac,B \$17.76 smcs; Jack Lederman \$72.21 smcs; Johnson Services \$5,880.00 smcs; Ky Chamber of Comm \$5,000.00 smcs; Ky Hub \$128.00 smcs; Ky Implement \$11,595.00 co; Ky Noon Rotary \$105.00 smcs; Ky United Way \$924.75 ps; Konica Minolta \$44.53 smcs; Krull Ins \$1,950.00 smcs; Kuhl,K \$37.50 smcs; Laser Technology \$30.50 co; LaserTec of NE \$105.00 co; Lerner Publishing \$750.00 smcs; Lindner,S \$66.25 smcs; Linweld \$16.92 smcs; Lynaugh,J \$93.00 smcs; Magic Cleaning \$1,350.00 smcs; Marlatt Machine Shop \$220.00 smcs; Matthew Bender \$42.47 smcs; Meier,B \$79.00 smcs; Metlife \$9,475.20 ps; Middleton Electric \$40.00 smcs; Miller & Associates \$55,819.46 co; Miller Signs \$175.00 smcs; Morgan,M \$93.00 smcs; NCS Equipment \$8.40 smcs; NE Child Support \$2,454.98 ps; NE Dept of Env \$300.00 smcs; NE Dept of Rev \$49,710.45 ps; NE Public Health \$983.00 smcs; NE Statewide Arboretum \$130.00 smcs; NE Truck & Equipment \$1,613.93 smcs; NMC Exchange \$4,937.82 co; Northwestern Energy \$533.22 smcs; NWEA \$680.00 smcs; Obermeier,A \$50.74 smcs; Office Depot \$548.77 smcs; Outdoor Recreation \$1,998.00 smcs,co; Paramount \$417.66 smcs; Pat's Plumbing \$315.00 smcs; Payflex Systems \$531.25 smcs,ps; Peerless Machine \$8,993.55 co; Pitney Bowes \$45.00 smcs; Platte Valley Labs \$577.50 smcs; Presto-X \$162.35 smcs; Pulliam,R \$40.00 smcs; Random House \$2,040.40 smcs; Recorded Books \$499.69 smcs; Rourke Publishing \$1,072.85 smcs; Schindler Elevator \$822.24 smcs; Shea,S \$92.00 smcs; Sherwin Industries \$374.39 smcs; Snap-On Tools \$1,279.00 smcs; Snow,T \$50.00 smcs; Softley,A \$14.00 smcs; Solid Waste Agency \$41,558.18 smcs; Stanley Security \$8,262.75 smcs; St of NE/AS Central \$4,269.56 smcs,co; Steinbrink's Landscaping \$80.00 co; Stuehm,A \$31.00 smcs; Sun Life Financial \$38,840.73 smcs; Sydow,J \$40.00 smcs; Terri's Shrub Design \$590.00 smcs; Theis,J \$120.00 smcs; Titan Machinery \$2,487.54 smcs; Tokay Software \$790.00 smcs; Tool Doctor \$27.00 smcs; Travis Anderson Construction \$21,300.00 co; Trew,D \$60.00 smcs; Tye & Rademacher \$14,285.73 smcs; Verizon Wireless \$1,136.15 smcs; Village Uniform \$433.39 smcs; Walsh,C \$99.60 smcs; Wellman,P \$30.48 smcs; Wick's Sterling Trucks \$117.10 smcs; Wiederspan,R \$93.00 smcs; Payroll Ending 11-06-2010 -- \$313,965.28. 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 bids received for the 2010 Part 5 Improvements consisting of Paving Improvement District No. 2010-944 commencing at a point 250 feet east of 11th Avenue and from a point 250 feet west of 11th Avenue in and including all of 56th Street, and commencing at the south line of 56th Street thence northerly to the north line of Spruce Hollow Boulevard in and including all 11th Avenue, 57th Street Place, 59th Street, 61st Street, 61st Street Place, 62nd Street Place and Spruce Hollow Boulevard; Water District No. 2010-561 commencing at the south line of 56th Street thence northerly to the north line of Spruce Hollow Boulevard in and including all 11th Avenue, 57th Street Place, 59th Street, 61st Street, 61st Street Place, 62nd Street Place and Spruce Hollow Boulevard; and Sanitary Sewer District No. 2010-501 commencing at the south line of

