

**Kearney, Nebraska**  
**April 10, 2012**  
**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 April 10, 2012 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; Tom Tye, Acting City Attorney; Wendell Wessels, Director of Finance; Suzanne Brodine, Assistant City Manager; Kirk Stocker, Director of Utilities; Rod Wiederspan, Director of Public Works; and Dan Lynch, Chief of Police were also present. Some of the citizens present in the audience included: Jane Musil, Donna Murphy, Danny Starostka, Mitch Humphrey, Paul Brungardt, Trenton Snow, Carig Bennitt, Nick Johnson, Jonathan Nikkila, Mark Benjamin, Mike Kalb, Russ Hilliard, Joe Sobotka, Joe Verzal, Mike Konz from Kearney Hub, Steve Lewis from KGFW Radio.

Notice of the meeting was given in advance thereof by publication in the Kearney Hub, the designated method for giving notice, a copy of the proof of publication being attached to these minutes. Advance notice of the meeting was also given to the City Council and a copy of their acknowledgment or receipt of such notice is attached to these minutes. Availability of the Agenda was communicated in the advance notice and in the notice to the Mayor and City Council. All proceedings hereafter shown were taken while the meeting was open to the attendance of the public.

## **I. ROUTINE BUSINESS**

### **INVOCATION**

Pastor Bob Wine from New Life Assembly Church provided the Invocation.

### **PLEDGE OF ALLEGIANCE**

One Boy Scout from Troop 158 led the Council members and audience in the Pledge of Allegiance.

### **ANNOUNCEMENT**

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

### **ORAL COMMUNICATIONS – POLICE DEPARTMENT VOLUNTEER PROGRAM**

Records Supervisor Jane Musil from the Kearney Police Department, accompanied by Donna Murphy, stated the senior volunteer program began at the Police Department in 1994. They have volunteered several thousands of hours over the years. This year they volunteered 1,491 which amount to \$14,910.

## **II. UNFINISHED BUSINESS**

There was no Unfinished Business.

## **III. PUBLIC HEARINGS**

### **VACATE PORTION OF BEL AIR SECOND AND BEL AIR FOURTH AND AMEND LAND USE MAP FOR PROPERTY LOCATED WEST OF THE INTERSECTION OF AVENUE N AND 66TH STREET**

Moved by Kearney seconded by Lammers to remove from the table Public Hearing 1 on vacating a portion of Bel Air Second and Bel Air Fourth and to amend the Land Use Map. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

Public Hearings 1, 2, 3 and 4 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Applications submitted by Buffalo Surveying (Applicant) for Starostka Group Unlimited, Inc. (Owner) as follows: (1) vacate Lots 1 through 5 of Block 3, all of Avenue L as it abuts Lot 5 of Block 3, all of that part of 66th Street Place as it abuts Lots 1 through 5 of Block 3, and all that part of 66th Street Place as it abuts part of Avenue L, all in Bel Air Second Addition, together with Lot 5 of Block 2 and all that part of 66th Street Place as it abuts said Lot 5 of Block 2, all in Bel Air Fourth Addition and to consider Ordinance No. 7706; and (2) an amendment to the Land Use Map of the City of Kearney Comprehensive Development Plan from Low Density Residential to Medium Density Residential for property described as Lots 1 through 5 inclusive of Block Three (to be vacated), Bel Air Second Addition, an addition to the City of Kearney, Buffalo County, Nebraska and part of 66th Street Place, a street in the City of Kearney, and part of Avenue L, a street in the City of Kearney (west of the intersection of Avenue N and 66th Street) and to consider Resolution No. 2012-33. Planning Commission recommended approval on a split vote with four in favor and three opposed. Their vote was also subject to the revisions and the conditions established in the Subdivision Agreement.

The applicant is requesting approval to develop a 2.42 acre tract of land as one parcel with multiple residential buildings. This project was on the agenda last month, but was tabled at the request of the developer. Last year, four single-family homes, four duplexes, and one tri-plex were initially proposed on this site. Both the neighbors and staff had concerns regarding the initial density of the project. The developer has continually met with the neighbors and with City staff to pursue revisions that would alleviate the density concerns. As a result of those meetings, the developer has removed the proposed single-family homes, thereby reducing the density to four duplexes and one tri-plex. The area that was formerly proposed to be occupied by the single-family homes is now proposed as landscaped open space. The neighbors continue to forward their concerns regarding the proposed development to the City. The developer has indicated to staff that another meeting with the neighboring property owners is scheduled for Monday, March 12, 2012, the night before the Council hearing. The neighbors' concerns are discussed in further detail later in this memo.

The property is currently zoned R-1, Urban Residential Single-Family District and will require rezoning to a higher density to allow duplexes and the tri-plex. The development is proposed to be served by a private lane. The project requires planned zoning due to the multi-building proposal on one lot, a deviation on the rear yard setback of 10 feet, and the proposed private lane for access and off-street parking. This project requires the following action items be considered:

1. Partial Vacation of Bel Air Second and Fourth Additions
2. A Land Use Map Amendment and associated Rezoning
3. Subdivision platting including a Public Works Plan and Subdivision Agreement
4. Development Plans

Lots 1-5, Block 3, all of Avenue L as it abuts Lot 5, Block 3, all of 66th Street Place as it abuts Lots 1-5, Block 3 and all of that part of 66th Street Place as it abuts Avenue L, all in Bel Air Second Addition, together with Lot 5, Block 2 and all of 66th Street Place as it abuts Lot 5, Block 2, all in Bel Air Fourth Addition has been requested for vacation so that the property can be replatted as a two-lot subdivision.

The property is currently zoned R-1, Urban Residential Single-Family District and the proposed use will require rezoning to R-2/PD, Urban Residential Mixed-Density/Planned Development Overlay District. The project requires planned zoning due to the multi-building proposal on one lot, a decreased rear yard setback and also because of the request for a private lane for access. The Future Land Use Map of the City of Kearney Comprehensive Development Plan does not project development patterns the way that they have occurred in this area. There is a mixture of "Parks and Conservation Open Space" (detention cell and drainage channels), "Low Density Residential" and "Medium Density Residential." "Low Density Residential" is appropriate for single-family homes while "Medium Density Residential" allows duplexes, tri-plexes and four-plexes in addition to single-family homes. It is difficult to overlay the relatively small 2.42 acre parcel on the land use map to get an accurate representation of the proper land uses. The most conservative approach in dealing with the land use question is to designate the subject property as "Medium Density Residential" to insure that it complies with the requested rezoning, if the decision is made to proceed.

Staff initially had concerns with rezoning the property to higher density. Staff advised the Starostka Team that the only time it is acceptable to down-zone a parcel that is adjacent to established housing is if the new development will be "better" than the originally proposed development. The Starostka Team has complied with all the requests staff has made in order to improve the new development:

1. Removed four single family units.
2. Created as much distance between property line and proposed duplexes as possible.
3. Added off street parking for overflow demand and visitors
4. Increased the amount of proposed landscaping.
5. Added uninterrupted open space between the properties that is greater than the rear yards that would have resulted in a traditional R-1 development.

6. Added a turnaround lane in order to assist with maneuverability of public vehicles as well as decrease the chances of headlights shining into the adjacent property owners' homes to the south.

The Starostka Team has made all the site improvements that DRT has requested.

The Preliminary Plat and Final Plat of Starostka View Addition consist of two lots. The Preliminary Plat was approved by Planning Commission on January 20, 2012 on a split vote with four in favor and three opposed. The larger lot to the west, proposed Lot One, Block Two, is the lot that will contain the private lane accessing the duplexes and triplex. Lot One, Block One is on the east side of Avenue L and will remain R-1 for a single-family home. With the portion of previously platted 66th Street Place that would extend west of Avenue L now proposed for vacation (replaced by private lane), 66th Street Place now bends ninety degrees to the south to become Avenue L and provide street connectivity to 65th Street Place. A Public Works Plan and Subdivision Agreement have been prepared.

The applicant shall verify at the request of the Planning Commission that the following components have been added to the final plat prior to approval:

1. The private lane shall be labeled as "40-foot wide private lane and utility easement" on the preliminary and final plats. Water and sewer lines will be installed within this easement.

2. Existing platted lot lines are shown on the preliminary and final plat overlaid on proposed Lot One, Block Two (the large lot). These lot lines should be removed as the lots are being vacated and the land area will be consolidated into one large lot under the current proposal.

3. Indicated size of proposed lots in square feet for the R-1 lot and in acres for the large lot.

4. The existing irrigation easement along the north side of the large lot needs to be vacated and relocated to the north. (The proposed buildings are shown over the easement on the development plans). The City owns the land to the north as the 40-acre northeast drainage detention cell is located here. It is acceptable to the City to relocate the irrigation easement at a width of 15 feet on City property. The developer shall hire a registered land surveyor to prepare a legal description for the relocated easement. No building permits will be issued for Lot One, Block Two until the easement is vacated and re-established and the irrigation line is relocated.

