

*Kearney, Nebraska
February 8, 2011
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 February 8, 2011, 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; Dan Lynch, Chief of Police; Shawna Erbsen, Human Resources Director; Neal Lewis, Director of Park & Recreation; and Jim Lynaugh, Airport Manager were also present. Some of the citizens present in the audience included: Greg Urbanek, Scott Gronewoller, Jon Loebig, John Schmitt, Jennifer Caudillo, Jason Koettters, Trent Snow, Candy Kuntz, David Butler, 7 UNK students, 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

With the absence of a representative from the Kearney Ministerial Association, the Council held a moment of silent prayer.

PLEDGE OF ALLEGIANCE

The Council members led the audience in the Pledge of Allegiance.

ANNOUNCEMENT

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

OATH OF OFFICE; POLICE OFFICERS BRADLEY NEWELL AN BRADLEY BUTLER

City Clerk Michaelle Trembly administered the Oath of Office to Police Officers Bradley Newell and Bradley Butler. Several family members and police officers were present during the ceremony.

ORAL COMMUNICATIONS

There was no Oral Communications.

II. UNFINISHED BUSINESS

There was no Unfinished Business.

III. PUBLIC HEARINGS**LAND USE MAP AMENDMENT FOR PROPERTY LOCATED AT 2985 EAST 92ND STREET**

Mayor Clouse stated that Public Hearings 1, 2 and 3 can be discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Trenton Snow (Applicant) for Mark and Debra Mowry (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 all that part of the Northwest Quarter of the Southwest Quarter of Section 8, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska (2985 East 92nd Street) and to consider Resolution No. 2011-5. Planning Commission recommend approval of the Land Use Map Amendment, Rezoning, and Subdivision Plat for this property as presented.

The applicant is requesting approval to rezone 18.74 acres for rural residential use and subdivide the property into two lots. The land is located in the Two-Mile Extraterritorial Jurisdiction at the southeast corner of 92nd Street and Antelope Avenue north of the Wood River. There is an existing rural residence on the east side of the property.

The land is currently zoned District AG, Agricultural, by default. The Future Land Use Map of the City of Kearney Comprehensive Development Plan shows the current land use designation as "Agricultural/Open." The requested rezoning is to District RR-1, Rural Residential District (Rural Standards) and the proposed land use designation is "Rural Estates."

The Preliminary and Final Plat for this tract consists of two lots. Lot 1 contains the existing house and out-buildings and consists of 7.85 acres. Lot 2 contains 8.73 acres. The remaining 2.16 acres is dedicated as road right-of-way. Both lots are bound on the south side by the centerline of the Wood River. Planning Commission approved the Preliminary Plat on January 21, 2011. Staff offered the following comments:

- a) There is a 100-year floodplain and associated floodway that traverses the property as shown on the Preliminary and Final Plat.
- b) Additional road right-of-way has been dedicated such that both Antelope Avenue and 92nd Street have fifty feet of right-of-way from centerline (arterial street standards).
- c) Contours were waived on the Preliminary Plat.

- d) No Public Works Plan is required as the property will not be served by City water and sewer.
- e) No stormwater maintenance agreement is required for this subdivision.
- f) No Subdivision Agreement is required.

Trenton Snow was present to answer any questions from the Council.

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 Trenton Snow (Applicant) for Mark and Debra Mowry (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 all that part of the Northwest Quarter of the Southwest Quarter of Section 8, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska (2985 East 92nd Street) and adopt **Resolution No. 2011-5**. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried.

RESOLUTION NO. 2011-5

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 all of that part of the Northwest Quarter of the Southwest Quarter of Section 8, Township 9 North, Range 15, West of the 6th P.M., Buffalo County, Nebraska, that lies north of the existing centerline of Wood River, and all more particularly described as follow: Beginning at the northwest corner of the Southwest Quarter of said Section 8 and assuming the West line of the Southwest Quarter as bearing South and all bearings contained herein are relative thereto; thence South on the West line of said Southwest Quarter a distance of 429.43 feet to a point on the existing centerline of Wood River, thence downstream and on the aforesaid centerline of Wood River S71°02'E a distance of 191.1 feet; thence S58°08'E a distance of 135.0 feet; thence S88°55'E a distance of 195.0 feet; thence S79°59'E a distance of 33.2 feet; thence S67°35'41"E a distance of 129.16 feet; thence S65°16'E a distance of 144.7 feet; thence S67°11'30"E a distance of 94.4 feet; thence S78°05'30"E a distance of 205.25 feet; thence N76°04'30"E a distance of 82.6 feet; thence N38°02'E a distance of 57.8 feet; thence N55°57'45"E a distance of 169.2 feet to the point of intersection with the centerline of Wood River and the East line of the Northwest Quarter of the Southwest Quarter of said Section 8; thence North and on the aforesaid East line of the Northwest Quarter of the Southwest Quarter of said section a distance of 600.33 feet to the Northeast corner of the Northwest Quarter of the Southwest Quarter of said section; thence N89°52'42"W and on the North line of said Northwest Quarter of the Southwest Quarter a distance of 1318.8 feet to the place of beginning, except that portion presently being used for road purposes, all in Buffalo 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 all of that part of the Northwest Quarter of the Southwest Quarter of Section 8, Township 9 North, Range 15, West of the 6th P.M., Buffalo County, Nebraska, that lies north of the existing centerline of Wood River, and all more particularly described as follow: Beginning at the northwest corner of the Southwest Quarter of said Section 8 and assuming the West line of the Southwest Quarter as bearing South and all bearings contained herein are relative thereto; thence South on the West line of said Southwest Quarter a distance of 429.43 feet to a point on the existing centerline of Wood River, thence downstream and on the aforesaid centerline of Wood River S71°02'E a distance of 191.1 feet; thence S58°08'E a distance of 135.0 feet; thence S88°55'E a distance of 195.0 feet; thence S79°59'E a distance of 33.2 feet; thence S67°35'41"E a distance of 129.16 feet; thence S65°16'E a distance of 144.7 feet; thence S67°11'30"E a distance of 94.4 feet; thence S78°05'30"E a distance of 205.25 feet; thence N76°04'30"E a distance of 82.6 feet; thence N38°02'E a distance of 57.8 feet; thence N55°57'45"E a distance of 169.2 feet to the point of intersection with the centerline of Wood River and the East line of the Northwest Quarter of the Southwest Quarter of said Section 8; thence North and on the aforesaid East line of the Northwest Quarter of the Southwest Quarter of said section a distance of 600.33 feet to the Northeast corner of the Northwest Quarter of the Southwest Quarter of said section; thence N89°52'42"W and on the North line of said Northwest Quarter of the Southwest Quarter a distance of 1318.8 feet to the place of beginning, except that portion presently being used for road purposes, all in Buffalo County, Nebraska.

