

Kearney, Nebraska
July 12, 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 July 12, 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. Absent: Bob Lammers. 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; Bobbi Pettit, Assistant Development Services Director; and Lance Lang, City Planner were also present. Some of the citizens present in the audience included: Roger Jasnoch, Brad Kernick, Tony Jelinek, Jerry Bumgardner, Charles Kelliher, Judy Sickler, Paul Younes, Galen Hadley, Doug Kristensen, Kelly Krier, Ben Holl, Tom Tye, Marvion Reichert, Gerry O'Rourke, Gale Dady, Colin Nability, Shawn Engberg, Jan Rodehorst, Dean Peg, Bonnie Taylor, John Obermiller, Judy Sickler, Denny Casey, Randy Fritson, Scott Matteson, Steve Rhoads, Oscar Lundell, Steve Altmaier from KGF Radio, Kevin Hervert, 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

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.

RECOGNITIONS

Mayor Clouse recognized Senator Galen Hadley and UNK Chancellor Doug Kristensen

present in the audience.

ORAL COMMUNICATIONS

There was no Oral Communications.

II. UNFINISHED BUSINESS

LIQUOR LICENSE – FOXHOLE, 1912 CENTRAL AVENUE

Moved by Kearney seconded by Lear to remove from the table Resolution No. 2011-70 pertaining to the liquor license application submitted by the Foxhole. Roll call resulted as follows: Aye: Clouse, Lear, Kearney, Buschkoetter. Nay: None. Lammers absent. Motion carried.

Mayor Clouse stated that at the last meeting the Council conducted a public hearing on the application for a Class I-94516 liquor license submitted by James R. Fox, dba Foxhole located at 1912 Central Avenue. The public hearing was closed and any action on Resolution No. 2011-70 was postponed to allow the applicant time to amend his application to include two convictions with regard to traffic violations. The Liquor Commission submitted information to the City showing the amendment to the application.

Moved by Lear seconded by Buschkoetter to adopt Resolution No. 2011-70 recommending approval to the Nebraska Liquor Control Commission the liquor license application submitted by the Foxhole located at 1912 Central Avenue. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear. Nay: None. Lammers absent. Motion carried.

RESOLUTION NO. 2011-70

WHEREAS, James R. Fox, dba Foxhole has filed with the Nebraska Liquor Control Commission and the City Clerk of the City of Kearney, Nebraska, an application for a Class I-94516 (Beer, Wine and Distilled Spirits – On Sale Only) Liquor License to do business at 1912 Central Avenue, Kearney, Nebraska, and has paid all fees and done all things required by law as provided in the Nebraska Liquor Control Act; and

WHEREAS, a hearing was held relating to said application on June 28, 2011 and the cost of the published notice was \$10.80.

WHEREAS, the applicant and its employees have agreed to comply with completing a state approved alcohol server/seller training program as required by the City's Liquor License Policy.

NOW, THEREFORE, BE IT RESOLVED that the President and City Council of the City of Kearney, Nebraska approve or recommend approval to the Nebraska Liquor Control Commission of the issuance of a Class I-94516 (Beer, Wine and Distilled Spirits – On Sale Only) Liquor License to James R. Fox, dba Foxhole located at 1912 Central Avenue, Kearney, Nebraska upon the completion of a state approved alcohol server/seller training program.

BE IT FURTHER RESOLVED that the City Clerk is hereby instructed to record the Council action favoring the issuance of said license in the Minute Record of the

proceedings of the Council.

PASSED AND APPROVED THIS 12TH DAY OF JULY, 2011.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

III. PUBLIC HEARINGS

CONDITIONAL USE PERMIT TO CROSSROADS CENTER RESCUE MISSION; 1404 EAST 39TH STREET

Mayor Clouse opened the public hearing on the Application submitted by Jerry Bumgardner for Crossroads Center Rescue Mission (Applicant) and O'Conner-Hadford Investments, LLC (Owner) for a Conditional Use Permit to locate a homeless shelter on property zoned District C-1/PD, Limited Commercial/Planned Development Overlay District and described as part of Lot 2, Grandview Estates Eighth Addition to the City of Kearney, Buffalo County, Nebraska (1404 East 39th Street). Planning Commission recommended approval subject to compliance with the following conditions: (1) a maximum occupancy of 27 individuals, plus Crossroads staff; (2) the rear yard will be completely enclosed with fencing that matches the existing fence on the west side of the rear yard; (3) the CUP will be renewable every five years; and (4) the number of off street parking stalls must match the maximum occupancy.

The applicant is requesting a Conditional Use Permit (CUP) to operate a transitional housing shelter for people who are homeless at 1404 East 39th Street. This is an existing building that was formerly occupied by the Boys and Girls Home of Nebraska. As such, the building is already laid out with multiple bedrooms and shared common facilities. There are 27 individual bedrooms existing in the building and 27 parking stalls. The required parking ratio is one stall per resident. Therefore, parking needs are adequately addressed.

In April, Council rejected a Planned Development proposal submitted by Crossroads for property located in southeast Kearney. Council directed Planning Commission to investigate a code amendment that will better accommodate the mission of Crossroads while also protecting the community's development goals.