56th Street thence northerly to the north line of Spruce Hollow Boulevard in and including all 11th Avenue, 57th Street Place, 59th Street, 61st Street, 61st Street Place, 62nd Street Place and Spruce Hollow Boulevard and adopt **Resolution No. 2010-217** awarding the bid to General Excavating in the amount of \$1,816,395.00 for Bid A (Water and Sewer) and to Paulsen, Inc. in the amount of \$1,634,697.50 for Bid B (Paving).

### **RESOLUTION NO. 2010-217**

WHEREAS, Miller & Associates and the City of Kearney have reviewed the sealed bids which were opened on October 20, 2010 at 2:00 p.m. for the 2010 Part 5 Improvements consisting of Paving Improvement District No. 2010-944 commencing at a point 250 feet east of 11th Avenue and from a point 250 feet west of 11th Avenue in and including all of 56th Street, and commencing at the south line of 56th Street thence northerly to the north line of Spruce Hollow Boulevard in and including all 11th Avenue, 57th Street Place, 59th Street, 61st Street, 61st Street Place, 62nd Street Place and Spruce Hollow Boulevard; Water District No. 2010-561 commencing at the south line of 56th Street thence northerly to the north line of Spruce Hollow Boulevard in and including all 11th Avenue, 57th Street Place, 59th Street, 61st Street, 61st Street Place, 62nd Street Place and Spruce Hollow Boulevard; and Sanitary Sewer District No. 2010-501 commencing at the south line of 56th Street thence northerly to the north line of Spruce Hollow Boulevard in and including all 11th Avenue, 57th Street Place, 59th Street, 61st Street, 61st Street Place, 62nd Street Place and Spruce Hollow Boulevard; and

WHEREAS, the Engineer's Opinion of Probable Construction Cost was \$1,694,985.00 for Bid A (water and sanitary sewer) and \$1,832,174.00 for Bid B (paving); and

WHEREAS, the said engineers have recommended the bid offered by General Excavating of Lincoln, Nebraska in the sum of \$1,816,395.00 be accepted as the lowest responsible bid for Bid A (water and sanitary sewer); and

WHEREAS, the said engineers have recommended the bid offered by Paulsen, Inc. of Cozad, Nebraska in the sum of \$1,634,697.50 be accepted as the lowest responsible bid for Bid B (paving).

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 General Excavating of Lincoln, Nebraska be and is the lowest responsible bidder for the 2010 Part 5 Improvements – Bid A consisting of Water District No. 2010-561 commencing at the south line of 56th Street thence northerly to the north line of Spruce Hollow Boulevard in and including all 11th Avenue, 57th Street Place, 59th Street, 61st Street, 61st Street Place, 62nd Street Place and Spruce Hollow Boulevard; and Sanitary Sewer District No. 2010-501 commencing at the south line of 56th Street thence northerly to the north line of Spruce Hollow Boulevard in and including all 11th Avenue, 57th Street Place, 59th Street, 61st Street, 61st Street Place, 62nd Street Place and Spruce Hollow Boulevard to be constructed in accordance with the plans and specifications on file with the City Clerk and that the bid of General Excavating of Lincoln, Nebraska in the sum of \$1,816,395.00 be and is hereby accepted.

BE IT FURTHER RESOLVED that the Engineers recommendation is hereby accepted and approved, that Paulsen Inc. of Cozad, Nebraska be and is the lowest responsible bidder for the 2010 Part 5 Improvements – Bid B consisting of Paving

Improvement District No. 2010-944 commencing at a point 250 feet east of 11th Avenue and from a point 250 feet west of 11th Avenue in and including all of 56th Street, and commencing at the south line of 56th Street thence northerly to the north line of Spruce Hollow Boulevard in and including all 11th Avenue, 57th Street Place, 59th Street, 61st Street, 61st Street Place, 62nd Street Place and Spruce Hollow Boulevard to be constructed in accordance with the plans and specifications on file with the City Clerk and that the bid of Paulsen Inc. of Cozad, Nebraska in the sum of \$1,634,697.50 be and is hereby accepted.