PASSED AND APPROVED THIS 8TH DAY OF FEBRUARY, 2011.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

REZONING FOR PROPERTY LOCATED AT 2985 EAST 92ND STREET

Public Hearings 1, 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 Mark and Debra Mowry (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 all that part of the Northwest Quarter of the Southwest Quarter of Section 8, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska (2985 East 92nd Street).

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 Mark and Debra Mowry (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 all that part of the Northwest Quarter of the Southwest Quarter of Section 8, Township 9 North, Range 15 West of the

6th P.M., Buffalo County, Nebraska (2985 East 92nd Street). Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried.

FINAL PLAT FOR WILDERNESS TRAILS

Public Hearings 1, 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 Mark and Debra Mowry (Owner) for the Final Plat for Wilderness Trails of Buffalo County, Nebraska for a tract of land being all that part of the Northwest Quarter of the Southwest Quarter of Section 8, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska (2985 East 92nd Street) and to consider Resolution No. 2011-6.

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 Mark and Debra Mowry (Owner) for the Final Plat for Wilderness Trails of Buffalo County, Nebraska for a tract of land being all that part of the Northwest Quarter of the Southwest Quarter of Section 8, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska (2985 East 92nd Street) and adopt **Resolution No. 2011-6**. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried.

RESOLUTION NO. 2011-6

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of Wilderness Trails of Buffalo County, Nebraska for a tract of land being all of that part of the Northwest Quarter of the Southwest Quarter of Section 8, Township 9 North, Range 15, West of the 6th P.M., Buffalo County, Nebraska, that lies north of the existing centerline of Wood River, and all more particularly described as follow: Beginning at the northwest corner of the Southwest Quarter of said Section 8 and assuming the West line of the Southwest Quarter as bearing South and all bearings contained herein are relative thereto; thence South on the West line of said Southwest Quarter a distance of 429.43 feet to a point on the existing centerline of Wood River, thence downstream and on the aforesaid centerline of Wood River S71°02'E a distance of 191.1 feet; thence S58°08'E a distance of 135.0 feet; thence S88°55'E a distance of 195.0 feet; thence S79°59'E a distance of 33.2 feet; thence S67°35'41"E a distance of 129.16 feet; thence S65°16'E a distance of 144.7 feet; thence S67°11'30"E a distance of 94.4 feet; thence S78°05'30"E a distance of 205.25 feet; thence N76°04'30"E a distance of 82.6 feet; thence N38°02'E a distance of 57.8 feet; thence N55°57'45"E a distance of 169.2 feet to the point of intersection with the centerline of Wood River and the East line of the Northwest Quarter of the Southwest Quarter of said Section 8; thence North and on the aforesaid East line of the Northwest Quarter of the Southwest Quarter of said section a distance of 600.33 feet to the Northeast corner of the Northwest Quarter of the Southwest Quarter of said section; thence N89°52'42"W and on the North line of said Northwest Quarter of the Southwest Quarter a distance of 1318.8 feet to the place of beginning, except that portion presently

being used for road purposes, 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 8TH DAY OF FEBRUARY, 2011.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

LAND USE MAP AMENDMENT FOR PROPERTY SOUTH AND EAST SIDE OF 56TH STREET AND ANTELOPE AVENUE

Mayor Clouse stated that Public Hearings 4 and 5 can be discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by City of Kearney (Applicant and Owner) for an amendment to the Land Use Map of the City of Kearney Comprehensive Development Plan from Mixed Use 3 to Business Park for property described as a tract of land being part of the Northeast Quarter of Section 29, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska (south and east side of 56th Street and Antelope Avenue) and to consider Resolution No. 2011-7. Planning Commission recommend that the Land Use Map Amendment to "Business Park" and Rezoning to District BP/PD be approved as presented, based on the regulators contained in the Tech oNE Crossing report and that future applications will be required to comply with the spirit of said regulators and any other more detailed regulations the City Council deems are in the best interest of the City of Kearney. Future applicants will prepare detailed Development Plans based on the written requirements contained in the report and meetings with DRT Staff and the application will proceed directly to City Council for their review.

Assistant City Manager Suzanne Brodine presented this matter to the Council. This potential development site is a City driven project for economic development. Over the course of the past two years, the City has been working with the Nebraska Department of Economic Development (NEDED) and the local Development Council to provide a shovel ready site for a technology park. After NEDED considered some 20 potential sites across the State based on eleven selection criteria, the Kearney site and two other sites were chosen as the best suited. A resource team was assembled consisting of planners, real estate consultants, marketing strategists, engineers, technology consultants, utility company representatives and representatives from the City of Kearney and NEDED to prepare a Feasibility and Marketing Study. Select pages that cover planning and zoning issues and the Executive Summary from the 150 page report were included in the information packet.