In the interim, Crossroads has identified a smaller piece of property, which is located in a C-1/PD, Limited Commercial/Planned Development Overlay District. The Boys and Girls Home was granted a Conditional Use Permit (CUP) in 2004. The use that was defined for the Boys and Girls Home was a hospital, which is permitted in a C-1 zone with a CUP.

Crossroads' use has been defined as "group residential", which is also permitted in a C-1 zone with a CUP. Even with a CUP, the Unified Land Development Ordinance (ULDO) places an occupancy cap of ten on a group residential use. In light of Council's direction to investigate a code amendment, staff believes this proposed location is the most appropriate solution at this time.

The ULDO treats group residential similar to single family housing; however, Crossroads has more of an institutional rather than a household character. The ULDO does not allow institutional sized group residential housing anywhere in Kearney. In the past, a larger group residential accommodation has never been perceived as necessary in Kearney. However, staff recognizes that the community has changed since the passage of the ULDO in 2002. Planning staff will soon begin revising our Community Comprehensive Plan, which is the basis of our ULDO. During that revision process, staff will research the need for emergency and group residential housing in Kearney. Based on staff's findings at that time, amendments to the ULDO may be proposed in order to better accommodate institutional group residential housing.

Staff also recognizes that Federal legislation such as the Fair Housing Amendments Act (FHAA, 1988) and the Religious Land Use and Institutionalized Persons Act (RLUIPA, 2000) requires City government to make reasonable accommodations for persons with disabilities. Homeless persons do not qualify as a protected class; however, a large portion of homeless individuals are disabled. While we must make accommodations, we must also ensure that no neighborhood is adversely impacted by a group residential home.

Therefore, staff believes that the location at the Boys and Girls Home is a suitable compromise. This property is already built to accommodate 27 individuals, will be fenced and screened appropriately, and is not located in a residential district. This proposal is also indicative of Crossroads' willingness to cooperate with the City of Kearney as they have cut their maximum occupancy request by sixty percent.

The conditions associated with this permit will be as follows:

1. A maximum occupancy of 27 individuals, plus Crossroads staff.
2. The rear yard will be completely enclosed with fencing that matches the existing fence on the west side of the rear yard.
3. The CUP will be renewable every five years.
4. The number of off street parking stalls must match the maximum occupancy.

Jerry Bumgardner presented this matter to the Council. He stated they have found a much better facility and location for the homeless shelter. It is the former location of the Boys & Girls Home on 39th Street with landscaping and parking. The layout of the building is able to accommodate the needs of the shelter with a section for families, a section for men and a section for women. Mr. Bumgardner agreed to the four conditions set forth in the Conditional Use Permit.

Moved by Buschkoetter seconded by Clouse to close the hearing and approve the Application submitted by Jerry Bumgardner for Crossroads Center Rescue Mission (Applicant) and O'Conner-Hadford Investments, LLC (Owner) for a Conditional Use Permit to locate a homeless shelter on property zoned District C-1/PD, Limited Commercial/Planned Development Overlay District and described as part of Lot 2, Grandview Estates Eighth Addition to the City of Kearney, Buffalo County, Nebraska (1404 East 39th Street) subject to compliance with the following conditions: (1) a maximum occupancy of 27 individuals, plus Crossroads staff; (2) the rear yard will be completely enclosed with fencing that matches the existing fence on the west side of the rear yard; (3) the CUP will be renewable every five years; and (4) the number of off

street parking stalls must match the maximum occupancy. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear. Nay: None. Lammers absent. Motion carried.

LIQUOR LICENSE – BEST WESTERN PLUS MID NE INN & SUITES

Mayor Clouse opened the public hearing on the application for a Class I-94781 liquor license submitted by B & K Holl Family LLC, dba Best Western Plus Mid NE Inn & Suites located at 224 2nd Avenue South, consider the manager application for Kelly Krier and to consider Resolution No. 2011-76.

This is an application submitted by B & K Holl Family LLC, dba Best Western Plus Mid NE Inn & Suites for a license to sell alcohol located at its facility, 224 2nd Avenue South. This is a new license; however, the impact on the community and the Police Department is as yet unknown. Each new license adds to the accessibility of alcohol and can add to the demands on the Police Department for enforcement.

The Police Department performed a background check on the applicants. Nothing was found to indicate that the people would not be appropriate and capable of managing this function. According to the applicants, the purpose of the application is to allow them to provide refreshments to their guests and service events such as wedding rehearsals, etc. This is not inconsistent with other like businesses in the area. The applicants were very receptive to the suggestions of the police officer and will be obtaining training in liquor service on July 7, 2011.

Kelly Krier returned the Liquor License Training Compliance form indicating that three people will be receiving TIPS training on July 7, 2011.

Ben Holl presented this matter to the Council. He and his wife own five hotels in Kearney, both Best Westerns, Roadway, Econo Lodge and recently purchased Kearney's Super 8. They would like to have at this hotel what is referred to as a manager's reception Monday –Thursday from 5:00 p.m.-7:00 p.m. They would provide wine, beer and food for guests. He, his wife and Kelly Krier attended the TIPS training last week.