BE IT FURTHER RESOLVED the Engineer's Opinion of Probable Construction Cost in the amount of \$1,694,985.00 for Bid A (water and sanitary sewer) and \$1,832,174.00 for Bid B (paving) 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 9TH DAY OF NOVEMBER, 2010.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**4. Adopt Resolution No. 2010-218** allowing the City to expend funds on the 2010 Part 5 Improvements consisting of Paving Improvement District No. 2010-944 commencing at a point 250 feet east of 11th Avenue and from a point 250 feet west of 11th Avenue in and including all of 56th Street, and commencing at the south line of 56th Street thence northerly to the north line of Spruce Hollow Boulevard in and including all 11th Avenue, 57th Street Place, 59th Street, 61st Street, 61st Street Place, 62nd Street Place and Spruce Hollow Boulevard; Water District No. 2010-561 commencing at the south line of 56th Street thence northerly to the north line of Spruce Hollow Boulevard in and including all 11th Avenue, 57th Street Place, 59th Street, 61st Street, 61st Street Place, 62nd Street Place and Spruce Hollow Boulevard; and Sanitary Sewer District No. 2010-501 commencing at the south line of 56th Street thence northerly to the north line of Spruce Hollow Boulevard in and including all 11th Avenue, 57th Street Place, 59th Street, 61st Street, 61st Street Place, 62nd Street Place and Spruce Hollow Boulevard from the proceeds of various debt issuances.

#### **RESOLUTION NO. 2010-218**

BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska (the "City"), as follows:

Section 1. The President and Council of the City hereby find and determine that it is necessary and appropriate to declare their official intent to issue tax-exempt bonds on behalf of the City and in addition, the City's reasonable expectations to reimburse certain expenditures with the proceeds of such bonds as proposed to be issued by the City in connection with the proposed project as described below.

Section 2. This resolution shall stand as a statement of the City's official intent under Regulation Section 1.150-2 of the regulations of the United States Treasury and for such purpose the following information is hereby given:

1. A general functional description of the project for which expenditures may be made and reimbursement from bond proceeds provided is as follows:

2010 Part 5 Improvements – Paving/Stormwater	\$1,900,000.00
2010 Part 5 Improvements – Sanitary Sewer	\$1,600,000.00
2010 Part 5 Improvements – Water	\$600,000.00

2. The maximum principal amount of debt expected to be issued for such project is \$4,100,000.00.

PASSED AND APPROVED THIS 9TH DAY OF NOVEMBER, 2010.

ATTEST  
MICHAELLE E. TREMBLY  
CITY CLERK

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

5. Approve Change Order No. 3 showing an increase in the amount of \$22,803.00 submitted by Central Contracting and approved by Wilkins Hinrichs Stober Architects for the Kearney Regional Airport Terminal Addition and Renovation Project and adopt **Resolution No. 2010-219.**

#### RESOLUTION NO. 2010-219

WHEREAS, Central Contracting of Kearney, Nebraska has performed services in connection with the construction of the Kearney Regional Airport Terminal Addition and Renovation Project, and the City's engineer, Wilkins Hinrichs Stober Architects, have filed with the City Clerk Change Order No. 3 showing an increase to the contract sum in the amount of \$22,803.00, as shown on Exhibit "A", attached hereto and made a part hereof by reference as follows:

Original Contract Sum	\$694,450.00
Change Order No. 1 (9-28-2010)	+ 13,102.00
Change Order No. 2 (10-12-2010)	+ 6,621.00
Change Order No. 3 (11-9-2010)	+ <u>22,803.00</u>
Contract Sum to Date	\$736,976.00

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, and hereby find and determine that Change Order No. 3, as shown on Exhibit "A", be and is hereby accepted and approved.