The property is currently zoned agricultural, since it has never been developed to a higher use. The land has been farmed in row crops for many years. The property must be rezoned and a corresponding change must be made to the Future Land Use Map of the City of Kearney Comprehensive Development Plan to move this project forward. The site is located at the southeast corner of Antelope Avenue and 56th Street and is owned by the City of Kearney. After detailed analysis, the team agreed that the most suitable zoning for the intended use is District BP, Business Park with a Planned District Overlay. The corresponding Land Use Amendment is also "Business Park." The team plans to market this site to attract technology based businesses such as Data Centers, Software Engineering and Testing Facilities, Co-location Facilities, Research and Development Buildings, Call Centers, or Disaster Recovery Facilities.

Due to the sensitive nature and specific operating characteristics of these types of businesses, the City will manage the development standards through the PD overlay as each project comes forward. The development requirements for such a site may depart from more typical standards for commercial and industrial development due to security needs, back up power provisions, and other unique considerations. It is the City's intent to apply the findings and recommendations of the feasibility study as the basis for Planned District review and approval in the future. Therefore, there will be no Development Plans submitted of a traditional nature at this time. Alternatively, the development standards are generally established by the 150 page report. As projects come forward in the future the City Council will have ultimate authority in applying any and all detailed development standards they deem fit for the proposed development. This approach will benefit the marketability of the site and expedite the review and approval process when a prospective developer seeks to develop the property.

Following are some general comments and information for consideration:

- The property consists of approximately 112 acres.
- All required infrastructure is available or will be extended to the site this year. There is or will be adequate capacity to meet the service need of the site for all infrastructure. There is an existing NPPD substation on the site.
- An enterprise data center could be commissioned on this site within 14-18 months of contract.
- The team recommends that the City prohibit the following uses at this site:
 - Heavy industrial, power generation, fertilizer plants, radio towers.
- The team recommends that the following recommendations be adopted as the basis for zoning regulation of the property as a Planned District Overlay:
 - Increase maximum building height from 60 feet to 65 feet.
 - Increase minimum lot size from 20,000 square feet to 2.5 acres.
 - Establish minimum setbacks at 200 feet along Antelope Avenue and 56th Street and at 50 feet from the interior loop road. Side and rear yards at 30 feet.
 - Increase maximum allowable building coverage from 50 percent to 60 percent.
 - Decrease maximum impervious area from 80 percent to 65 percent.
 - Maintain maximum floor area ratio at 2.0.
 - Remove the restriction requiring 50 percent of the off-street parking to be in the side or rear yard and allow 100 percent of the parking to be in the front yard, if desired.

- Revise off-street parking requirements for data centers to be based on actual occupancy as opposed to square footage of the facility.
- Remove requirement for percentage of front façade to be masonry material when street facing. STAFF DOES NOT AGREE WITH THIS CHANGE. The development standard requiring a percentage of any street facing façade be constructed with enhanced masonry materials shall remain in force. Currently, the percentage is 35 percent but could be increased to insure a proper fit with the high quality standards of the community. Planning Commission agreed that the 35 percent requirement should remain in force for this development.
- Add new requirement that establishes maximum dBA sound level at 55 as measured at the nearest residential property line after 10:00 p.m.
- Establish screening requirements specific to data centers in consideration of the architecture of the building. Such standards may exceed the current screening standards as set forth in zoning regulations but shall not be less.
- For site lighting, add provisions allowing LED lighting with downcast cut-off fixtures. Disallow high and low-pressure sodium lamps.
- Increase minimum fence height to 12 feet, could possibly be higher depending on security issues.
- Remove requirements to screen parking lots.
- Modify landscape maintenance requirements to meet LEED standards.
- Remove off-street loading requirements for data centers.
- Require greater vehicle stacking based on building occupancy.
- Require greater vehicular stacking at technology park entrance.
- Modify tree replacement guidelines to insure any diseased, dying or dead trees are replaced according to the original approved Landscape Plan.

There was no one present in opposition to this hearing.

Discussion was held on the recommendation from the Planning and Feasibility Study conducted by Gensler and Associates to remove the requirement for a percentage of front facing façade to be masonry material when facing a street. Staff believes the development standard for this should be required and the current percentage is 35 percent but could be increased to insure a proper fit with the high quality standards of the community.

Moved by Buschkoetter seconded by Clouse to close the hearing and approve the Application submitted by City of Kearney (Applicant and Owner) for an amendment to the Land Use Map of the City of Kearney Comprehensive Development Plan from Mixed Use 3 to Business Park for property described as a tract of land being part of the Northeast Quarter of Section 29, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska (south and east side of 56th Street and Antelope Avenue) and adopt **Resolution No. 2011-7**. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried.