The developer has submitted a Development Plan package in conformance with the Planned Development Overlay District requirements. The site plan depicts the private lane with an emergency vehicle turn-around and guest parking. Proposed landscape berms with Douglas Fir trees are strategically placed to shield the headlight glare from vehicles towards the existing homes to the south. The landscaping is contained in a large area of open space that will be planted in native warm season grasses. The width of this open space area from the back lot line of the existing homes to the private lane ranges from about 50 to 80 feet forming a substantial landscaped space buffer. Architectural elevations and floor plans of the proposed buildings are included. Staff offers the following comments regarding the Development Plans:

a) The developer is requesting a deviation to the rear building setback behind the duplexes and the tri-plex. Code requires a rear setback of 25 feet but the developer would like to request a 15-foot rear setback because the back of these units face onto the 40-acre detention cell owned by the City. This land will never be developed and will always be open space.

b) The emergency hammerhead turn-around layout does not meet Fire Codes. In the 2006 Edition of the International Fire Code, Appendix D, Figure D-103.1 the turn-around is shown as a minimum width of 20 feet and the radiuses are minimum of 28 feet. (*Staff has contacted the developer and he has agreed to change the design in order to conform to Code*).

Although it is not the proper place for City staff to speak for or against the neighboring property owners or the developer, several emails have been received from parties in opposition to the proposed project. It is anticipated that these individuals or their representative will provide testimony at the public hearing in front of the City Council. There were several people that spoke in opposition at the Planning Commission hearing as well as letters and a petition submitted in opposition. As previously mentioned, the developer has held meetings with the neighbors to discuss the development. City staff has not been in attendance at these meetings.

It appears that the two main points of contention raised by the neighbors are the proposed increase in density and the question of rental versus owner occupied properties. The increase in density and whether it is appropriate for this location is the key question to be contemplated. The City has no control over the developer's intent to either sell or rent property other than the maximum allowable number of people in a living unit. In fact, there are many single-family homes throughout the community that are rentals.

The question of density can be summarized in a few questions.

1) *What is the land use category shown on the Future Land Use Plan of the Comprehensive Development Plan for the subject property? What about the surrounding area?*

As previously mentioned, the development of this area to date does not necessarily correspond directly to the land use lines that are delineated on the Future Land Use Map. The map is small in scale and it is difficult to apply small pieces of development to the map in an accurate fashion. Certainly the map recognizes the detention cell as an area reserved for conservation open space and perhaps a park facility someday. The general direction afforded by the map for developable land indicates a mixture of low and medium density residential in this area and even mixed use further to the north. There are existing duplexes to the south of this area as close as abutting the property of some of the protestors. Consideration of medium residential density does not seem out of the question. The City Council has the right to amend the plan to higher density and the Planning Commission recommended doing so, albeit on a slim margin with four votes in favor and three dissenting. If the Council increases the density to medium density is that option in conflict with the neighbors' expectation that this property will develop at low density?

2) *What is the current zoning of the subject property and surrounding properties?*

As previously discussed, the subject property is currently zoned R-1 for single-family homes. This zoning must be changed to a higher density if the project is to move

forward as proposed by the developer. The neighbors in opposition occupy single-family homes in an R-1 zone that abut the south line of the proposed development. Homes on the other side of the street abut existing duplexes to the south. A drive through the surrounding area reveals a mixture of duplex units in some areas of a predominantly single-family nature. There are entire cul-de-sac streets with duplexes on both sides. The difference is that these areas were zoned higher density to allow duplexes from the beginning instead of requesting a density increase at a later date. Again it does not seem out of the question to contemplate duplex development given the presence of other duplex development in the general area. However, the question revolves around the neighboring property owners' expectation whether the land abutting them to the north will remain R-1, the same as their R-1 zoning, or be granted an increase in density. Perhaps the developer could consider changing the proposed tri-plex to a duplex so that all of the proposed dwelling units are duplexes.

Mitch Humphrey from Buffalo Surveying presented this matter to the Council. The tract of land consists of two pieces that are being rezoned from R-1. The Stoneridge development from the south is zoned R-2 and the land north of the City's detention cell to the south of the spillway is also zoned R-2. This property consists of a preliminary plat that would bend 66th Street into Avenue L and eliminate 66th Street Place East and adjacent lots and retain the zoning on the large lot except for a corner that would allow for the street to curve around. Because of the nature of this property, they will also discuss a development plan for this site. They want to put up some duplexes and tri-plexes.

The clients and the engineer began having meetings with the neighborhood in October and where they ran up against some obstacles and issues and decided to mitigate the situation and came up with some compromises that were suggested by the City. Mr. Humphrey also made some suggestions that seemed palatable to the neighbors after meeting with them. He met with the neighborhood representatives two or three times. After the item was tabled at the Council meeting, they again met with the neighbors at the Library and brought all the current plans, exhibits and maps to show them and had a really good turnout. Mr. Humphrey stated he did not believe that everyone walked away agreeing with him. There were a lot of people who had signed the petition at one time who came up to him after the meeting and said they wished they would have had this much information before on the project.

In the preliminary plat, the utility and road easement is being dedicated that would come across the lot with the proposed duplexes and tri-plexes located to the north. The southerly part of the property will be retained as green space with generous landscaping and berms. His suggestion to the adjoining property owners was putting in a large berm with evergreen trees planted on top to supply a generous buffer and noise and light abatement from one site to the other. He stated he has talked to the owners of Lots 5 and 6 and one other to the south and had received some pretty positive feedback. His office tries to build a consensus from the owners and explain to them what is proposed and to find ways to appease their concerns. The lot directly north of Lot 5 will retain the R-1 zoning and the rest will be R-2/PD. This plat contains utility and roadway easements and an irrigation line easement that cuts across the cul-de-sac which was discovered and was not completely addressed at the time plats were done. The City has been good to work with to find a way to put that easement for that irrigation line on the

outside of this subdivision. The owner of the land to the northwest of this property across the detention cell (TWL LLC/Dave Terveen) has agreed that he will release the easement that is there, assuming the City grants a new one. He has talked to City Attorney Mike Tye about this issue and that has been pretty much been taken care of.

Mr. Humphrey showed the plan as it was originally presented which met the code requirement for density, but it was not really palatable to the neighbors. They have reconfigured the plan to make a large separation between single dwellings and multiplexes. In accordance with the Subdivision Agreement, Mr. Starostka is willing to pay for the utility lines to be built in this section of the street and he reserved the right to request a paving district to install the paving. When the Bel-Air section was built, this section of street was not built. According to the Code, all of the adjoining streets shall be improved prior to the construction of homes or provisions made to get the streets built. Mr. Starostka has agreed to put in the water lines for example to improve water pressure and provide fire protection.

Paul Brungardt, Brungardt Engineering stated they have taken the four duplexes and the one triplex and put them on the north side as far away from the adjoining property as they could. The property line is about 25 feet from the existing house. There will be a 150-foot separation from the front of the garage to the new building and the next one is 165 feet and the next one is 200 feet and the last one is a little over 210 feet. If these were to stay single family units, the difference would be a house could be built within 25 feet of each other in this case. They added some off-street parking requirements to this project for the duplexes. Each duplex has a 2-car garage with the capability of two additional cars in the driveway. They will also have a parking lot with a total of 15 stalls which will be separated by very large berms that would have vegetative trees. These trees would provide a good shield so there would not be any light bleeding into the back yards of the adjacent houses. This plan does not have a large bulbous cul-de-sac, but will have a 3-point turn around for utility trucks, moving vans and fire trucks. When a vehicle backs up, it will go to the backup lane which will be marked so nobody drives into it. This will also prevent headlights shining into someone's backyard, because they will be heading out into the public street.

There are attractive duplexes to the south of this site and basically the separation between the back of these duplexes and the back of these adjacent houses is about 80-85 feet. They are looking at putting double to triple that distance between these properties to the north.

With regard to the public works plan, there is sanitary sewer coming off 66th Street to tie into and wrap around into the utility easement that has been discussed. There would be an 8-inch water line and fire hydrants according to the City Code. The storm sewer pipe comes through and drains into Bel Air First. They are suggesting putting in a couple of curb inlets just north of the property which will drain into the cell to the north.

The construction will be typical of duplexes. The first floor level is 1,272 square feet of living space. The finished basement has 475 square feet and the garage has 518 square feet. Each half of the duplex has 1,750 square feet of living space with wood frame construction and stonework. The same designed duplexes are currently being constructed on 4th Avenue behind the Cottonwood Veterinary Clinic. The triplex will

have the same square footage as the duplex; it is just an additional unit. The original plan for the hammerhead turn around did not meet fire code. They were asked to widen it another five feet and make the radius returns a little wider and that revision has been made in these plan.

Council member Buschkoetter asked how this plan matches up to the neighbors on the north. Mitch Humphrey stated that the property to the north is the storm water detention cell (unplatted City property) and is essentially green space. This allows them to push the envelope a little to the north and people can overlook the detention cell as green space in their backyard. The neighbors on the south will have the green space created by the berm and trees. Since Mr. Starostka will have a lot of fill material coming out for the basements, he will maintain that fill on the property and build berms approximately 4-foot high which will be very broad so they can support a hybridiferous tree with a large root ball. He had one of the neighbors at the meeting volunteer to help plant grass, wildflowers and plants after the trees are planted. Regarding the question about rent, he stated that Mr. Starostka is renting the duplexes on 4th Avenue for about \$1,500 a month and he has a waiting list and some people have offered to buy.