There was no one present in opposition to this hearing.

Moved by Clouse seconded by Kearney to close the hearing and adopt **Resolution No. 2011-76** recommending approval to the Nebraska Liquor Control Commission the application for a Class I-94781 liquor license submitted by B & K Holl Family LLC, dba Best Western Plus Mid NE Inn & Suites located at 224 2nd Avenue South, and approve the manager application for Kelly Krier. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Kearney. Nay: None. Lammers absent. Motion carried.

RESOLUTION NO. 2011-76

WHEREAS, B & K Holl Family LLC, dba Best Western Plus Mid NE Inn & Suites has filed with the Nebraska Liquor Control Commission and the City Clerk of the City of Kearney, Nebraska, an application for a Class I-94781 (Beer, Wine and Distilled Spirits

– On Sale Only) Liquor License to do business at 224 2nd Avenue South, Kearney, Nebraska, and has paid all fees and done all things required by law as provided in the Nebraska Liquor Control Act; and

WHEREAS, B & K Holl Family LLC, dba Best Western Plus Mid NE Inn & Suites also filed with the Nebraska Liquor Control Commission and the City Clerk of the City of Kearney, Nebraska, an application for Corporate Manager of Kelly Krier; and

WHEREAS, a hearing was held relating to said application on July 12, 2011 and the cost of the published notice was \$11.78.

WHEREAS, the applicant and its employees have agreed to comply with completing a state approved alcohol server/seller training program as required by the City’s Liquor License Policy.

NOW, THEREFORE, BE IT RESOLVED that the President and City Council of the City of Kearney, Nebraska approve or recommend approval to the Nebraska Liquor Control Commission of the issuance of a Class I-94781 (Beer, Wine and Distilled Spirits – On Sale Only) Liquor License to B & K Holl Family LLC, dba Best Western Plus Mid NE Inn & Suites located at 224 2nd Avenue South, Kearney, Nebraska, and to approve the application for Corporate Manager of Kelly Krier upon the completion of a state approved alcohol server/seller training program.

BE IT FURTHER RESOLVED that the City Clerk is hereby instructed to record the Council action favoring the issuance of said license in the Minute Record of the proceedings of the Council.

PASSED AND APPROVED THIS 12TH DAY OF JULY, 2011.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

IV. CONSENT AGENDA

Moved by Kearney seconded by Lear that Subsections 1 through 7 of Consent Agenda Item IV be approved. Roll call resulted as follows: Aye: Clouse, Lear, Kearney, Buschkoetter. Nay: None. Lammers absent. Motion carried.

1. Approve Minutes of Regular Meeting held June 28, 2011.

2. Approve the following Claims:

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

ABA Recovery Services \$175.94 ps; Aflac \$2,815.56 ps; Air Cleaning Technologies \$126.50 smcs; Alfred Benesch \$14,507.85 co; Amer First Aid \$471.28 smcs; Amer Library Assn \$230.00 smcs; Analytical Services \$1,250.00 smcs; Arctic Refrigeration \$515.78 smcs; Baker & Taylor \$4,780.00 smcs; Bells Curb Grinding \$720.00 co; Bluecross Blueshield \$78,152.63 smcs; Bosselman \$2,395.40 smcs; Bruha,S \$789.58 smcs; Buffalo Co Sheriff \$111,552.15 smcs; Builders Warehouse \$1,590.42 smcs,co; Cash-Wa \$61.66 smcs; Central Contracting \$41,511.50 co; Central NE Bobcat