RESOLUTION NO. 2011-7

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 located in part of the Northwest Quarter of Section 29, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Beginning at the northwest corner of said Northwest Quarter and assuming the North line of said Section as bearing N89°51'38"E with all other bearings shown hereon relative thereto; thence N89°51'38"E on said North line a distance of 2307.46 feet to the West line of a tract owned by Nebraska Public Power District (NPPD); thence S00°09'12"E on said West line a distance of 432.99 feet to the southwest corner of said NPPD tract; thence N89°52'13"E on the South line of said NPPD tract a distance of 333.75 feet to the East line of said Northwest Quarter; thence S00°37'00"E on said East line a distance of 924.83 feet to the North line of a Drainage Easement granted to Central Platte Natural Resources District (CPNRD), recorded as Inst 2002-8421 in the Office of the Register of Deeds, Buffalo County, Nebraska; thence S89°35'04"W on said North line a distance of 43.17 feet; thence S00°24'56"E on said North line perpendicular to the previous course a distance of 2.0 feet; thence S89°35'04"W on said North line perpendicular to the previous course a distance of 15.10 feet to the beginning of a tangent curve to the left having a central angle of 38°39'39", a radius of 552.0 feet and an arc length of 372.47 feet; thence S50°55'25"W on said North line tangent to said curve a distance of 47.51 feet; thence S39°04'35"E on said North line perpendicular to the previous course a distance of 6.0 feet; thence S50°55'25"W on said North line perpendicular to the previous course a distance of 790.12 feet to the beginning of a tangent curve to the right having a central angle of 18°36'23", a radius of 454.0 feet and an arc length of 147.43 feet; thence N20°28'12"W on said North line radially to said previous curve a distance of 1.0 feet to the beginning of a curve to the right being parallel with the previously described curve extended, having a central angle of 20°03'16", a radius of 453.0 feet, and an arc length of 158.56 feet; thence S89°35'04"W on said North line tangent to said curve a distance of 224.87 feet; thence S00°24'56"E on said North line perpendicular to the previous course a distance of 7.0 feet; thence S89°35'04"W on said North line perpendicular to the previous course a distance of 1074.33 feet to the West line of said Northwest Quarter; thence N00°34'56"W" on said West line a distance of 2127.02 feet to the point of beginning, containing 112.69 acres, more or less, of which 3.36 acres are currently in use as County Road Right-of-Way on the North and West sides, all in Buffalo County, Nebraska from Mixed Use 3 to Business Park, 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 Mixed Use 3 to Business Park the use classification for a tract of land located in part of the Northwest Quarter of Section 29, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Beginning at the northwest corner of said Northwest Quarter and assuming the North line of said Section as bearing N89°51'38"E with all other bearings shown hereon relative thereto; thence N89°51'38"E on said North line a distance of 2307.46 feet to the West line of a tract owned by Nebraska Public Power District (NPPD); thence

S00°09'12"E on said West line a distance of 432.99 feet to the southwest corner of said NPPD tract; thence N89°52'13"E on the South line of said NPPD tract a distance of 333.75 feet to the East line of said Northwest Quarter; thence S00°37'00"E on said East line a distance of 924.83 feet to the North line of a Drainage Easement granted to Central Platte Natural Resources District (CPNRD), recorded as Inst 2002-8421 in the Office of the Register of Deeds, Buffalo County, Nebraska; thence S89°35'04"W on said North line a distance of 43.17 feet; thence S00°24'56"E on said North line perpendicular to the previous course a distance of 2.0 feet; thence S89°35'04"W on said North line perpendicular to the previous course a distance of 15.10 feet to the beginning of a tangent curve to the left having a central angle of 38°39'39", a radius of 552.0 feet and an arc length of 372.47 feet; thence S50°55'25"W on said North line tangent to said curve a distance of 47.51 feet; thence S39°04'35"E on said North line perpendicular to the previous course a distance of 6.0 feet; thence S50°55'25"W on said North line perpendicular to the previous course a distance of 790.12 feet to the beginning of a tangent curve to the right having a central angle of 18°36'23", a radius of 454.0 feet and an arc length of 147.43 feet; thence N20°28'12"W on said North line radially to said previous curve a distance of 1.0 feet to the beginning of a curve to the right being parallel with the previously described curve extended, having a central angle of 20°03'16", a radius of 453.0 feet, and an arc length of 158.56 feet; thence S89°35'04"W on said North line tangent to said curve a distance of 224.87 feet; thence S00°24'56"E on said North line perpendicular to the previous course a distance of 7.0 feet; thence S89°35'04"W on said North line perpendicular to the previous course a distance of 1074.33 feet to the West line of said Northwest Quarter; thence N00°34'56"W on said West line a distance of 2127.02 feet to the point of beginning, containing 112.69 acres, more or less, of which 3.36 acres are currently in use as County Road Right-of-Way on the North and West sides, all in Buffalo County, Nebraska.

PASSED AND APPROVED THIS 8TH DAY OF FEBRUARY, 2011.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

REZONING FOR PROPERTY SOUTH AND EAST SIDE OF 56TH STREET AND ANTELOPE AVENUE

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

Mayor Clouse opened the public hearing on the Application submitted by City of Kearney (Applicant and Owner) to rezone from District AG, Agricultural District to District BP, Business Park property described as a tract of land being part of the Northeast Quarter of Section 29, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska (south and east side of 56th Street and Antelope Avenue).

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 City of Kearney (Applicant and Owner) to rezone from District AG, Agricultural District to District BP, Business Park property described as a tract of land being part of the Northeast Quarter of Section 29, Township 9 North, Range 15

West of the 6th P.M., Buffalo County, Nebraska (south and east side of 56th Street and Antelope Avenue). Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried.