Joe Verzal, 1016 East 65th Street Place, stated that this proposal will be directly north of his house. He hoped that the Council had received the petition that showed the signatures of the people from the neighborhood. He was elected to speak on their behalf and through this process had an opportunity to meet a lot of his neighbors and get an understanding of their wishes. As citizens, they bought their houses with the understanding that there would be houses behind them. Some of the owners have been there 4-6 years and others have been there less than two months. Now, their understanding is that they can keep rentals from coming in behind them and would still have the opportunity to have five houses behind them with the hammerhead turnaround. Regarding the meeting at the Library with Mr. Humphrey and Mr. Starostka, he did not believe that Mr. Humphrey disclosed that he works for Mr. Starostka and had drawn up the plans and did the surveying. The homeowners do not believe they had an unbiased person's opinion to explain in detail their options to either have the houses or the rentals.

They have concerns regarding the rentals such as their home ownership and the decision to purchase a home that did have rentals around them. These owners have graduated to the point where they were able to purchase a home without rentals around them. He does not have a problem with renters or rentals. When they took out their 30-year loan at the bank for their house, it was with the understanding that there were going to be houses behind them. As citizens, they are not City planners, architects or know what meets code and what does not, but for some of them they made the biggest investment of their lives. He spoke to each of the people who attended the meeting at the library. There were nine from his neighborhood, four were still against the rentals, three were undecided, and one did not sign the petition to begin with and he did not talk with the other one. After the library meeting, each of the people who signed the petition initially also initialed their name stating they still stood for no rentals, but he did not know if they want seven houses either.

Mr. Verzal asked if there was a possibility the Council could extend their neighborhood the courtesy that they did for the builder to table this for another month. This would

allow them time to ask a representative that has no connection to Starostka Homes (neutral party) to explain their options with regard to the R-1 zoning versus the R-2 zoning and if they could have five houses behind them versus increasing the density to seven houses. Mr. Starostka and Mr. Humphrey both stated at the meeting that they would put in seven houses to offset the expense of putting in the street and the utilities if it stays with the hammerhead street design. It was sold to them that they either got rentals or seven less expensive homes. He wanted someone to explain if that can be done and if so does it have to be replatted and go through the whole process again before coming to Council.

City Planner Lance Lang stated the way the property is currently platted, there is a cul-de-sac that runs along the City property and there are five single family lots with R-1 zoning. The developer could come in with the property plans and get a building permit to start building those single family homes right away. The proposal is to increase the density to R-2 which would allow them to put in duplexes or tri-plexes with Council's approval. The original proposal in October had four single family houses plus the higher density units which they wanted to do without getting R-2 zoning. Through negotiations with the neighbors and City staff, it was changed to the 11 units as shown now which can only be built if the R-2 zoning is granted. In order to go to seven single family houses, there would have to be a minor sub to make seven lots out of the five lots or it would have to be vacated and replatted. The minor sub could be done in R-1 without rezoning it. The minor sub would be an option and they would not have to go back through the process in order to get a couple more lots. The seven single family lots would still have to meet the code and the minimum lot standards.

City Planner stated he has not personally investigated to see if that is feasible. He stated the minimum lot width is 65 feet for a single family house, and most developers are platting larger lots than that because that is what people want. The process for a minor sub is an administrative subdivision process whereby a plat is drawn, but it does not come through the Planning Commission or the Council. It comes through the Chief Building Official who makes sure that it meets all the requirements. If he approves, he signs it and sends it to the City Manager for his signature. It is an expedited process, but it does have limitations. If any of these lots have been minor subed before, they cannot be done again. He did not think that any of these have been. All the utilities paving, water and sewer, have to be in place or there has to be assurances they would be in place. At this time with things being in limbo, they have talked about districts, infrastructure agreement and the Subdivision Agreement that had been hammered out to everyone's satisfaction. The City really has no control over whether the units are sold or rented. There are single family houses in town that are rented to families. The City does not have a legal right to discriminate and say what can be rented and what cannot, that is up to the developer. Many duplexes in Kearney are also owned.

Council member Lear stated to summarize a vacation and replat would take it back to Planning Commission and then to Council. A minor subdivision process would essentially go to the Chief Building Official for approval and then to the City Manager for approval. It would be a slightly different process for same result.

Mr. Verzal again asked for more information and a meeting with the City Manager to further explain their options.

Danny Starostka, 4207 Country Club Lane, stated that about eight months ago, he went to a meeting with some of the City staff and some managers of factories, real estate agents, developers, etc. and as a result, they found there is a big need for rental property. That is where he got the idea to do housing. There is also a great need for affordable housing in this community. He has built a few subdivisions throughout Kearney and believed that he does a nice job. He thought this would be a great mix of residential units. That cul-de-sac is full already. What is unique about this site is there is nothing on the back green space. There are no neighbors to the north and a buffer zone on the south so that people in front of it get no value from it, but people who live behind it get all the landscaping. Several of the people he rents to are professional people who moved here from out of town so there is a need for housing for those kinds of people. He will also continue to work on helping the City fill a need for affordable housing. As a developer he is trying to help the City grow a little and provide places for people to live.

Regarding the request for a delay, Mr. Starostka stated he has delayed this project for a number of months and believed the neighborhood has had enough time to talk to the City Manager about this. He is already in the fall market. By the time they go for a district to be created, they will already be in the fall/spring of next year. His preference is to approve or deny at this meeting. If it gets turned down, he will find some other places that need building such as Lincoln, Hastings and Grand Island where they are building the same units. Mr. Starostka stated he lives on Country Club Lane and he has rentals across the street from his house. Many people live next door to houses that are rentals. He stated that in this case, his renters would all have his number. They could also call one of his supervisors who has been with him for a long time and would be taking care of this property and he lives a block away from the site. They have professional landscapers that do the yard work so the yards will always be maintained and look nice. He talked with City staff several times and this project has gone to Planning Commission and was approved.

Mr. Humphrey stated that he was brought into this project after the October meeting. He asked to meet with the neighborhood group and met with one of the families three times. He suggested a neighborhood meeting, but they declined because they thought they had it handled and everything was okay. A lot of people showed up at the Planning Commission meeting and from that they sensed not everything was okay. They elected to have another meeting at the library and the project was continued for a couple of City Council meetings. At the library meeting, he gave Mr. Verzal his phone number and asked him to call if he had any questions or if any of the neighbors had questions to contact him. Some of the neighbors did contact him. His policy is not to step into a project that he cannot see himself living in. He is very impartial and tries to look at projects from both sides of the fence and has had a lot of professional experience doing so. Mr. Starostka has been very accommodating in his willingness to change things around in the plan to create that open space for the neighbors. Mr. Humphrey stated he also talked with a couple of private assessors who stated this is a good project and could see no adverse effect on property values.

Mr. Verzal further stated the issues he believed were not sufficiently answered at the library meeting were with regard to tree heights, size of berms and mapping of property lines. He was aware of the housing issues in the community as it has been in the

newspaper. He contacted a number of rental corporations in Kearney and found four with vacancies and four had a waiting list; one included the elderly, handicapped and disabled. He recently talked to two new physicians at New West who found housing, but told him it had been difficult. He stated that his neighborhood is simply asking the Council to do what is best for them. The members of the Council were elected to represent the citizens and again asked for the decision of only five single family homes to be built. Increased traffic in the area was another concern for this housing area where there are children.

Council member Lear stated what is before the Council is whether to move forward with the project as proposed. He asked if each of the existing property owners who signed the petition were aware of the option of rentals versus single homes. Mr. Verzal stated he did not think that they were.

Council member Lammers stated that the proposed building would be over 150 feet away from the closest home and that is about twice as much as you would normally have with a single family housing lot. That single family lot might end up with a rental on it anyway. The units Mr. Starostka is proposing would rent for \$1,500 a month, so you will not have the type of renter that is paying \$400-\$500 a month living in these units. There was a comment about some discrepancies in the reporting of the amount of rent for these units. Mr. Starostka says he bases his rental factor according to number of occupants and that is how the range is determined.

Mayor Clouse stated generally he is not in favor of rezoning from R-1 to R-2 because of some of the examples that were sited. He talked with a couple members of the Planning Commission without looking at the project. He asked why they approved this and they said because they had an excellent buffer plan. This is a much different buffer than they usually see. There is no way to control the property once it has been purchased. He appreciated the concern about the traffic, but they have 66th Street with traffic diverted both ways. Another factor he took into consideration is the detention cell and the green space to the north side. If there was other developments that were going to be platted with other housing that might have influenced his decision.

He suggested that Mr. Verzal talk with the City Manager who could tell him what can happen from his experience and what he has seen with those types of requests to keep single family. Although that might be after the fact, he thought that once some of those things are explained, he could understand where the Council is coming from.