PASSED AND APPROVED THIS 9TH DAY OF NOVEMBER, 2010.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

6. Approve the Plans and Specifications for the Kearney Regional Airport Terminal Parking Rehabilitation Project (AIP Project No. 3-31-0045-23) and set the bid opening date for December 2, 2010 at 2:00 p.m.

7. Authorize City staff to submit the Grant Application for the Kearney Regional Airport

Terminal Parking Rehabilitation Project (AIP Project No. 3-31-0045-23) and adopt **Resolution No. 2010-220.**

**RESOLUTION NO. 2010-220**

THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the City Administration be and is hereby authorized and directed to submit the Grant Application for the Kearney Regional Airport Terminal Parking Rehabilitation Project (AIP Project No. 3-31-0045-23) to the Federal Aviation Administration for consideration.

PASSED AND APPROVED THIS 9TH DAY OF NOVEMBER, 2010.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

8. Approve the application for a Special Designated License submitted by Chicken Bones of Kearney, Inc., dba Chicken Coop Sports Bar & Grill in connection with their Class I-54354 liquor license to dispense beer, wine and distilled spirits in the Exhibit Building located at the Buffalo County Fairgrounds, 3807 Avenue N on November 27, 2010 from 12:00 p.m. until 1:00 a.m. for a reception.

9. Approve the application for a Special Designated License submitted by Chicken Bones of Kearney, Inc., dba Chicken Coop Sports Bar & Grill in connection with their Class I-54354 liquor license to dispense beer, wine and distilled spirits in the Concourse Area of the Exposition Building located at the Buffalo County Fairgrounds, 3807 Avenue N on December 4, 2010 from 12:00 p.m. until 1:00 a.m. for a fund raiser.

10. Approve the Agreement for Acquisition of Property and Construction of Storm Water Structures between the City of Kearney and Jeffrey and Lisa Overturf pertaining to any and all issues relating to the construction on 30th Avenue and 11th Street with reference to the storm water structures constructed as a part of that project and adopt **Resolution No. 2010-221.**

**RESOLUTION NO. 2010-221**

BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the Mayor is hereby authorized and directed, on behalf of the City of Kearney, to execute the Agreement for Acquisition of Property and Construction of Storm Water Structures between the City of Kearney and Jeffrey and Lisa Overturf pertaining to any and all issues relating to the construction on 30th Avenue and 11th Street with reference to the storm water structures constructed as a part of that project.

PASSED AND APPROVED THIS 9TH DAY OF NOVEMBER, 2010.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

11. Accept the Warranty Deed granted to the City of Kearney by Jeffrey and Lisa

Overturf for a tract of land being part of the North Half of the Northeast Quarter, part of Government Lot 4 and part of accretion lands deriving from and adjacent to Government Lot 4 all located in Section 9, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska and adopt **Resolution No. 2010-222**.

### **RESOLUTION NO. 2010-222**

WHEREAS, the City Council conducted a public hearing on August 11, 2009 on the application for a Conditional Use Permit submitted by Jeffrey Overturf for dredging sand/gravel on property described as a tract of land being part of the North Half of the Northeast Quarter, part of Government Lot 4 and part of accretion lands deriving from and adjacent to Government Lot 4 all located in Section 9, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska; and

WHEREAS, Jeffrey and Lisa Overturf have granted to the City of Kearney a Warranty Deed for a tract of property described as a tract of land being part of the North Half of the Northeast Quarter, part of Government Lot 4 and part of accretion lands deriving from and adjacent to Government Lot 4 all located in Section 9, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the Warranty Deed be and is hereby accepted.

PASSED AND APPROVED THIS 9TH DAY OF NOVEMBER, 2010.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**12.** Approve the application for a Special Designated License submitted by Alley Rose Inc. of Kearney, NE, dba Alley Rose in connection with their Class IK-21763 catering liquor license to dispense beer, wine and distilled spirits in the Ag Pavilion located at the Buffalo County Fairgrounds, 3807 Avenue N on December 3, 2010 from 5:00 p.m. until 12:00 a.m. for a reception.