IV. CONSENT AGENDA

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

1. Approve Minutes of Regular Meeting held January 25, 2011 and Minutes of Emergency Meeting held January 28, 2011.

2. Approve the following Claims:

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

ADS-Hydra Stop \$1,308.93 co; Affiliated Computer Services \$1,065.00 smcs; Aflac \$2,946.02 ps; Albrecht,J \$1.20 smcs; Alfred Benesch & Co \$654.74 co; Allen,J \$17.51 smcs; Amer Library Assn \$31.95 smcs; Anderson Bros \$3,323.07 smcs; Ask Supply \$554.12 smcs; Baker & Taylor \$2,739.00 smcs; Blackstone Audiobooks \$22.50 smcs; Bluecross Blueshield \$45,890.89 smcs; Brilliance Audio \$60.57 smcs; Brodart \$105.18 smcs; Broz,L \$23.68 smcs; Buchmann,L \$61.47 smcs; Buffalo Co Register Deeds \$21.00 smcs; Builders Warehouse \$409.72 smcs; Camera Doctor \$118.00 smcs; Carriage Paper Products \$92.19 smcs; Cash-Wa \$76.90 smcs; Central District Health \$3,059.50 smcs; Central Fire & Safety \$32.25 smcs; Central NE Bobcat \$5,908.39 smcs,co; Charter \$39.99 smcs; City of Ky \$240,428.81 smcs,ps; CNA Surety \$40.00 smcs; Copycat Printing \$52.16 smcs; Credit Management Services \$121.85 ps; Crocker Painting \$1,393.00 smcs; Crushers \$500.00 smcs; Cudaback,A \$37.11 smcs; Danko Emergency \$37.44 smcs; Dawson Co PPD \$19,200.00 smcs; Dawson,K \$31.47 smcs; Dell \$1,321.74 co; Demco \$209.85 smcs; Dishman,B \$60.00 smcs; Dutton-Lainson \$1,298.64 smcs,co; Eakes \$1,740.49 smcs,co; Ecolab \$31.00 smcs; Eirich,T \$50.00 smcs; Elliott Equipment \$178.73 smcs; Fairbanks \$1,600.00 co; Farmers Union Coop \$26.75 smcs; Felsburg Holt & Ullevig \$3,000.00 co; Fiddelke \$93.75 smcs; Five Points Bank \$10,125.00 smcs; Fore!Reservations \$1,500.00 smcs; Foster,D \$20.00 smcs; Frontier \$2.20 smcs; Gale \$401.15 smcs; Galls \$52.58 smcs; GE Money Bank \$1,974.21 smcs; Gough,P \$120.00 smcs; H&H Distributing \$177.20 smcs; Harland Technology \$1,347.00 smcs; HD Supply \$3,829.40 smcs; Highland Park \$1,698.68 smcs; Highsmith \$374.35 smcs; Hometown Leasing \$207.71 smcs; Honeywell First Responders \$666.05 smcs; HSBC Bank Nevada \$319.74 ps; Hydrite Chemical \$3,476.39 smcs; ICMA RC \$4,139.92 ps; IRS \$99,085.39 ps; Jack Lederman \$136.53 smcs; Jelinek,T \$364.88 smcs; Jensen,R \$60.00 smcs; Joe,B \$1,225.00 smcs; Ky Comm Foundation \$5,100.00 co; Ky Glass \$112.50 smcs; Ky United Way \$732.24 ps; Klaus,M \$79.74 smcs; Konica Minolta \$879.77 smcs; Krull Ins \$1,950.00 smcs; Mac Tools \$249.99 smcs; Magic Cleaning \$2,010.00 smcs; Marlatt Machine Shop \$69.25

smcs; Matheson Tri-Gas \$49.44 smcs; McCarty,D \$284.00 smcs; McNulty,S \$37.00 smcs; Menards \$109.11 smcs; Metlife \$6,618.80 ps; Milco Environmental \$2,432.50 smcs; Miller & Associates \$43,383.75 smcs,co; Minitex \$1,217.00 smcs; Morgan,M \$111.18 smcs; Municipal Supply \$426.76 smcs; Municipal Emergency \$44.56 smcs; NE Cemetery Assn \$40.00 smcs; NE Child Support \$2,454.98 ps; NE Dept of Rev \$87,225.59 smcs,ps; NE Fire Administrative \$15.00 smcs; NE Library Assn \$320.75 smcs; NE Rural Water Assn \$475.00 smcs; Neopost \$3,288.94 smcs; NetMotion Wireless \$3,097.50 smcs; Northwestern Energy \$3,012.18 smcs; O'Keefe Elevator \$453.44 smcs; Orr,L \$100.00 smcs; Panowicz,K \$25.00 smcs; Paramount Linen \$56.82 smcs; Pat's Plumbing \$75.00 smcs; Patterson,B \$93.81 smcs; Payflex Systems \$1,830.00 smcs,ps; Pitney Bowes \$2,266.00 smcs; Planning Comm Journal \$163.00 smcs; Platte Valley Comm \$646.96 smcs; Presto-X \$61.95 smcs; Pulliam,R \$40.00 smcs; Quill \$140.36 smcs; Randel,D \$46.43 smcs; Randles,C \$60.00 smcs; Recorded Books \$331.35 smcs; Reinke's Heating \$72.50 smcs; Research Technology \$179.95 smcs; Roberts,R \$382.75 smcs; Rowe,T \$185.00 smcs; Sapp Bros \$28,905.30 smcs; Snow,T \$50.00 smcs; Sorensen Partners \$335.36 ps; St of NE/AS Central \$3,356.71 smcs; Sun Life Financial \$42,584.80 smcs; Sydow,J \$40.00 smcs; Tri-Cities Group \$484.82 smcs; Tri-County Glass \$6,519.90 co; Turner Body Shop \$225.00 smcs; Tye & Rademacher \$11,566.77 smcs; Verizon Wireless \$1,135.32 smcs; Village Uniform \$448.55 smcs; Whelen Engineering \$216.25 smcs; Zulkoski,R \$46.86 smcs; Payroll Ending 1-29-2011 -- \$335,729.45. 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 application for a Special Designated License submitted by submitted by Juan Lazo, dba El Tropicico in connection with their IBK-37623 catering liquor license to dispense beer and distilled spirits in the Exhibit Building located at the Buffalo County Fairgrounds, 3807 Avenue N, on March 5, 2011 from 6:00 p.m. until 1:00 a.m. for a dance.