Council member Kearney stated he would concur with the Planning Commission's decision. He supported their recommendation.

Council member Lammers stated he was initially concerned with the number of people who had signed the petition. He drove out and looked at the site. After reviewing the plan with the buffer and the types of homes being built, he did not have a problem with it.

Council member Buschkoetter stated he believed that their job is to balance the ownership rights of the neighbors and protect the people who own the property. Although the project did not quite fit at the beginning, the developer made the

adjustments to make it work. The fact there is a private drive mitigates any concerns they have about traffic. The plan considers light and sound pollution. He stated his home was built in the 1980's and in the last two years his home has been surrounded by rental property. Others have been repurchased for single family homes. There is no guarantee at any point in an established neighborhood that there would not be rentals. Mr. Starostka has done a good job of working with the neighborhood and isolating this project from the single family housing. That is the goal of any zoning process.

Council member Lear stated Mr. Starostka and Mr. Humphrey have done a good job "dressing up" R-2 as much as it can be, but it still is R-2. When the home owners purchased their property, the expectation was they were in a R-1 setting and they had no indication that it would change. There is no doubt there is a need in the community for better housing opportunities. In his opinion if he bought a home in R-1 zoning, he would have an expectation that the property next to him would maintain the same zoning. He would have no problem if this had been zoned AG or R-3, but this is going from a lower density to a higher density. He also considered the fact that four out of the five neighbors were opposed to it.

Moved by Clouse to close the public hearing and introduced Ordinance No. 7706 on the Application submitted by Buffalo Surveying (Applicant) for Starostka Group Unlimited, Inc. (Owner) to vacate Lots 1 through 5 of Block 3, all of Avenue L as it abuts Lot 5 of Block 3, all of that part of 66th Street Place as it abuts Lots 1 through 5 of Block 3, and all that part of 66th Street Place as it abuts part of Avenue L, all in Bel Air Second Addition, together with Lot 5 of Block 2 and all that part of 66th Street Place as it abuts said Lot 5 of Block 2, all in Bel Air Fourth Addition 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 Lammers seconded the motion to close the hearing and suspend the rules for Ordinance No. 7706. 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. Nay: Lear. 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. 7706 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. Nay: Lear. Motion carried. Ordinance was read by number.

Moved by Kearney seconded by Lammers that Ordinance No. 7706 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lammers. Nay: Lear. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7706 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.

Moved by Lammers seconded by Buschkoetter to adopt **Resolution No. 2012-33**

approving the amendment to the Land Use Map of the City of Kearney Comprehensive Development Plan from Low Density Residential to Medium Density Residential for property described as Lots 1 through 5 inclusive of Block Three (to be vacated), Bel Air Second Addition, an addition to the City of Kearney, Buffalo County, Nebraska and part of 66th Street Place, a street in the City of Kearney, and part of Avenue L, a street in the City of Kearney (west of the intersection of Avenue N and 66th Street). Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: Lear. Motion carried.

### **RESOLUTION NO. 2012-33**

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 Lots 1 through 5, inclusive, Block Three, all of Avenue "L", a street in the City of Kearney, Buffalo County, Nebraska as it abuts said Lot 5, Block Three on the East, all that part of 66th Street Place, a street in the City of Kearney as it abuts said Lots 1 through 5, inclusive, Block Three, and all that part of 66th Street Place as it abuts the aforescribed part of Avenue "L" on the North, all in Bel Air Second Addition, together with Lot 5, Block Two, and all that part of 66th Street Place, a street in the City of Kearney, as it abuts said Lot 5, Block Two on the North, all in Bel Air Fourth Addition, all being located in the City of Kearney, Buffalo County, Nebraska, with the aforescribed lots and streets now vacated and located in the Southeast Quarter of the Northeast Quarter of Section 24, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, all being more particularly described as follows: Referring to the Southeast Corner of the Northeast Quarter of Section 24 and assuming the East line of the Northeast Quarter of said Section 24 as bearing N00°08'04"E and all bearings contained herein are relative thereto; thence N00°08'04"E on the East line of the Northeast Quarter of said Section 24 a distance of 343.0 feet; thence leaving the East line of the Northeast Quarter of said Section 24, N89°46'30"W a distance of 50.0 feet to the Northeast Corner of Lot 8, Block Two of said Bel Air Second Addition, an addition to the City of Kearney, Buffalo County, Nebraska, said point also being the Southeast Corner of Lot 1, Block Two, Bel Air Fourth Addition, an addition to the City of Kearney, Buffalo County, Nebraska, and said point also being on the West line of Avenue "N", a street in the City of Kearney, Buffalo County, Nebraska; thence leaving the West line of said Avenue "N" and continuing N89°46'30"W and on the line common with the North line of Lot 8, Block Two of said Bel Air Second Addition, and the South line of Block Two, of said Bel Air Fourth Addition a distance of 114.92 feet to the Northeast Corner of Lot 7 of said Block Two, Bel Air Second Addition; thence S85°24'40"W on the line common with the North line of Lot 7 of said Block Two, Bel Air Second Addition and the South line of said Block Two, Bel Air Fourth Addition a distance of 100.19 feet; thence S86°33'39"W on the line common with the North line of Lot 6 of said Block Two, Bel Air Second Addition and the South line of said Block Two, Bel Air Fourth Addition a distance of 92.91 feet to the ACTUAL PLACE OF BEGINNING, said point being the Southwest Corner of Lot 4 of said Block Two, Bel Air Fourth Addition; thence continuing S86°33'39"W on the line common with the North line of said Lot 6, Block Two, Bel Air Second Addition and the South line of said Block Two, Bel Air Fourth Addition a distance of 7.20 feet to the Northeast Corner of Lot 5 of said Block Two, Bel Air Second Addition; thence S89°56'55"W on the North line of said Block Two, Bel Air Second Addition a distance of 115.07 feet to the Northwest Corner of said Lot 5, Block Two, Bel Air Second Addition, said point being on the East line of said Avenue "L"; thence leaving

the East line of said Avenue "L" N89°52'13"W and on the North line of Lot 6 and Lot 7, if extended easterly of said Block Three, Bel Air Second Addition a distance of 254.92 feet to the Northwest Corner of said Lot 7, Block Three, Bel Air Second Addition; thence N83°30'52"W on the North line of Lot 8 of said Block Three, Bel Air Second Addition a distance of 90.65 feet; thence N83°28'03"W on the North line of Lot 9 of said Block Three, Bel Air Second Addition a distance of 179.18 feet to the Northwest Corner of said Lot 9, Block Three, Bel Air Second Addition, said point also being the Northeast Corner of Lot 9, Bel Air First Addition, an addition to the City of Kearney, Buffalo County, Nebraska; thence N89°56'46"W on the North line of said Lot 9, Bel Air First Addition a distance of 77.84 feet to the Northwest Corner of said Lot 9, Bel Air First Addition, said point also being the Southwest Corner of Lot 2 of said Block Three, Bel Air Second Addition; thence N00°06'18"E on the West line of said Block Three, Bel Air Second Addition a distance of 170.12 feet to the Northwest Corner Lot 1 of said Block Three, Bel Air Second Addition; thence N89°52'02"E on the North line of said Block Three, and the North line of said 66th Street Place, Bel Air Second Addition, and the North line of Bel Air Fourth Addition and the North line of said 66th Street Place, Bel Air Fourth Addition a distance of 723.30 feet to a point on the West line of Lot 4, if extended northerly, of said Block Two, Bel Air Fourth Addition; thence S00°08'40"W on the West line of said Lot 4, if extended northerly, Block Two, Bel Air Fourth Addition a distance of 199.18 feet to the place of beginning, containing 3.17 acres, more or less (west of the intersection of Avenue N and 66th Street) from Low Density Residential to Medium Density Residential, 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 Low Density Residential to Medium Density Residential the use classification for Lots 1 through 5, inclusive, Block Three, all of Avenue "L", a street in the City of Kearney, Buffalo County, Nebraska as it abuts said Lot 5, Block Three on the East, all that part of 66th Street Place, a street in the City of Kearney as it abuts said Lots 1 through 5, inclusive, Block Three, and all that part of 66th Street Place as it abuts the aforescribed part of Avenue "L" on the North, all in Bel Air Second Addition, together with Lot 5, Block Two, and all that part of 66th Street Place, a street in the City of Kearney, as it abuts said Lot 5, Block Two on the North, all in Bel Air Fourth Addition, all being located in the City of Kearney, Buffalo County, Nebraska, with the aforescribed lots and streets now vacated and located in the Southeast Quarter of the Northeast Quarter of Section 24, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, all being more particularly described as follows: Referring to the Southeast Corner of the Northeast Quarter of Section 24 and assuming the East line of the Northeast Quarter of said Section 24 as bearing N00°08'04"E and all bearings contained herein are relative thereto; thence N00°08'04"E on the East line of the Northeast Quarter of said Section 24 a distance of 343.0 feet; thence leaving the East line of the Northeast Quarter of said Section 24, N89°46'30"W a distance of 50.0 feet to the Northeast Corner of Lot 8, Block Two of said Bel Air Second Addition, an addition to the City of Kearney, Buffalo County, Nebraska, said point also being the Southeast