## **V. CONSENT AGENDA ORDINANCES**

### **ORDINANCE NO. 7616 SELLING PROPERTY TO SCOTT AND STACY DARVEAU**

The City has owned a small parcel of property for a number of years which is located at the corner of Hillcrest Drive and 29th Street. The City Park Department has maintained this parcel over the years; however, the adjacent home owner recently inquired as to whether or not he could acquire this parcel and then maintain it as a part of his yard. There is no use that the City contemplates for this parcel and continuing to maintain it is not an appropriate use of City resources. We have had the property surveyed and would propose that it be transferred to Scott and Stacy Darveau who have recently purchased the adjacent property.

Council Member Lammers introduced Ordinance No. 7616, being Subsection 1 of Agenda Item V selling part of a tract of land designated as "PARK" located easterly of Lot 25 as shown on the original plat of Hillcrest Addition to the City of Kearney, Buffalo

County, Nebraska to Scott and Stacy Darveau, 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. 7616 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. 7616 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. 7616 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

## **VI. REGULAR AGENDA**

### **ORDINANCE NO. 7617 GRANTING CONDITIONAL USE PERMIT TO SYDNEE KOSMICKI (PERTAINS TO PUBLIC HEARING 1)**

Council Member Buschkoetter introduced Ordinance No. 7617, being Subsection 1 of Agenda Item VI to grant a Conditional Use Permit to Sydnee Kosmicki (Applicant) and Rhonda Kosmicki (Owner) to locate an in-home day care facility on property zoned District R-1, Urban Residential Single-Family District (Low Density) and described as Lot 13, Hammer Park Estates, an addition to the City of Kearney, Buffalo County, Nebraska (1016 East 14th Street), and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Clouse seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, 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. 7617 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. 7617 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. 7617 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. 7618 REZONING 4965 BISON ROAD (PERTAINS TO PUBLIC HEARING 2)**

Council Member Buschkoetter introduced Ordinance No. 7618, being Subsection 2 of Agenda Item VI to rezone from District AG, Agricultural District to District RR-1, Rural Residential District (Rural Standards) property described as a tract of land being part of the Southeast Quarter of the Northwest Quarter of Section 29, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (4965 Bison Road), 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. 7618 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. 7618 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. 7618 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. 7619 GRANTING CONDITIONAL USE PERMIT TO KEARNEY RV PARK & CAMPGROUND (PERTAINS TO PUBLIC HEARING 4)**

Council Member Buschkoetter introduced Ordinance No. 7619, being Subsection 3 of Agenda Item VI to grant a Conditional Use Permit to North Shore Marina, LLC (Applicant) and O & O Farms Inc., a Nebraska Corporation (Owner) to locate a recreational vehicle park and campground on property zoned District AG, Agricultural District and described as a tract of land being part of Government Lots 3 and 4 and part of accretion land adjacent to and abutting said Government Lots 3 and 4, all located in

Section 7, Township 8 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska (south of 11th Street east of Avenue M), 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. 7619 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. 7619 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. 7619 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.

**ANNEXATION AGREEMENT FOR KEARNEY RV PARK & CAMPGROUND  
(PERTAINS TO PUBLIC HEARING 4)**

Mayor Clouse opened for discussion the agreement submitted by North Shore Marina, LLC, dba Kearney RV Park to annex into the City limits a tract of land being part of Government Lots 3 and 4 and part of accretion land adjacent to and abutting said Government Lots 3 and 4, all located in Section 7, Township 8 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska (south of 11th Street east of Avenue M) and to consider Resolution No. 2010-223.

City Attorney Michael Tye presented this matter to the Council. In anticipation that the City Council may grant a Conditional Use Permit to the proposed Kearney RV Park, City staff has indicated that this property (15-acre parcel) should be annexed into the Kearney City limits as it is adjacent and contiguous to Kearney City limits and will be served by City services. The Kearney RV Park intends to connect to City sewer and water. This being the case, City staff has put together an Annexation Agreement which has been signed by the Kearney RV Park developer.