4. Approve the application for a Special Designated License submitted by submitted by Juan Lazo, dba El Tropicico in connection with their IBK-37623 catering liquor license to dispense beer and distilled spirits in the Exhibit Building located at the Buffalo County Fairgrounds, 3807 Avenue N, on April 16, 2011 from 6:00 p.m. until 1:00 a.m. for a dance.

5. Approve Change Order No. 5 showing an increase in the amount of \$1,661.00 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. 2011-8.**

RESOLUTION NO. 2011-8

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. 5 showing an increase to the contract sum in the amount of \$1,661.00, 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)	+ 22,803.00
Change Order No. 4 (12-28-2010)	+ 8,628.00
Change Order No. 5 (2-8-2011)	<u>+ 1,661.00</u>
Contract Sum to Date	\$747,265.00

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

PASSED AND APPROVED THIS 8TH DAY OF FEBRUARY, 2011.

ATTEST:
 MICHAELLE E. TREMBLY
 CITY CLERK

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

V. CONSENT AGENDA ORDINANCES

None.

VI. REGULAR AGENDA

ORDINANCE NO. 7630 – REZONING PROPERTY LOCATED AT 2985 EAST 92ND STREET (PERTAINS TO PUBLIC HEARING 2)

Council Member Lammers introduced Ordinance No. 7630, being Subsection 1 of Agenda Item VI rezoning from District AG, Agricultural District to District RR-1, Rural Residential District (Rural Standards) property described as a tract of land being all that part of the Northwest Quarter of the Southwest Quarter of Section 8, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska (2985 East 92nd 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, 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. 7630 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 Lear seconded by Buschkoetter that Ordinance No. 7630 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. 7630 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. 7631 – REZONING PROPERTY LOCATED SOUTH AND EAST SIDE OF 56TH STREET AND ANTELOPE AVENUE (PERTAINS TO PUBLIC HEARING 5)

Council Member Buschkoetter introduced Ordinance No. 7631, being Subsection 2 of Agenda Item VI rezoning from District AG, Agricultural District to District BP/PD, Business Park/Planned Development Overlay District property described as a tract of land being part of the Northeast Quarter of Section 29, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska (south and east side of 56th Street and Antelope Avenue), and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Clouse seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, 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. 7631 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 Clouse seconded by Kearney that Ordinance No. 7631 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. 7631 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.

INTERLOCAL AGREEMENT TO MANAGE KEA LAKE WILDLIFE MANAGEMENT AREA

Mayor Clouse opened for discussion the Interlocal Agreement between the City of Kearney and the Nebraska Game and Parks Commission for operation and management of Kea Lake Wildlife Management Area and to consider Resolution No. 2011-9.

Director of Park & Recreation Neal Lewis presented this matter to the Council. He stated the City is entering into an agreement with the Nebraska Game and Parks Commission for the City to manage and maintain the Kea Lake Wildlife Management

Area. With the City maintaining this area, the City will continue to enhance the entrance into the City. There is erosion taking place behind the Event Center that they will be watching and building back up. The area will continue to be maintained in its natural state by the City Park & Rec Department with minimal maintenance cost. Maintaining this area will not require any additional staff.

Moved by Kearney seconded by Lammers to approve the Interlocal Agreement between the City of Kearney and the Nebraska Game and Parks Commission for operation and management of Kea Lake Wildlife Management Area and adopt **Resolution No. 2011-9**. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

RESOLUTION NO. 2011-9

WHEREAS, the City of Kearney, Nebraska, and the Nebraska Game and Parks Commission desire to enter into an Interlocal Agreement for operation and management for Kea Lake Wildlife Management Area; and

WHEREAS, the Nebraska Game and Parks Commission desires the City to manage the wildlife management area as a public access for wildlife, fisheries and associated habitat, public recreation and environmental educational purposes.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the Mayor be authorized and directed to execute the Interlocal Agreement between the City of Kearney, Nebraska, and the Nebraska Game and Parks Commission for operation and management for Kea Lake Wildlife Management Area. A copy of the said Agreement, marked as Exhibit "A", is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 8TH DAY OF FEBRUARY, 2011.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

CDBG DOWNTOWN REVITALIZATION PLANNING GRANT

Mayor Clouse opened for discussion submitting a CDBG Downtown Revitalization Planning Grant Application to the Nebraska Department of Economic Development for the lighting replacement project within downtown Kearney and to consider Resolution No. 2011-10.

Candy Kuntz presented this matter to the Council. The Downtown Revitalization program is a funding category within the Community Development Block Grant program funded and developed by the Nebraska Department of Economic Development. This grant is available for local governments to plan for and finance redevelopment in traditional downtown districts. The program is split into two phases: planning and construction/implementation.

The City of Kearney is requesting \$30,000 for Phase I Planning downtown revitalization activities. The City is required to provide a cash match of \$10,000. Staff will submit a request to apply for Phase II of the project, construction, upon successful completion of

Phase I. Maximum funding request for Phase II is \$350,000, with a cash match of \$117,000.

A streetscape project was conducted in Downtown Kearney in 1981-1984. This included lighting, in-ground planters and sidewalk improvements. Since then the lighting, in particular, has aged considerably. The specific lights purchased for the Downtown are no longer manufactured, making replacement parts expensive and time consuming for staff to machine. Discussion was held with the Downtown Improvement Board and Main Street Kearney over a two year period has indicated a strong desire for a lighting project. The City Council has set aside \$50,000 per year, over four years, to fund a capital improvement project in the Downtown district. The Downtown Improvement Board recommends using these funds as the cash match for this grant project.