Corner of Lot 1, Block Two, Bel Air Fourth Addition, an addition to the City of Kearney, Buffalo County, Nebraska, and said point also being on the West line of Avenue "N", a street in the City of Kearney, Buffalo County, Nebraska; thence leaving the West line of said Avenue "N" and continuing N89°46'30"W and on the line common with the North line of Lot 8, Block Two of said Bel Air Second Addition, and the South line of Block Two, of said Bel Air Fourth Addition a distance of 114.92 feet to the Northeast Corner of Lot 7 of said Block Two, Bel Air Second Addition; thence S85°24'40"W on the line common with the North line of Lot 7 of said Block Two, Bel Air Second Addition and the South line of said Block Two, Bel Air Fourth Addition a distance of 100.19 feet; thence S86°33'39"W on the line common with the North line of Lot 6 of said Block Two, Bel Air Second Addition and the South line of said Block Two, Bel Air Fourth Addition a distance of 92.91 feet to the ACTUAL PLACE OF BEGINNING, said point being the Southwest Corner of Lot 4 of said Block Two, Bel Air Fourth Addition; thence continuing S86°33'39"W on the line common with the North line of said Lot 6, Block Two, Bel Air Second Addition and the South line of said Block Two, Bel Air Fourth Addition a distance of 7.20 feet to the Northeast Corner of Lot 5 of said Block Two, Bel Air Second Addition; thence S89°56'55"W on the North line of said Block Two, Bel Air Second Addition a distance of 115.07 feet to the Northwest Corner of said Lot 5, Block Two, Bel Air Second Addition, said point being on the East line of said Avenue "L"; thence leaving the East line of said Avenue "L" N89°52'13"W and on the North line of Lot 6 and Lot 7, if extended easterly of said Block Three, Bel Air Second Addition a distance of 254.92 feet to the Northwest Corner of said Lot 7, Block Three, Bel Air Second Addition; thence N83°30'52"W on the North line of Lot 8 of said Block Three, Bel Air Second Addition a distance of 90.65 feet; thence N83°28'03"W on the North line of Lot 9 of said Block Three, Bel Air Second Addition a distance of 179.18 feet to the Northwest Corner of said Lot 9, Block Three, Bel Air Second Addition, said point also being the Northeast Corner of Lot 9, Bel Air First Addition, an addition to the City of Kearney, Buffalo County, Nebraska; thence N89°56'46"W on the North line of said Lot 9, Bel Air First Addition a distance of 77.84 feet to the Northwest Corner of said Lot 9, Bel Air First Addition, said point also being the Southwest Corner of Lot 2 of said Block Three, Bel Air Second Addition; thence N00°06'18"E on the West line of said Block Three, Bel Air Second Addition a distance of 170.12 feet to the Northwest Corner Lot 1 of said Block Three, Bel Air Second Addition; thence N89°52'02"E on the North line of said Block Three, and the North line of said 66th Street Place, Bel Air Second Addition, and the North line of Bel Air Fourth Addition and the North line of said 66th Street Place, Bel Air Fourth Addition a distance of 723.30 feet to a point on the West line of Lot 4, if extended northerly, of said Block Two, Bel Air Fourth Addition; thence S00°08'40"W on the West line of said Lot 4, if extended northerly, Block Two, Bel Air Fourth Addition a distance of 199.18 feet to the place of beginning, containing 3.17 acres, more or less (west of the intersection of Avenue N and 66th Street).

PASSED AND APPROVED THIS 10TH DAY OF APRIL, 2012.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**REZONING PROPERTY LOCATED WEST OF THE INTERSECTION OF AVENUE N  
AND 66TH STREET**

Moved by Kearney seconded by Lammers to remove from the table Public Hearing 2 on rezoning property located west of the intersection of Avenue N and 66th Street. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

Public Hearings 1, 2, 3 and 4 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Buffalo Surveying (Applicant) for Starostka Group Unlimited, Inc. (Owner) to rezone from District R-1, Urban Residential Single-Family District (Low Density) to District R-2/PD, Urban Residential Mixed-Density/Planned Development Overlay District property described as Lots 1 through 5 inclusive of Block 3 (to be vacated), Bel Air Second Addition, an addition to the City of Kearney, Buffalo County, Nebraska and part of 66th Street Place, a street in the City of Kearney, and part of Avenue L, a street in the City of Kearney (west of the intersection of Avenue N and 66th Street) and to consider Ordinance No. 7707.

Moved by Buschkoetter to close the public hearing and introduced Ordinance No. 7707 on the Application submitted by Buffalo Surveying (Applicant) for Starostka Group Unlimited, Inc. (Owner) to rezone from District R-1, Urban Residential Single-Family District (Low Density) to District R-2/PD, Urban Residential Mixed-Density/Planned Development Overlay District property described as Lots 1 through 5 inclusive of Block 3 (to be vacated), Bel Air Second Addition, an addition to the City of Kearney, Buffalo County, Nebraska and part of 66th Street Place, a street in the City of Kearney, and part of Avenue L, a street in the City of Kearney (west of the intersection of Avenue N and 66th Street) and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Clouse seconded the motion to close the hearing and suspend the rules for Ordinance No. 7707. 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. Nay: Lear. 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. 7707 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. Nay: Lear. Motion carried. Ordinance was read by number.

Moved by Clouse seconded by Kearney that Ordinance No. 7707 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: Lear. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7707 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.

**FINAL PLAT AND SUBDIVISION AGREEMENT FOR STAROSTKA VIEW ADDITION**

Moved by Kearney seconded by Lammers to remove from the table Public Hearing 3 on the final plat and subdivision agreement for Starostka View Addition. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

Public Hearings 1, 2, 3 and 4 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Buffalo Surveying Corp. (Applicant) for Starostka Group Unlimited, Inc. (Owner) for the Final Plat and Subdivision Agreement for Starostka View Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as Lots 1 through 5 inclusive of Block 3, all of Avenue L, a street in the City of Kearney as it abuts said Lot 5 of Block 3 on the east, all that part of 66th Street Place, a street in the City of Kearney as it abuts said Lots 1 through 5 inclusive of Block 3, and all that part of 66th Street Place, a street in the City of Kearney as it abuts the aforescribed part of Avenue L on the north, all in Bel Air Second Addition, an addition to the City of Kearney, Buffalo County, Nebraska; TOGETHER WITH Lot 5 of Block 2, and all that part of 66th Street Place, a street in the City of Kearney as it abuts said Lot 5 of Block 2 on the north, all in Bel Air Fourth Addition, an addition to the City of Kearney, Buffalo County, Nebraska (said lots and streets to be vacated) (west of the intersection of Avenue N and 66th Street) and to consider Resolution No. 2012-34.

Moved by Kearney seconded by Lammers to close the hearing and adopt **Resolution No. 2012-34** approving the Application submitted by Buffalo Surveying Corp. (Applicant) for Starostka Group Unlimited, Inc. (Owner) for the Final Plat and Subdivision Agreement for Starostka View Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as Lots 1 through 5 inclusive of Block 3, all of Avenue L, a street in the City of Kearney as it abuts said Lot 5 of Block 3 on the east, all that part of 66th Street Place, a street in the City of Kearney as it abuts said Lots 1 through 5 inclusive of Block 3, and all that part of 66th Street Place, a street in the City of Kearney as it abuts the aforescribed part of Avenue L on the north, all in Bel Air Second Addition, an addition to the City of Kearney, Buffalo County, Nebraska; TOGETHER WITH Lot 5 of Block 2, and all that part of 66th Street Place, a street in the City of Kearney as it abuts said Lot 5 of Block 2 on the north, all in Bel Air Fourth Addition, an addition to the City of Kearney, Buffalo County, Nebraska (said lots and streets to be vacated) (west of the intersection of Avenue N and 66th Street). Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lammers. Nay: Lear. Motion carried.