\$10,789.00 co; Central States Wire \$282.00 smcs; Chesterman \$1,139.45 smcs; CHS Agri Service \$485.32 smcs; City of Ky \$292,332.68 smcs,ps; Copycat Printing \$25.00 smcs; Curbit \$3,000.00 smcs; Danko Emergency \$1,248.00 smcs; Eakes \$701.02 smcs; Ecolab \$36.00 smcs; Eirich,T \$50.00 smcs; Elliott Equipment \$486.95 smcs; Encore Funding \$325.44 ps; Encyclopedia Britannica \$315.00 smcs; Eustis Body Shop \$150.00 smcs; EZ Turf \$411.48 smcs; Fairbanks \$3,674.66 smcs; Fiddelke \$256.46 smcs; FireCom \$170.00 smcs; FireGuard \$584.64 smcs; Footjoy \$54.41 smcs; Frontier \$8,649.01 smcs; Gale \$478.21 smcs; Gangwish Turf \$92.40 co; Garrett Tires \$85.95 smcs; General Excavating \$123,107.40 co; Gough,P \$210.00 smcs; GI Independent \$745.70 smcs; H&H Distributing \$709.15 smcs; Hardesty Construction \$60.00 smcs; HD Supply \$7,933.55 smcs; Hometown Leasing \$207.71 smcs; ICMA RC \$3,811.51 ps; IRS \$116,300.97 ps; Jack Lederman \$168.91 smcs; James,D \$741.40 smcs; JCB Enterprises \$103.50 smcs; Johnson,A \$60.00 smcs; Ky United Way \$605.24 ps; KHGI/KWNB TV \$80.00 smcs; Konica Minolta \$1,277.56 smcs; Krull Ins \$1,950.00 smcs; Larson,H \$18.66 smcs; Lockmobile \$63.74 smcs; Magic Cleaning \$350.00 smcs; Matheson Tri-Gas \$95.36 smcs; Menards \$35.43 smcs,co; Metlife \$6,736.52 ps; Mid American Signal \$449.00 smcs; Mid-Continent Public Library \$14.00 smcs; Midwest Striping \$13,790.00 smcs; Miller Signs \$150.00 smcs; Municipal Automation \$287.00 smcs; Municipal Supply \$969.90 smcs; NE Child Support \$2,704.46 ps; NE Crime Commission \$25.50 smcs; NE Dept of Agriculture \$49.10 smcs; NE Dept of Revenue \$75,428.11 smcs,ps; NEland Distributors \$513.66 smcs; Neopost \$6,000.00 smcs; Norm's Plumbing \$712.05 smcs; Northwestern Energy \$7,262.01 smcs; Novus \$35.00 smcs; Office Depot \$752.83 smcs; Officenet \$158.09 smcs; On Site Mobile Sharpening \$67.00 smcs; O'Neill Wood Resources \$9,249.80 smcs; Overhead Door \$330.00 smcs; Paramount \$57.87 smcs; Pat's Plumbing \$150.00 smcs; Paulsen \$111,038.40 co; Payflex Systems \$535.50 smcs,ps; Pep Co \$51.10 smcs; Platte Valley Comm \$1,031.16 smcs; Platte Valley Labs \$505.00 smcs; Presto-X \$213.00 smcs; Protex Central \$300.00 smcs; Pulliam,R \$40.00 smcs; Random House \$28.00 smcs; Ready Mixed Concrete \$3,685.50 co; Recorded Books \$1,136.89 smcs; Reeves,B \$352.80 ps; S&B Heating \$9,410.00 co; Sapp Bros \$33,672.00 smcs; Senson,J \$29.00 smcs; Sid Dillon Ford \$52,388.00 co; Snow,T \$50.00 smcs; St of NE/AS Central \$3,890.71 smcs; Steinbrink Landscaping \$100.00 smcs; Sun Life Financial \$43,601.11 smcs; Sysco \$114.20 smcs; Tactical Technologies \$119.00 smcs; Taser Int'l \$108.37 smcs; Taylor,J \$168.75 smcs; Theis,J \$60.00 smcs; Thompson,J \$18.06 smcs; Tri-County Glass \$6,288.79 co; Tye & Rademacher \$10,813.80 smcs; UNK Loper Football \$2,440.00 smcs; Verizon \$1,092.35 smcs; Village Uniform \$675.91 smcs; Watchguard Video \$256.25 co; We Care Tree Care \$375.00 co; Ziembra Roofing \$150.00 smcs; Zimmerman Printers \$389.43 smcs; Payroll Ending 7-2-2011 -- \$389,426.44. 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 recommendation from the Development Services Division on the annual renewal of the manufactured home court license of Sheen's Mobile Home Court, 4664 West Highway 30 until May 31, 2012.

4. Approve the Employment Agreement between the City of Kearney and Michael Morgan and adopt **Resolution No. 2011-77**.

RESOLUTION NO. 2011-77

WHEREAS, the City Council of the City of Kearney, Nebraska, do hereby fix, prescribe and limit salary and wages to be paid by this City to the City Manager, pursuant to the authority granted in Section 1-301 of the Code of the City of Kearney, Nebraska, and Section 19-620 of the Nebraska Revised Statutes.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the City Manager continue to be paid an annual salary of One Hundred Fifty-eight Thousand Two Hundred Seventy Dollars (\$158,270.00) effective July 1, 2011; said salary to be paid bi-weekly from any City funds in such proportionate amounts as the City Manager may determine.

BE IT FURTHER RESOLVED that the President of the Council be and is hereby authorized and directed to execute the Employment Agreement.

PASSED AND APPROVED THIS 12TH DAY OF JULY, 2011.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

5. Approve the Plans and Specifications for the World Theatre Project and set the bid opening date for August 10, 2011 at 2:00 p.m.

6. Approve the bid submitted by Cellxion in the amount of \$44,580.00 for the construction of a carrier hotel located at the Tech ONE Crossing Data Park.

7. Approve the application for a Special Designated License submitted by NIGHT LIFE CONCEPTS, INC., dba Cunningham's Journal in connection with their Class CK-59311 catering liquor license to dispense beer, wine and distilled spirits inside the Exposition Building, in an area what is known as the "Outside Arena", and a beer garden which is located west of the Exposition Building located at the Buffalo County Fairgrounds, 3807 Avenue N, on August 3, 4, 5, 8, 2011 from 3:00 p.m. until 12:00 a.m., August 6 from 11:00 a.m. until 12:00 a.m., and on August 7 from 12:00 p.m. until 12:00 a.m. for the Buffalo County Fair which includes concerts and a demolition derby.

V. CONSENT AGENDA ORDINANCES

None.