Moved by Lammers seconded by Lear to approve submitting a CDBG Downtown Revitalization Planning Grant Application to the Nebraska Department of Economic Development for the lighting replacement project within downtown Kearney and adopt **Resolution No. 2011-10**. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried.

RESOLUTION NO. 2011-10

WHEREAS, the City of Kearney, Nebraska, is an eligible unit of a general local government authorized to file an application under the Housing and Community Development Act of 1974 as amended for Small Cities Community Development Block Grant Program; and

WHEREAS, the City of Kearney, Nebraska, desires to submit an application to the Economic Development Administration for an amount of \$30,000 to plan for and finance redevelopment in traditional downtown districts.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the City Manager be authorized and directed to execute all grant related documents with regard to this grant application.

PASSED AND APPROVED THIS 8TH DAY OF FEBRUARY, 2011.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

CDBG NEIGHBORHOOD STABILIZATION PROGRAM 3 GRANT

Mayor Clouse opened for discussion submitting a CDBG Neighborhood Stabilization Program 3 Grant Application to the Nebraska Department of Economic Development for a proposed rental housing project in the downtown district and to consider Resolution No. 2011-11.

Candy Kuntz presented this matter to the Council. The Neighborhood Stabilization Program is a funding category within the Community Development Block Grant program funded and developed by the Nebraska Department of Economic Development. This grant is available for local governments and non-profit organizations for housing

projects that involve the purchase and rehabilitation of abandoned and foreclosed properties or the redevelopment of demolished or vacant properties. Priority for the third round of funding has been identified as creating low income housing.

The City of Kearney has conditionally been awarded \$977,000 for construction of affordable housing in the City of Kearney plus 4 percent or \$39,080 for general administration for a total grant amount of \$1,016,080. Total project cost is estimated at \$1,232,500. The remaining \$255,500 will be contributed by the property owner.

The proposed project is a rental housing project in the downtown district in the City of Kearney. The project location in the downtown district has been verified by the City and the Main Street Coordinator. The property would renovate a three-story building into 14 two-bedroom apartments for income eligible persons. The first floor would house four apartments that would be handicapped accessible. The other two floors would contain five apartments each. The City's 2004 Comprehensive Plan revealed a need for 1,097 rental units for persons with incomes of less than \$25,000; only 899 apartments have been added for that income level since 2004. Rental units will have rates capped by HUD LMI levels for a period of 15 years. The LMI levels will be at 120 percent of the Area Median Income (AMI).

Moved by Lear seconded by Buschkoetter to approve submitting a CDBG Neighborhood Stabilization Program 3 Grant Application to the Nebraska Department of Economic Development for a proposed rental housing project in the downtown district and adopt **Resolution No. 2011-11**. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried.

RESOLUTION NO. 2011-11

WHEREAS, the City of Kearney, Nebraska, is an eligible unit of a general local government authorized to file an application under the Housing and Community Development Act of 1974 as Amended for Small Cities Community Development Block Grant Program (CDBG) and Title III of Division B of the Housing and Economic Recovery Act of 2008 for funds distributed by the Department of Economic Development through the Neighborhood Stabilization Program (NSP); and

WHEREAS, the City of Kearney, Nebraska, desires to submit an application to the Economic Development Administration for an amount of \$1,016,080 for a proposed rental housing project in the downtown district in the City of Kearney.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the City Manager be authorized and directed to execute all grant related documents with regard to this grant application.

PASSED AND APPROVED THIS 8TH DAY OF FEBRUARY, 2011.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

**NORTHWEST WELL FIELD IMPROVEMENTS; PHASE II – WATER TRANSMISSION
MAIN FINALIZED**

Mayor Clouse opened for discussion the Settlement Agreement, Change Order No. 1 showing a decrease in the amount of \$169,010.62, Application and Certificate for Payment No. 11-Final in the amount of \$444,894.33, the Certificate of Final Completion submitted by Starostka Group and approved by Miller & Associates for the Northwest Well Field Improvements; Phase II - Water Transmission Main and to consider Resolution No. 2011-12.

City Attorney Michael Tye presented this matter to the Council. As a part of the Northwest Well Field project, the City awarded Contract No. 130-CI-049-05 to Starostka Group Unlimited to connect the well field to the City water system. The total contract amount awarded on July 10, 2007 for this project was \$4,098,297.20. Because of significant delays by the contractor in completing this job by the completion date as set forth in the contract, the City has been withholding liquidated damages from payments to the contractor. Because of an ongoing dispute between Starostka and the City of Kearney as to these liquidated damages, final payment has not been made on the above referenced contract. Starostka Group and its attorney filed a claim against the City with reference to this contract claiming an amount due of \$957,000.

Since filing of this claim, the parties have been making an effort to try to resolve this dispute, ultimately agreeing to mediation. In mediation, the parties have negotiated a final payment amount of \$444,894.33 that the contractor will accept as final payment and that City staff and the City's engineer would recommend for approval to the Kearney City Council.

The liquidated damages of \$136,500.00 are a substantial deduction from the contract price for not completing the contract within the timelines that were set forth in the City's agreement. A Settlement Agreement that incorporates these provisions and further indicates that any claims relating to this contract are settled upon payment of the above-referenced amount and the claim filed by Starostka Group Unlimited is hereby withdrawn and settled.