**RESOLUTION NO. 2012-34**

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of Starostka View Addition, an addition to the City of Kearney, Buffalo County, Nebraska for Lots 1 through 5, inclusive, Block Three, all of Avenue "L", a street in the City of Kearney, Buffalo County, Nebraska as it abuts said Lot 5, Block Three on the East, all that part of 66th Street Place, a street in the City of Kearney as it abuts said Lots 1 through 5, inclusive, Block Three, and all that part of 66th

Street Place as it abuts the aforescribed part of Avenue "L" on the North, all in Bel Air Second Addition, together with Lot 5, Block Two, and all that part of 66th Street Place, a street in the City of Kearney, as it abuts said Lot 5, Block Two on the North, all in Bel Air Fourth Addition, all being located in the City of Kearney, Buffalo County, Nebraska, with the aforescribed lots and streets now vacated and located in the Southeast Quarter of the Northeast Quarter of Section 24, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, all being more particularly described as follows: Referring to the Southeast Corner of the Northeast Quarter of Section 24 and assuming the East line of the Northeast Quarter of said Section 24 as bearing  $N00^{\circ}08'04''E$  and all bearings contained herein are relative thereto; thence  $N00^{\circ}08'04''E$  on the East line of the Northeast Quarter of said Section 24 a distance of 343.0 feet; thence leaving the East line of the Northeast Quarter of said Section 24,  $N89^{\circ}46'30''W$  a distance of 50.0 feet to the Northeast Corner of Lot 8, Block Two of said Bel Air Second Addition, an addition to the City of Kearney, Buffalo County, Nebraska, said point also being the Southeast Corner of Lot 1, Block Two, Bel Air Fourth Addition, an addition to the City of Kearney, Buffalo County, Nebraska, and said point also being on the West line of Avenue "N", a street in the City of Kearney, Buffalo County, Nebraska; thence leaving the West line of said Avenue "N" and continuing  $N89^{\circ}46'30''W$  and on the line common with the North line of Lot 8, Block Two of said Bel Air Second Addition, and the South line of Block Two, of said Bel Air Fourth Addition a distance of 114.92 feet to the Northeast Corner of Lot 7 of said Block Two, Bel Air Second Addition; thence  $S85^{\circ}24'40''W$  on the line common with the North line of Lot 7 of said Block Two, Bel Air Second Addition and the South line of said Block Two, Bel Air Fourth Addition a distance of 100.19 feet; thence  $S86^{\circ}33'39''W$  on the line common with the North line of Lot 6 of said Block Two, Bel Air Second Addition and the South line of said Block Two, Bel Air Fourth Addition a distance of 92.91 feet to the ACTUAL PLACE OF BEGINNING, said point being the Southwest Corner of Lot 4 of said Block Two, Bel Air Fourth Addition; thence continuing  $S86^{\circ}33'39''W$  on the line common with the North line of said Lot 6, Block Two, Bel Air Second Addition and the South line of said Block Two, Bel Air Fourth Addition a distance of 7.20 feet to the Northeast Corner of Lot 5 of said Block Two, Bel Air Second Addition; thence  $S89^{\circ}56'55''W$  on the North line of said Block Two, Bel Air Second Addition a distance of 115.07 feet to the Northwest Corner of said Lot 5, Block Two, Bel Air Second Addition, said point being on the East line of said Avenue "L"; thence leaving the East line of said Avenue "L"  $N89^{\circ}52'13''W$  and on the North line of Lot 6 and Lot 7, if extended easterly of said Block Three, Bel Air Second Addition a distance of 254.92 feet to the Northwest Corner of said Lot 7, Block Three, Bel Air Second Addition; thence  $N83^{\circ}30'52''W$  on the North line of Lot 8 of said Block Three, Bel Air Second Addition a distance of 90.65 feet; thence  $N83^{\circ}28'03''W$  on the North line of Lot 9 of said Block Three, Bel Air Second Addition a distance of 179.18 feet to the Northwest Corner of said Lot 9, Block Three, Bel Air Second Addition, said point also being the Northeast Corner of Lot 9, Bel Air First Addition, an addition to the City of Kearney, Buffalo County, Nebraska; thence  $N89^{\circ}56'46''W$  on the North line of said Lot 9, Bel Air First Addition a distance of 77.84 feet to the Northwest Corner of said Lot 9, Bel Air First Addition, said point also being the Southwest Corner of Lot 2 of said Block Three, Bel Air Second Addition; thence  $N00^{\circ}06'18''E$  on the West line of said Block Three, Bel Air Second Addition a distance of 170.12 feet to the Northwest Corner Lot 1 of said Block Three, Bel Air Second Addition; thence  $N89^{\circ}52'02''E$  on the North line of said Block Three, and the North line of said 66th Street Place, Bel Air Second Addition, and the North line of Bel Air Fourth Addition and the North line of said 66th Street Place, Bel Air

Fourth Addition a distance of 723.30 feet to a point on the West line of Lot 4, if extended northerly, of said Block Two, Bel Air Fourth Addition; thence S00°08'40"W on the West line of said Lot 4, if extended northerly, Block Two, Bel Air Fourth Addition a distance of 199.18 feet to the place of beginning, containing 3.17 acres, more or less, Buffalo County, Nebraska duly made out, acknowledged and certified, and the same hereby is approved in accordance with the provisions and requirements of Section 19-916 of the Nebraska Revised Statutes, be accepted and ordered filed and recorded in the Office of the Register of Deeds of Buffalo County, Nebraska; said addition is hereby included within the corporate limits of said City and shall be and become a part of said City for all purposes whatsoever, and the inhabitants of such addition shall be entitled to all the rights and privileges and shall be subject to all laws, ordinances, rules and regulations of said City.

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

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

PASSED AND APPROVED THIS 10TH DAY OF APRIL, 2012.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

### **DEVELOPMENT PLANS FOR 66TH STREET PLACE AND AVENUE L**

Moved by Kearney seconded by Lammers to remove from the table Public Hearing 4 on the development plans for Starostka View Addition. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

Public Hearings 1, 2, 3 and 4 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Brungardt Engineering (Applicant) for Starostka Group Unlimited, Inc. (Owner) for Planned District Development Plan Approval for duplex development on property to be zoned District R-2/PD, Urban Residential Mixed-Density/Planned Development Overlay District for property described as proposed Lot 1 of Block 2, Starostka View Addition, an addition to the City of Kearney, Buffalo County, Nebraska (66th Street Place and Avenue L) and to consider Resolution No. 2012-35.

Moved by Lammers seconded by Buschkoetter to close the hearing and adopt **Resolution No. 2012-35** approving the Application submitted by Brungardt Engineering (Applicant) for Starostka Group Unlimited, Inc. (Owner) for Planned District Development Plan Approval for duplex development on property to be zoned District R-2/PD, Urban Residential Mixed-Density/Planned Development Overlay District for property described as proposed Lot 1 of Block 2, Starostka View Addition, an addition to the City of Kearney, Buffalo County, Nebraska (66th Street Place and Avenue L). Roll

call resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: Lear. Motion carried.

### **RESOLUTION NO. 2012-35**

WHEREAS, Brungardt Engineering (Applicant) for Starostka Group Unlimited, Inc. (Owner) have applied for Planned District Development Plan Approval for duplex development on property zoned District R-2/PD, Urban Residential Mixed-Density/Planned Development Overlay District and described as proposed Lot 1 of Block 2, Starostka View Addition, an addition to the City of Kearney, Buffalo County, Nebraska (66th Street Place and Avenue L).

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the application of Brungardt Engineering (Applicant) for Starostka Group Unlimited, Inc. (Owner) for Planned District Development Plan Approval for duplex development on property zoned District R-2/PD, Urban Residential Mixed-Density/Planned Development Overlay District and described as proposed Lot 1 of Block 2, Starostka View Addition, an addition to the City of Kearney, Buffalo County, Nebraska (66th Street Place and Avenue L) be approved subject to compliance with the following conditions:

1. The emergency hammerhead turn-around shall have a minimum width of 28 feet as required by the 2006 Edition of the International Fire Code, Appendix D, Figure D-103.1.
2. The developer is granted a 15-foot rear building setback deviation behind the duplexes and the tri-plex as the back of these units face onto the 40-acre detention cell owned by the City.

PASSED AND APPROVED THIS 10TH DAY OF APRIL, 2012.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

### **VACATE PORTION OF WINDSOR ESTATES SEVENTH AND CONSIDER FINAL PLAT FOR WINDSOR ESTATES ELEVENTH ADDITION**

Mayor Clouse opened the public hearing on the Applications submitted by Buffalo Surveying Corp. (Applicant) for Johnson Imperial Home Company (Owner) as follows: (1) vacate Lot 6, except the west 44.0 feet thereof and Lots 7 through 16 inclusive, all in Block Three, Windsor Estates Seventh Addition, an addition to the City of Kearney, Buffalo County, Nebraska, with said property being located in the Northwest Quarter of the Southeast Quarter of Section 26, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska and consider Ordinance No. 7714; and (2) the Final Plat for Windsor Estates Eleventh Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described above and located east of the intersection of 6th Avenue and 47th Street Place and consider Resolution No. 2012-51. Planning Commission recommended approval.

The applicant is revising the original development concept for the property that abuts the cul-de-sac at 47th Street Place east of 6th Avenue. There is one large existing duplex constructed on the northwest end of the property. Sixteen lots for eight duplexes

were originally platted as Windsor Estates Seventh Addition. The applicant would like to vacate the remaining undeveloped lots and replat the area with nine new lots (not including the existing duplex) for single-family construction. The zoning can remain R-2 since single-family housing is an allowable use in R-2 districts.

Lot 6 except the west 44.0 feet thereof and Lots 7 through 16 of Block 3, Windsor Estates Seventh Addition must be vacated and replatted as Windsor Estates Eleventh Addition.