Moved by Kearney seconded by Lammers to approve the agreement submitted by North Shore Marina, LLC, dba Kearney RV Park to annex into the City limits a tract of land being part of Government Lots 3 and 4 and part of accretion land adjacent to and abutting said Government Lots 3 and 4, all located in Section 7, Township 8 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska (south of 11th Street east of Avenue M) and adopt **Resolution No. 2010-223**. Roll call resulted as follows: Aye:

Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried.

### **RESOLUTION NO. 2010-223**

BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the Agreement for Annexation between the City of Kearney and North Shore Marina, LLC, dba Kearney RV Park for a tract of land being part of Government Lot 3, part of Government Lot 4, and accretion land deriving from and adjacent to Government Lot 3 all in Section 7, Township 8 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Referring to the northwest corner of Government Lot 3 in Section 7 and assuming the west line of said Government Lot 3 in Section 7 as bearing S00°55'04"E and all bearings contained herein are relative thereto; thence S00°55'04"E and on the west of said Government Lot 3 in Section 7 a distance of 667.07 feet to the ACTUAL PLACE OF BEGINNING; thence continuing S00°55'04"E and on the west of said Government Lot 3 in Section 7 a distance of 132.00 feet; thence leaving the west of said Government Lot 3 in Section 7, N89°55'29"E a distance of 410.70 feet; thence S00°04'31"E a distance of 402.56 feet to a point on the centerline of the existing channel of the North Channel of the Platte River; thence downstream and on the centerline of said existing channel of the North Channel of the Platte River the following courses and distances; S89°31'E a distance of 191.37 feet; thence N64°56'E a distance of 176.0 feet; thence N61°40'E a distance of 216.0 feet; thence N81°13'E a distance of 200.0 feet; thence N79°32'E a distance of 322.0 feet; thence S84°45'E a distance of 331.0 feet; thence N70°29'E a distance of 373.0 feet; thence leaving the centerline of said existing channel of the North Channel of the Platte River, N00°04'31"W a distance of 178.02 feet; thence S89°55'29"W a distance of 2149.50 feet to the place of beginning, EXCEPTING THERFROM a tract of land conveyed to the City of Kearney as described on Microfilm Roll 121, Page 426 recorded on June 7, 1937, containing 15.08 acres, more or less of which 0.06 acres, more or less, are presently being used for road purposes on the west side, all in Buffalo County, Nebraska (south of 11th Street east of Avenue M) be and is hereby accepted.

BE IT FURTHER RESOLVED that the Mayor be and is hereby authorized and directed to execute the Agreement on behalf of the City of Kearney for the annexation of the respective business.

PASSED AND APPROVED THIS 9TH DAY OF NOVEMBER, 2010.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

### **ORDINANCE NO. 7620 VACATE PORTION OF FOUNTAIN HILLS THIRD ADDITION (PERTAINS TO PUBLIC HEARING 5)**

Council Member Lammers introduced Ordinance No. 7620, being Subsection 5 of Agenda Item VI to vacate Lots 1 through 10 inclusive of Block 4, Fountain Hills Third Addition to the City of Kearney, Buffalo County, Nebraska (between 10th Avenue and 11th Avenue south of 48th Street), and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of

the ordinance on its first reading and then upon its final passage. Council Member 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, Lear, Lammers, Kearney, Buschkoetter. 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. 7620 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried. Ordinance was read by number.

Moved by Lear seconded by Buschkoetter that Ordinance No. 7620 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7620 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. 7621 REZONE BETWEEN 10TH AVENUE AND 11TH AVENUE SOUTH OF 48TH STREET (PERTAINS TO PUBLIC HEARING 5)**

Council Member Lammers introduced Ordinance No. 7621, being Subsection 6 of Agenda Item VI to rezone from District R-2, Urban Residential Mixed-Density District to District R-2/PD, Urban Residential Mixed-Density/Planned Development Overlay District for a tract of land to be vacated and described as Lots 1 through 10 inclusive of Block 4, Fountain Hills Third Addition to the City of Kearney, Buffalo County, Nebraska (between 10th Avenue and 11th Avenue south of 48th Street), and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member 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, Lear, Lammers, Kearney, Buschkoetter. 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. 7621 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried. Ordinance was read by number.