Moved by Buschkoetter seconded by Clouse to approve the Settlement Agreement, Change Order No. 1 showing a decrease in the amount of \$169,010.62, Application and Certificate for Payment No. 11-Final in the amount of \$444,894.33, the Certificate of Final Completion submitted by Starostka Group and approved by Miller & Associates for the Northwest Well Field Improvements; Phase II - Water Transmission Main and adopt **Resolution No. 2011-12**. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

RESOLUTION NO. 2011-12

WHEREAS, on July 10, 2007 Starostka Group Unlimited of Grand Island, Nebraska was awarded the contract for the Northwest Well Field Improvements; Phase II – Water Transmission Main; and

WHEREAS, because of significant delays by the contractor in completing the job by the completion date as set forth in the contract, the City has been withholding liquidated damages from payments to the contractor; and

WHEREAS, because of an ongoing dispute between Starostka Group Unlimited and the City of Kearney as to these liquidated damages, final payment has not been made on the above referenced contract; and

WHEREAS, Starostka Group Unlimited filed a claim against the City with reference to this contract claiming an amount due of \$957,000; and

WHEREAS, Starostka Group Unlimited, the City of Kearney and Miller & Associates entered into mediation in an effort to resolve all disputes relating the claim and said contract;

WHEREAS, the parties have come to a tentative agreement as set forth in the Settlement Agreement and Release, said Agreements marked as Exhibit "A" is attached hereto and made a part hereof by reference; and

WHEREAS, Starostka Group Unlimited of Grand Island, Nebraska performed services in connection with the Northwest Well Field Improvements; Phase II – Water Transmission Main, and the City's engineer, Miller & Associates, filed with the City Clerk Application and Certificate for Payment No. 10 in the amount of \$302,094.11 and on February 24, 2009 the City Council passed and approved Resolution No. 2009-20 approving Application and Certificate for Payment No. 10 in the amount of \$302,094.11; and

WHEREAS, it has come to the City's attention that an error in subtracting the total amount of withholdings from the amount due was incorrect; that the amount should have been \$353,283.70; and

WHEREAS, Starostka Group Unlimited and the City's engineer, Miller & Associates, have filed with the City Clerk Change Order No. 1 showing a decrease in the amount of \$169,010.62, as shown on Exhibit "B" attached hereto and made a part hereof by reference; and

WHEREAS, the Contractor and the City's engineer have filed with the City Clerk Application and Certificate for Payment No. 11-Final in the amount of \$444,894.33 as shown on Exhibit "C" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	\$4,098,297.20
Change Order – None	<u>- 169,010.62</u>
Contract Sum to Date	3,929,286.58
Total Completed and Stored to Date	3,929,286.58
Retainage	.00
Amount Due to Date	3,929,286.58
Less Previous Certificates for Payment	<u>- 3,484,392.25</u>
Amount Due	\$ 444,894.33

WHEREAS, the Engineer and Contractor have now certified to the City Clerk that work is completed as of January 25, 2011, as shown by Exhibit "D" attached hereto and made a part hereof by reference.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, and hereby find and determine that it is in the best interests of the City of Kearney to authorize the Mayor and City Clerk to execute the said Settlement Agreement and Release, as set forth in Exhibit "A".

BE IT FURTHER RESOLVED that Change Order No. 1, as shown on Exhibit "B", Application and Certificate for Payment No. 11-Final, as shown on Exhibit "C", and the

Certificate of Final Completion as shown on Exhibit "D" be and are hereby accepted and approved.

PASSED AND APPROVED THIS 8TH DAY OF FEBRUARY, 2011.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

ORDINANCE NO. 7629 – ANNEXATION OF KEARNEY RV PARK & CAMPGROUND, SOUTH OF 11TH STREET EAST OF AVENUE M

Most generally, the City Council always suspends the rules requiring the reading on three different days and moves for final passage. However, in accordance with Section 16-404 of the Nebraska Revised Statutes, "...such requirement shall not be suspended for any ordinance for the annexation of territory." The first reading of the ordinance annexing property known as Kearney RV Park & Campground located south of 11th Street east of Avenue M was held on January 25 and this is the second reading.

Council Member Clouse introduced Ordinance No. 7629, being Subsection 7 of Agenda Item VI annexing 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 Ordinance No. 7629 be placed on second reading by title and that the City Clerk be permitted to read Ordinance No. 7629 on its first reading. Council Member Kearney seconded the motion to place Ordinance No. 7629 on second reading. 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. City Clerk read Ordinance No. 7629 by title on second reading.

OPEN ACCOUNT CLAIMS: NPPD - \$596.18, PLATTE VALLEY STATE BANK - \$48,793.05

Moved by Kearney seconded by Lammers that Open Account Claims in the amount of \$48,793.05 payable to Platte Valley State Bank, and in the amount of \$596.18 payable to Nebraska Public Power District be allowed. Roll call resulted as follows: Aye: Kearney, Buschkoetter, Lammers. Nay: None. Clouse and Lear abstained. Motion carried.

VII. REPORTS

CLOSED SESSION

Moved by Lammers seconded by Clouse that Council adjourn into closed session at 7:40 p.m. for the protection of the public interest to discuss real estates matters and possible litigation. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried.

Council member Kearney left the meeting at 8:17 p.m.

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

Moved by Clouse seconded by Lammers that Council reconvene in regular session at 9:02 p.m. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Buschkoetter. Nay: None. Kearney absent. Motion carried.

VIII. ADJOURN

Moved by Clouse seconded by Buschkoetter that Council adjourn at 9:02 p.m. Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear. Nay: None. Kearney absent. Motion carried.

ATTEST:

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

**MICHAELLE E. TREMBLY
CITY CLERK**