The Preliminary and Final Plat for Windsor Estates Eleventh Addition consists of nine lots on 3.22 acres. The Preliminary Plat was approved by the Planning Commission on March 16, 2012. A Public Works Plan was previously submitted for this subdivision. All water, sewer and pavement improvements are in place. No Subdivision Agreement is required. A 10-foot wide drainage easement shall be maintained between Lots 4 and 5.

Mitch Humphrey from Buffalo Surveying presented this matter to the Council. The area is zoned R-2 and Johnson Imperial wants to re-divide the lots and retain the zoning. In this way they can have some flexibility to build single family homes or duplexes in that cul-de-sac. 47th Street Place does have one duplex on the north corner. The lot has been divided so they can sell half that duplex. The utilities and paving are in place. They want to vacate the lots that are there and come back with a new subdivision plat with eight lots so the size of the lots fit better with the plan and scheme of what they want to do. The property is surrounded by a wrought iron fence with brick pillars which will give the property a special look.

Nick Johnson from Johnson Imperial Home stated Lots 4 and 5 will remain the same size as the original. The other lots will be changed a little and will increase in size.

There was no one present in opposition to this hearing.

Moved by Lear to close the public hearing and introduced Ordinance No. 7714 on the Application to vacate Lot 6, except the west 44.0 feet thereof and Lots 7 through 16 inclusive, all in Block Three, Windsor Estates Seventh Addition, an addition to the City of Kearney, Buffalo County, Nebraska, with said property being located in the Northwest Quarter of the Southeast Quarter of Section 26, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska 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 close the hearing and suspend the rules for Ordinance No. 7714. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7714 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried. Ordinance was read by number.

Moved by Buschkoetter seconded by Clouse that Ordinance No. 7714 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7714 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.

Moved by Clouse seconded by Kearney to adopt **Resolution No. 2012-51** approving the Final Plat for Windsor Estates Eleventh Addition, an addition to the City of Kearney, Buffalo County, Nebraska. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried.

### **RESOLUTION NO. 2012-51**

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of Windsor Estates Eleventh Addition, an addition to the City of Kearney, Buffalo County, Nebraska for a tract of land being Lot 6, except the west 44.0 feet thereof, and Lots 7 through 16, inclusive, all now vacated, Block Three, Windsor Estates Seventh Addition, an addition to the City of Kearney, Buffalo County, Nebraska, with said part of Lot 6 and Lots 7 through 16, inclusive, now vacated, Block Three being located in the Northwest Quarter of the Southeast Quarter of Section 26, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, all more particularly described as follows: Referring to the Northwest Corner of the Southeast Quarter of Section 26, and assuming the North line of the Southeast Quarter as bearing N 89°50'37" E and all bearings contained herein are relative thereto; thence N 89°50'37" E on the North line of the Southeast Quarter of said Section 26 a distance of 1239.58 feet to the Northeast Corner of Lot 3, Block Three, Windsor Estates Seventh Addition, an addition to the City of Kearney, Buffalo County, Nebraska; thence S 00°01'49" W on the East line of said Lot 3, Block Three a distance of 150:0 feet to the ACTUAL PLACE OF BEGINNING, said point being the Southeast Corner of said Lot 3, Block Three, and said point also being the Northeast Corner of Lot 10, in said Block Three, Windsor Estates Seventh Addition; thence on the East line of Lots 10 and 11 in said Block Three, S 00°01'49" W a distance of 329.97 feet to the Southeast Corner of Lot 11 in said Block Three, thence on the South line of Lots 11 through 16, inclusive, in said Block Three, S 89°54' W a distance of 576.88 feet to the Southwest Corner of Lot 16 in said Block Three, said point being on the East right-of-way line of 6th Avenue, an avenue in the City of Kearney, Buffalo County, Nebraska; thence on the West line of Lot 16 in said Block Three and on the East right-of-way line of said 6th Avenue, N 00°06' W a distance of 134.67 feet to the Northwest Corner of said Lot 16, Block Three, said point also being on the South right-of-way line of 47th Street Place, a street in the City of Kearney, Buffalo County, Nebraska; thence leaving the East right-of-way line of 6th Avenue on the North line of Lots 16 through 13, inclusive, in said Block Three and on the South right-of-way line of 47th Street Place, N 89°54' E a distance of 372.25 feet to a point that intersects on the southerly right-of-way line of a 50.0 foot radius curve of a cul-de-sac, said point also being the Northeast Corner of Lot 13 in said Block Three; thence easterly on a non-tangent 50.0 foot radius curve of said cul-de-sac, concave

northerly, forming a central angle of 143°29'56" an arc distance of 124.91 feet to the Northwest Corner of Lot 11 in said Block Three; said point bears N 71°27'54" E a chord distance of 94.87 feet from said point of non-tangent curvature, said point also being the Southwest Corner of Lot 10 in said Block Three; thence continuing on said 50.0 foot radius curve of said cul-de-sac, concave southerly, forming a central angle of 142°37'19" an arc distance of 125.18 feet to the Southeast Corner of Lot 8 in said Block Three, said point bears N 71°39'54" W a chord distance of 94.87 feet from the Southwest Corner of said Lot 10, Block Three, said point also being on the North right-of-way line of said 47th Street Place; thence on the South line of Lots 8 through 6, inclusive, in said Block Three and on the North right-of-way line of said 47th Street Place, S 89°54' W a distance of 223.25 feet to the Southeast Corner of the West 44.0 feet of said Lot 6, Block Three; thence parallel with the West line of said Lot 6, Block Three, N 00°06' W a distance of 134.93 feet to the Northeast Corner of the West 44.0 feet of said Lot 6, Block Three; thence on the North line of Lots 6 through 10, inclusive, in said Block Three, N 89°50'37" E a distance of 428.63 feet to the place of beginning, containing 3.22 acres, more or less, Buffalo County, Nebraska duly made out, acknowledged and certified, and the same hereby is approved in accordance with the provisions and requirements of Section 19-916 of the Nebraska Revised Statutes, be accepted and ordered filed and recorded in the Office of the Register of Deeds of Buffalo County, Nebraska; said addition is hereby included within the corporate limits of said City and shall be and become a part of said City for all purposes whatsoever, and the inhabitants of such addition shall be entitled to all the rights and privileges and shall be subject to all laws, ordinances, rules and regulations of said City.

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

PASSED AND APPROVED THIS 10TH DAY OF APRIL, 2012.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**REZONING PROPERTY LOCATED WEST OF 69TH STREET AND AVENUE L**

Public Hearings 6, 7 and 8 were discussed together but voted on separately.

Council member Kearney vacated his chair and abstained from discussion and voting on the matter because of a possible conflict of interest.

Mayor Clouse opened the public hearing on the Application submitted by Buffalo Surveying Corp. (Applicant) for TWL, LLC, a Nebraska Limited Liability Company (Owner) to rezone from District AG, Agricultural District to District R-1, Urban Residential Single-Family District (Low Density) property described as being part of the East Half of the Northeast Quarter of Section 24, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (west of 69th Street and Avenue L) and to consider Ordinance No. 7715. Planning Commission recommended approval.

The applicant is requesting approval to rezone and subdivide 8.52 acres of land for single-family housing lots on the north side of the 40-acre Northeast Drainage Detention Cell owned by the City. Twenty new lots are proposed.

Although the rezoning exhibit states that the area is to be rezoned from AG to R-2, the property is in fact proposed for rezoning to R-1, Urban Residential Single-Family District. The area to be rezoned includes 8.5 acres. This rezoning is in conformance with the Future Land Use designation of "Low Density Residential" as depicted in the Comprehensive Development Plan of the City of Kearney.

The Preliminary and Final Plat for Bel Air Fifth Addition contain 20 proposed single-family lots on 8.52 acres. The Preliminary Plat was approved by Planning Commission on March 16, 2012. A Public Works Plan is provided. Lot 10, Block 3 of Bel Air Third Addition (outside this plat area) is reserved for stormwater management for Bel Air Third and Fifth Additions. This lot is unbuildable. Lots 1 and 2 of Block 4 are not included in the platted area even though 67th Street is extended to the west edge of Lot 2. This is because there is a very deep, large diameter sanitary sewer main that must be extended west along the rear property line of these lots. Staff believes that the magnitude of this construction would be overly disruptive to any resident that had built a house on one or both of these lots. In fact, the trunk line sewer will not benefit these lots as they will be served from the 8-inch sewer in 67th Street. The trunk line sewer will be extended in the future to serve future development to the west.

This property is contiguous to the existing City limits and can be served by City services as demonstrated on the Public Works Plan. Therefore, this property will be annexed into the corporate boundary of the City of Kearney.

Mitch Humphrey from Buffalo Surveying presented this matter to the Council. This site is across from the detention cell of the Starostka View Development. They are following a preliminary plat that was developed a number of years ago for this corridor. This plan provided for some access off of 69th Street and 67th Street for this property. The zoning map in the area shows R-1, but noted that Lots 1 through 5 south of 67th Street at one time were zoned R-2 and the area to the south is zoned R-2 and was platted as part of the Bel Air Third Addition. Bel Air Third Addition is pretty much developed at this time so Mr. Terveen is requesting some rezoning in the area to extend that same general concept to the west. The final plat shows extending 67th Street a little and coming in with Avenue L in a cul-de-sac and extending 69th Street and creating single family residential lots.