Moved by Lear seconded by Buschkoetter that Ordinance No. 7621 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7621 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. 7622 REZONE NORTHEAST CORNER OF THE INTERSECTION OF HIGHWAY 44 AND HIGHWAY 50A (PERTAINS TO PUBLIC HEARING 9)**

Council Member Lammers introduced Ordinance No. 7622, being Subsection 7 of Agenda Item VI to rezone from District AG, Agricultural District to District RR-1, Rural Residential District (Rural Standards) for property described as a tract of land being part of the West Half of the Southwest Quarter of Section 24, Township 8 North, Range 16 West of the 6th P.M., Kearney County, Nebraska (northeast corner of the intersection of Highway 44 and Highway 50A), 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, Lear, Lammers, Kearney, Buschkoetter. 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. 7622 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried. Ordinance was read by number.

Moved by Lear seconded by Buschkoetter that Ordinance No. 7622 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7622 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.

**APPLE MARKET MANAGER APPLICATION FOR ED MACH**

Mayor Clouse opened for discussion the Manager Application for Ed Mach submitted by B & R Stores, Inc., dba Apple Market in connection with their Class C-81872 liquor license located at 7 West 25th Street.

The Application for Manager has been submitted by B & R Stores, Inc., dba Apple Market in connection with their Class C-81872 liquor license located at 7 West 25th Street. A background was conducted on Ed Mach as the applicant for Manager for Apple Market. Mr. Mach is a long time employee who has managed the store for several years and has extensive experience. Apple Market does not have any record of violations or problems.

The City Council is concerned with the selling of alcohol to minors in our community,

and wants to encourage all license holders to provide the necessary training to all employees that sell or dispense alcohol. Therefore, City staff has developed a form entitled "Liquor License Training Compliance" requiring applicants to document and verify training compliance of their employees. Mr. Mach has returned the form indicating both a plan for training employees and for compliance with all State and local regulations.

Ed Mach, Store Director for Grand Central Apple Market, presented this matter to the Council. They have had a good record to date regarding their liquor license. The Council expressed their appreciation for that.

Moved by Buschkoetter seconded by Clouse to approve the Manager Application for Ed Mach submitted by B & R Stores, Inc., dba Apple Market in connection with their Class C-81872 liquor license located at 7 West 25th Street. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried.

**OPEN ACCOUNT CLAIMS: NPPD - \$616.49, PLATTE VALLEY STATE BANK - \$47,058.15, SCHOOL DISTRICT #7 - \$8,069.45**

Moved by Buschkoetter seconded by Kearney that Open Account Claims in the amount of \$47,058.15 payable to Platte Valley State Bank, and in the amount of \$616.49 payable to Nebraska Public Power District be allowed. Roll call resulted as follows: Aye: Buschkoetter, Lammers, Kearney. Nay: None. Clouse and Lear abstained. Motion carried.

Moved by Clouse seconded by Kearney that Open Account Claims in the amount of \$8,069.45 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**

### **CLOSED SESSION**

Moved by Kearney seconded by Lammers that Council adjourn into closed session at 7:58 p.m. for the protection of the public interest to discuss litigation. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

Mayor Clouse restated the purpose for the closed session is for the protection of the public interest to discuss litigation. According to law, the Council has the option to reconvene back into open session and may take any formal action it deems appropriate.

Council member Kearney left at approximately 8:15 p.m.

Moved by Buschkoetter seconded by Lear that Council reconvene in regular session at 8:17 p.m. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney absent. Motion carried.

**VIII. ADJOURN**

Moved by Clouse seconded by Buschkoetter that Council adjourn at 8:17 p.m. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney absent. Motion carried.

**ATTEST:**

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

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**MICHAELLE E. TREMBLY  
CITY CLERK**