VI. REGULAR AGENDA

ORDINANCE NO. 7659 – CONDITIONAL USE PERMIT TO CROSSROADS CENTER RESCUE MISSION (PERTAINS TO PUBLIC HEARING 1)

Council Member Lear introduced Ordinance No. 7659, being Subsection 1 of Agenda Item VI granting a Conditional Use Permit to Jerry Bumgardner for Crossroads Center Rescue Mission (Applicant) and O'Conner-Hadford Investments, LLC (Owner) to locate a homeless shelter on property zoned District C-1/PD, Limited Commercial/Planned Development Overlay District and described as part of Lot 2, Grandview Estates Eighth

Addition to the City of Kearney, Buffalo County, Nebraska (1404 East 39th 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 Buschkoetter seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear. Nay: None. Lammers absent. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7659 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear. Nay: None. Lammers absent. Motion carried. Ordinance was read by number.

Moved by Buschkoetter seconded by Clouse that Ordinance No. 7659 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Kearney. Nay: None. Lammers absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7659 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.

RESTAURANT AND DRINKING PLACE OCCUPATION TAX

Mayor Clouse opened for public input regarding a Restaurant and Drinking Place Occupation Tax. The Council will not be taking any action on this matter at this meeting.

Mayor Clouse stated this item is a result from the listening sessions that staff and Council conducted earlier this year. A list of things was compiled from what they heard from the citizens of the community about what they would like to see as community betterment and improvement. After reviewing the budget and seeing where they are with the ½ cent special sales tax and holding the line on property tax, they found there are not funds to take care of some of these items. The Council and staff decided to bring this item forward to talk about if they want to do these community betterment and improvement items. If they do then they must have some other funding sources to do them.

Roger Jasnoch, Director of the Kearney Visitors Bureau, 8 Crestview Drive, expressed his appreciation to the City in being a strong partner in tourism. The amenities that have been provided on South 2nd Avenue have made a great entrance into the City. The City has made significant investments in soccer and softball fields, baseball complexes which have enabled Kearney to host a number of sports tournaments. The possible use of this proposed tax would give an opportunity to bring in more tournaments to the community. When people come to this community, they spend money for food, lodging, fuel and shopping which will continue to increase our tax base. Kearney is very competitive in the state marketplace with North Platte and Grand Island and sometimes with Lincoln and Omaha. Kearney has also evolved to a player in the national

marketplace. Kearney just lost a national wrestling tournament to Chicago and were in competition for the BMX tournament and the number two place was Des Moines.

Mr. Jasnoch stated as Kearney citizens travel to different places outside the state, they expect great police protection, fire protection and good roadways. As we travel to these places, we help pay for those benefits by spending money for lodging, food, fuel, etc. because they have some kind of sales tax that goes back to the city. In this way, we pay our fair share. This tax would work the same way for Kearney. This tax would be a way for people coming to this city and taking advantage of our services to pay their fair share. In a study from a few years ago, it showed that about half the food and beverage tax collected comes from the outside. So it is really a benefit to the people of Kearney that those people share in the expenses that we incur as residents here.

Dean Peg, 28 Redwood Drive, stated he is a restaurant owner in Grand Island. Last year Grand Island implemented a 1.5 percent occupation tax on restaurants to pay for the State Fair. They implemented that tax out of necessity. The city had made a commitment to bring the State Fair there and then decided how to pay for it. It ended up coming on the backs of the restaurant and bar owners. He did not believe that the city thought through how it was going to affect those businesses and their employees. It is his responsibility as a restaurant owner to pay the tax based on revenue. It is not a sales tax, but is a tax on his business. As an owner, he can either absorb that amount or pass it on to his guests. He stated going out to eat gets more expensive as time goes on because of the cost of food and services. He spends 12 cents of every dollar he makes to local, state and government taxes, fees, etc. His net profit was four percent so he made four cents and paid 12 cents to the government. On that four percent profit, he pays 25 percent income tax on the four cents which leaves about three cents. He conceded that is the cost of doing business.

Mr. Peg stated that although it sounds good in theory that the people coming to the community can pay for it, the business owner has to pass those costs on because the margins in the restaurant business are just too close. Restaurants come and go quite frequently because it is a very competitive industry. There is no room for error. He believed that as prices increase to absorb the cost of the tax, that gratuities decline. Servers depend on those gratuities as part of their income so essentially they end up paying those taxes. He agreed that the State Fair and the restaurant occupation tax has been a good thing for the City of Grand Island, but believed that it could have been handled in a better way.

Bonnie Taylor, 4008 Avenue E, stated when she saw the notice in the paper about this hearing, she went to the internet to see what special projects Kearney had slated for this money. As she looked at the list, she saw many special interests projects that would benefit special interest groups in the community. In her opinion, many of these services are already sufficiently being taken care of in the community. A lot of these things once they are developed and completed, such as new ball fields, soccer fields and parks are going to cost money to maintain. Later those costs will have to be added to our yearly budget. These things are money pits. We all enjoy and appreciate the parks, but it takes a lot of people and money to maintain them. She believed they need to look to the future and decide why these special projects are so important in our economy. Her property taxes have tripled in the last ten years and her insurance has doubled. She has

a good job, but her wages have not tripled in the last ten years. They have barely been cost of living raises. She believed that it is very difficult for the average family in this community to make budget ends meet. One of the hardest hit groups in the City is our seniors, many are on fixed budgets and many eat out because they are alone and single. It does not matter whether they are only paying fifty percent and the other half comes from out of town people, it is still going to impact them. She was concerned about who is going to make the decision on which projects are going to be funded. Citizens could vote if it were a bond issue, but before going ahead she would like to know who the decision makers are going to be. It is only fair before taxing the people of Kearney, that they have a vote on each one of these proposed special projects and how the tax dollars are being spent. She stated this community needs jobs, not recreational items.

John Obermiller, 1102 West 16th Street, stated he is the manager of Pizza Hut Delivery. As an organization, Pizza Hut, decided to lower their prices. Eighteen months ago a large pizza was \$16.00 and is now \$10.00. They basically decided to become more competitive and tighten their belts. They have cut their profit margin to four cents out of a dollar. They are struggling as a restaurant to make it. They have customers who complain because instead of \$10.00 the cost is \$10.70. You would think the additional tax of 70 cents would be a common sense thing, but not necessarily. Mr. Obermiller stated personally he is not for new taxes. He is against any new taxes personally and as a business owner. He believed that everyone needs to live within their means and budget things out in advance. He believed that if there is interest in a special project, the citizens should have an opportunity to vote on it.

Mr. Obermiller read from a Kearney Hub article by Mike Konz from 2005 quoting that Council reassures citizens at the town hall meeting that sales tax dollars would not be used for a new Library, Interstate 80 bypass or Meadowlark Golf Course debt. City Manager Michael Morgan replied that statement was incorrect because the Library was slated from day one of the listening sessions to use sales tax dollars. Council member Buschkoetter stated the statement is true for the other two items that no sales tax dollars were used for the interchange or the Golf Course.

Mr. Obermiller stated that when money is collected through these kinds of taxes, people have the opportunity to vote on how the money is spent. Mayor Clouse stated that the City holds public hearings and talks about these projects on an annual basis. They lay the projects out for the public and a couple of times throughout the year they ask for public input on what is most important to them and how to prioritize them. Although he has heard similar comments from other citizens, he believes there are some misconceptions about how the money is being spent. The spreadsheets are available to the public and every penny of that ½ cent special sales tax is accounted for. He added that frankly no one comes to those meetings when they are held, but the opportunity is there. City Manager stated as he stated previously, the listening sessions were attended by 1500-1600 people before the sales tax went into effect. The annual sales tax listening session usually is attended by less than ten citizens.

Colin Nability, 6 Centennial Lane, stated that he owns and operates the Chicken Coop, Lumbergs and The Garage in Kearney. He understood the need for the restaurant occupation tax being implemented in Grand Island because of the State Fair coming in.

The State Fair obviously brings in a lot of out of town people which increases revenues and sales taxes which in turn might keep property taxes low. He believed that these proposed special interest projects for Kearney are money pits as opposed to revenue generating streams. He wants to see projects that will create incentives for new business to come to Kearney and provide more jobs. Before this tax is implemented, he would want to see a list of projects that would be funded and believed there were many in Kearney that would agree with him.

Mayor Clouse stated some of the things on the list they think will bring additional revenue to the community are baseball, soccer and softball fields. Those types of activities would bring in larger tournaments and more revenue. Mr. Nability stated that although we might get those groups in the first time, they might move on to a community that does not have this extra tax. Council member Buschkoetter stated basically a softball tournament committee is going to look at the type of facilities we have to offer and not be concerned about a small amount of tax on food and drinks. They are more concerned if there are enough places to eat and places to spend their down time between games.

Mayor Clouse stated that Lincoln's purpose for their occupation tax was to fund their event center which like the state fair, was a large ticket item. Kearney does not have a large ticket item to fund so they looked at funding a variety of smaller items that the City believes could bring some benefits.

Mr. Nability stated he has seen all the great improvements that Kearney has made with the ½ cent special sales tax, the general growth of the community and the Keno revenue that comes in. He stated in taking a business man's approach, there is always a list of things that they want to get done and when the money is there it is taken care of. The community has done a good job of that up to this point. He wanted to know what is prompting the special interest now and needing to get it done now. Mayor Clouse stated they are at a point where there is no extra income and property taxes have not been raised for five years and they do not want to see that. The funds from the ½ cent special sales tax are already committed for street improvements because Kearney has streets that are in bad shape. We may not get to some of these projects if we do not have more revenue. As a Council, they can manage the budget anyway they want, but they believe it is important to hear from the community about what they want to keep the community growing and bringing in more revenue. As they look at these projects they must determine which ones are going to provide a rate of return for the community. He believed that they have a good track record with what they have done with ½ cent special sales tax. One of the things they have not done is street repair so that is where the dollars are going now.

Council member Lear stated this community is dependent on sales tax revenues and he believed that we need to have this discussion as a community to help keep that engine moving so we can pay for streets, fire, safety, etc. They have tried to hold the line on property taxes because they are a difficult thing to raise on people. A person can decide if they want to go out to eat or not and how much to spend. Some of these are bigger projects that would help bring more people here and others are just community betterment projects. This is what the discussion is all about. He appreciates the comments made by the restaurant owners. We collect approximately \$2 million dollars

in property tax and sales tax of \$10 million and that is how we pay for everything. In comparison, Nebraska and North/South Dakota have the least amount of budget woes that any of the other states. We have a strong agricultural component which helps our community. Perhaps now is not the right time to do this, but that is why this discussion is taking place to try to determine that.

Colin Nabity stated that eventually big projects like the Library are going to be done. City Manager stated all the big projects were paid for as reflected in the budget in cash. We do have debt for our street projects. These funds are committed for the foreseeable future; currently fifty percent of keno funds goes to Meadowlark Golf Course. In the future, fifty percent will go to capital improvements to the golf course maintenance and fifty percent towards our share of Cherry Avenue. Keno funds are \$300,000-\$400,000 per year.

Mr. Nabity stated the Hub made it sound like the decision is either property tax or restaurant tax and wanted to know if there is another option. City Manager stated the other choice is to do nothing or wait over time and save money and pay cash to do some of these projects further down the road. They do not like to borrow money, but streets are too expensive not to borrow.

Mr. Nabity also inquired if bars only would be included in the occupation tax, as well as restaurants and bars that have food. Finance Director Wendell Wessels stated that all three would be subject to the tax. Mr. Nabity stated although they are very competitive with their liquor prices here in the Midwest, he would need to raise prices to absorb the tax increase as taxes are all inclusive in alcohol pricing which might hurt business.

Marvion Reichert, 18 Rolling Hills, stated that he suggested that he would have liked to have seen a time limit set on the ½ cent special sales tax and then it could be voted on again. If this occupation tax is implemented, he would also like to see a time limit set on collecting it and vote on it again. He believed that the amount of sales tax collected would eventually catch up and would no longer be needed for projects. Council member Lear pointed out that as projects go forward, the inflation costs increase as well. Finance Director stated that although sales tax has increased about five percent per year, the annexing of Cabela's was also calculated in that amount which boosted the amount.

Denny Casey, 401 West 28th Street, stated he moved to Kearney from Grand Island so he is familiar with the occupation tax. He believed that the tax is a double edged sword. The restaurants are going to take a hit and the people are going to take a hit. However, the public is willing to pay for conveniences. Taxes on cell phone bills, internet bills, etc. are charged, but people pay them for the convenience of having these things. If a business owner has to raise their prices due to the extra tax, then so be it. We as consumers have to realize if we want something decent, we have to pay for it.

Randy Fritson, 9 Tabor Place, stated he is involved with competitive soccer and softball and is a very conservative person. He does go to Norfolk, Columbus, Omaha, Lincoln McCook and North Platte and so has experienced those taxes, but it is just part of doing business there. He believed that Kearney needs to continue doing these things that are vital to energizing the community. In his business, they have a lot of people coming from

the Kansas area who not only spend money at their establishment, but are purchasing food, fuel and goods while they are here. He stated that we want and need to continue to grow and be able provide our citizens, as well as others, with these proposed opportunities.

Scott Matteson, 5508 Avenue I, stated in the 16 years he has lived in Kearney, he believed that the City Council tries to avoid raising property taxes just so they can say Kearney has the lowest tax levy in the state. He would be in favor of raising property taxes although he thought Nebraska is already quite high. He did not understand why they would put the occupation tax on the poorest business owners in the community. Secondly, he did not agree with the way they presented these needs. The newspaper stated that the tax would be between 2.0 and 6.25 percent. He was certain the Council was not considering 6.25 percent; he believed that is a tactic just like the federal government uses to propose a high amount so the public will accept the low amount.

He attended the Chamber of Commerce Annual meeting when Mike Yanney donated the land for Yanney Park to the City which the City maintains. Yanney Park is one of the best parks around and is constantly in use. He also knows there have been a lot of donations that have helped make it great. He thought that the City has at least one extra employee to take care of the landscaping for Yanney Park which is an expense to the City. Additional facilities will necessitate more City employees and more cost to run the City government. He believed this was not a good time to do that with this economy. He was concerned about the sales tax being able to sustain all these things if the economy worsens in the future. He did not like the idea that the City Council would automatically assume another tax.

Steve Rhoads, 72 LaCrosse Drive, stated he moved back to Kearney about a year ago and was born and raised here. He lived in Lincoln the past 12 years and one of the reasons he moved back was the quality of life here, but also because the taxes in Lincoln are getting outrageous. The have wheel tax, impact fees, home builder fees plus \$5,000 if you want to build a house, etc. He is against any additional taxes and that the City should be looking for ways to cut its spending. He believed that each Council member could find a project on this list they do not believe is necessary at this time. As far as the question about what the other options are, he believed they have already been covered with cell phones, cable, natural gas, hotels, etc. Just because other communities have done this does not mean Kearney should do it.

Tom Tye, 2507 West 36th Street Place, stated he was speaking for himself, not for any group or organization where he is a member. He is a third generation Kearneyite and stated that they are all very proud of the community because of the quality of life and the amenities that it has. There have been debates and discussions over the years in the history of Kearney about if we need to be forward thinking or progressive to enhance the quality of our community. The alternative was to hold back and be more reactionary. He viewed Kearney as being more visionary and progressive and getting things that other communities do not have. This has made Kearney a business and cultural hub in the state. He is in favor of implementing the food and drink place occupation tax. The fact that the City went out and poled the community to get public input and are now taking that information and being transparent with it (as they were with the sales tax) is a great thing for the community. As has been stated, all

expenditures can be viewed at any time to see how each dollar is being spent. He believed the Council would handle this tax in a like manner and prioritize, decide on a time line and engage the community as civic leaders should do. He was confident that there are opportunities out there where they can do public and private projects. Kearney has had experience where public dollars are leveraged with private investments which have been successful. Those opportunities may not always be there. He urged the Council to continue as generations before them have done.

Doug Kristensen, UNK Chancellor, stated he previously made a presentation to the City Council on the impact of the University on the community. It is important to think about how all the parts of the future of Kearney fit together. He reviewed some of the highlights of his spring presentation. The University generates approximately \$124 million a year through state funding and their students. UNK has 1,000 employees and 500 student workers. There are 5,000 students who live on campus or in the community. There are 4,300 alumni with Kearney city addresses and 10,500 alumni in the contiguous counties around the City of Kearney.

He observed things that the City of Kearney has as priorities are very similar to the priorities that the University has. One of those was they are going to do quality projects that increase their visibility and would make our community stand out and be unique. They are also committed to capital improvements and growth in the community. With a residential campus their needs are very simple. As the University looks into the future, they need to expand what the nature of a residential campus is. There is high competition for higher education and it is facility and quality based. They also need to maintain facilities that visitors and students use on campus. What he proposed in the spring fits in with the City's goals of betterment of the community both short term and long term.

Chancellor Kristensen continued in stating he does not like tax increases especially if they are going to go into the same old budgets and not see anything different. They think about what they would do with those funds if they became available. Their answer is they would put them into visible quality capital projects that would not only enhance the University, but also the community. The momentum of the University's south campus project that he outlined in the spring is a major endeavor for them. The primary feature is to move University Heights to create a unique university village that will help draw people to the City of Kearney along with students and faculty. The funds from this proposal will give them a jump start and help make it a reality. If they can do this over a number of years, it will be a real game changer for the University and the City of Kearney. They would also include some capital improvement projects around campus where people use the campus facilities for a variety of uses. They want to be able to have that partnership to do that. He stated this is a rare opportunity to invest in the future of the campus and Kearney. He promised that if the funds come in their direction, they will be used wisely with a strategic plan to leverage other funds and they will be extremely accountable.

Oscar Lundell, 2 North Lake Drive, stated he is the franchise owner for Arby's. He is for promoting Kearney as much as possible. He stated rather than singling out the restaurant and drink business why not do something that includes the whole business community. Over the past two years they have experienced a lot of increases in the cost

of doing business; minimum wage increase for new hires caused his long time employees to expect a raise also and food costs have increased. He did not understand why they have to bear the whole tax burden. They are not the only businesses in town that benefits from people coming into town. He believed other stores like Target and K-Mart should also have to pay a portion since they receive the same benefits. The businesses and Kearney need each other.

City Manager stated that if the City raised the property tax fifty percent it would still be less than Grand Island's property tax. Kearney's property tax is the third lowest of 148 cities in Nebraska. In order to fund the suggested projects, the City property tax rate would have to increase approximately fifty percent.

Mayor Clouse stated that another option would be to have a three percent restaurant and drinking place occupation tax and reduce the property tax from 12 cents to 8 cents. It costs a certain amount of money to live in any community; whether it be taxes, property taxes, discretionary taxes, it just depends what you want to do for your community and what you want for quality of life and the amenities.

Mayor Clouse stated it is important to have good accurate information out there so that the people know what the Council is considering. The Council is wanting to be as transparent as possible about this process. The Council wants to give this as much as thought as possible because it does help set the direction for the future.

Mayor Clouse stated that all these comments will be taken under advisement to determine what the next step would be.

OPEN ACCOUNT CLAIMS: PLATTE VALLEY STATE BANK - \$49,519.71, SCHOOL DISTRICT #7 - \$3,816.75

Moved by Clouse seconded by Kearney that the Open Account Claim in the amount of \$49,519.71 payable to Platte Valley State Bank be allowed. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter. Nay: None. Lear abstained. Lammers absent. Motion carried.

Moved by Kearney seconded by Lear that the Open Account Claim in the amount of \$3,816.75 payable to School District #7 be allowed. Roll call resulted as follows: Aye: Clouse, Kearney, Lear. Nay: None. Buschkoetter abstained. Lammers absent. Motion carried.

VII. REPORTS

None.

VIII. ADJOURN

Moved by Kearney seconded by Lear that Council adjourn at 8:25 p.m. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear. Nay: None. Lammers absent. Motion carried.

ATTEST:

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

**MICHAELLE E. TREMBLY
CITY CLERK**