Along the north side of the detention cell and the southerly side of the TWL property there is a large sanitary sewer main that will serve north Kearney someday. It is one of those sewer lines that as soon as they extend it to the north and west, they will probably see some further development in north 2nd Avenue and up along the Glenwood Corners area. It was decided that it would be best not to create lots at this time because that sewer is large and deep. It did not make sense to create lots abutting or encompassing the ground where that sewer is because eventually the backyards of those lots will have to be dug up or alongside of the property for that sewer line.

Paul Brungardt, Brungardt Engineering stated for Bel Air Third Addition they had to put

a 12-inch clay pipe sanitary sewer down the middle of Avenue M. It is large and deep enough that they were able to cap it off of 67th Street with an 8-inch line which runs to the west, up the new street, ties into the dead end to the cul-de-sac bulb and up 69th Street to the northwest corner of the property. There is a 16-inch pipe that is running every mile down 69th Street which will be extended to the western most edge of the proposed development. 67th Street has an 8-inch line which will loop through and tie in so all 20 lots will be served. The reason they did not extend any sewer up 67th Street to the front of the two lots is because it would have prevented any type of development until that 30-inch line gets extended. They designed an open detention cell when they did Bel Air Third that collects the water, retains it and controls the discharge out into the NRD cell into the waterway. The water then heads down along the abandoned railroad tract. That cell was sized 5-6 years ago for this second development and for this phase. They are putting a series of curb inlets that will tip and drain down the east side of the new street and tie in and open up into an open ditch that will extend down and discharge into this cell. When the platted lot develops, they have sized the pipe according to where these open ditches will convert into closed conduit and reinforce concrete pipes that will drain into the detention cell.

There was no one present in opposition to this hearing.

Moved by Lammers to close the public hearing and introduced Ordinance No. 7715 on the Application submitted by Buffalo Surveying Corp. (Applicant) for TWL, LLC, a Nebraska Limited Liability Company (Owner) to rezone from District AG, Agricultural District to District R-1, Urban Residential Single-Family District (Low Density) property described as being part of the East Half of the Northeast Quarter of Section 24, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (west of 69th Street and Avenue L) 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 close the hearing and suspend the rules for Ordinance No. 7715. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney abstained. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7715 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney abstained. Motion carried. Ordinance was read by number.

Moved by Lear seconded by Buschkoetter that Ordinance No. 7715 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter. Nay: None. Kearney abstained. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7715 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.

**FINAL PLAT AND SUBDIVISION AGREEMENT FOR BEL AIR FIFTH ADDITION**

Public Hearings 6, 7 and 8 were discussed together but voted on separately.

Council member Kearney vacated his chair and abstained from discussion and voting on the matter because of a possible conflict of interest.

Mayor Clouse opened the public hearing on the Application submitted by Buffalo Surveying Corp. (Applicant) for TWL, LLC, a Nebraska Limited Liability Company (Owner) for the Final Plat and Subdivision Agreement for Bel Air Fifth Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as being part of the East Half of the Northeast Quarter of Section 24, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (west of 69th Street and Avenue L) and to consider Resolution No. 2012-52. Planning Commission recommended approval.

There was no one present in opposition to this hearing.

Moved by Buschkoetter seconded by Clouse to close the hearing and adopt **Resolution No. 2012-52** approving the Application submitted by Buffalo Surveying Corp. (Applicant) for TWL, LLC, a Nebraska Limited Liability Company (Owner) for the Final Plat and Subdivision Agreement for Bel Air Fifth Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as being part of the East Half of the Northeast Quarter of Section 24, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (west of 69th Street and Avenue L). Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear. Nay: None. Kearney abstained. Motion carried.

**RESOLUTION NO. 2012-52**

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of Bel Air Fifth Addition, an addition to the City of Kearney, Buffalo County, Nebraska for a tract of land being part of the East Half of the Northeast Quarter of Section 24, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Referring to the Northeast Corner of Section 24 and assuming the East line of the Northeast Quarter of Section 24 as bearing SOUTH and all bearings contained herein are relative thereto; thence N 89°51'35" W and on the North line of the Northeast Quarter of said Section 24 and on the North line of Bel Air Third Addition, an addition to the City of Kearney, Buffalo County, Nebraska a distance of 400.00 feet to the ACTUAL PLACE OF BEGINNING, said point being the Northwest Corner of said Bel Air Third Addition; thence continuing on the North line of the Northeast Quarter of said Section 24, N 89°51'35" W a distance of 362.00 feet; thence leaving the North line of the Northeast Quarter of said Section 24, SOUTH a distance of 301.82 feet; thence WEST a distance of 45.00 feet; thence SOUTH a distance of 381.21 feet; thence S 39°08'38" E a distance of 169.50 feet; thence S 38°56'30" W a distance of 181.00 feet to a point on a non-tangent, 313.00 foot radius curve, concave Northeasterly; thence Southeasterly on said non-tangent curve forming a central angle of 38°56'23" an arc distance of 212.72 feet to

a point being tangent to the South line of 67th Street, a street dedicated and shown on the final plat of said Bel Air Third Addition, said point of tangency bears S 70°31'49" E a chord distance of 208.65 feet from the previously described point, and with said point of tangency being on the West line of said Bel Air Third Addition; thence leaving said curve, non-tangent, NORTH and on the West line of said Bel Air Third Addition a distance of 66.00 feet to a point on the North line of said 67th Street; thence EAST on the North line of said 67th Street and continuing on the Northerly line of said Bel Air Third Addition a distance of 217.03 feet to the Southwest Corner of Lot 7, Block Two of said Bel Air Third Addition; thence leaving the North line of said 67th Street NORTH and continuing on the West line of said Bel Air Third Addition a distance of 957.93 feet to the place of beginning, containing 8.52 acres, more or less, Buffalo County, Nebraska duly made out, acknowledged and certified, and the same hereby is approved in accordance with the provisions and requirements of Section 19-916 of the Nebraska Revised Statutes, be accepted and ordered filed and recorded in the Office of the Register of Deeds of Buffalo County, Nebraska; said addition is hereby included within the corporate limits of said City and shall be and become a part of said City for all purposes whatsoever, and the inhabitants of such addition shall be entitled to all the rights and privileges and shall be subject to all laws, ordinances, rules and regulations of said City.

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

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

PASSED AND APPROVED THIS 10TH DAY OF APRIL, 2012.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

### **ANNEXATION OF BEL AIR FIFTH ADDITION**

Public Hearings 6, 7 and 8 were discussed together but voted on separately.

Council member Kearney vacated his chair and abstained from discussion and voting on the matter because of a possible conflict of interest.

Mayor Clouse opened the public hearing on the Application submitted by Buffalo Surveying Corp. (Applicant) for TWL, LLC, a Nebraska Limited Liability Company (Owner) for the annexation of Bel Air Fifth Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as being part of the East Half of the Northeast Quarter of Section 24, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (west of 69th Street and Avenue L) and to consider Resolution No. 2012-53. Planning Commission recommended approval.

There was no one present in opposition to this hearing.

Moved by Clouse seconded by Lammers to close the hearing and adopt **Resolution No. 2012-53** approving the Application submitted by Buffalo Surveying Corp. (Applicant) for TWL, LLC, a Nebraska Limited Liability Company (Owner) for the annexation of Bel Air Fifth Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as being part of the East Half of the Northeast Quarter of Section 24, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (west of 69th Street and Avenue L). Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney abstained. Motion carried.

### **RESOLUTION NO. 2012-53**

WHEREAS, an Application has been submitted by Buffalo Surveying Corp. (Applicant) for TWL, LLC, a Nebraska Limited Liability Company (Owner) for the inclusion of Bel Air Fifth Addition, an addition within the corporate boundaries of the City of Kearney said property described as a tract of land being part of the East Half of the Northeast Quarter of Section 24, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Referring to the Northeast Corner of Section 24 and assuming the East line of the Northeast Quarter of Section 24 as bearing SOUTH and all bearings contained herein are relative thereto; thence N 89°51'35" W and on the North line of the Northeast Quarter of said Section 24 and on the North line of Bel Air Third Addition, an addition to the City of Kearney, Buffalo County, Nebraska a distance of 400.00 feet to the ACTUAL PLACE OF BEGINNING, said point being the Northwest Corner of said Bel Air Third Addition; thence continuing on the North line of the Northeast Quarter of said Section 24, N 89°51'35" W a distance of 362.00 feet; thence leaving the North line of the Northeast Quarter of said Section 24, SOUTH a distance of 301.82 feet; thence WEST a distance of 45.00 feet; thence SOUTH a distance of 381.21 feet; thence S 39°08'38" E a distance of 169.50 feet; thence S 38°56'30" W a distance of 181.00 feet to a point on a non-tangent, 313.00 foot radius curve, concave Northeasterly; thence Southeasterly on said non-tangent curve forming a central angle of 38°56'23" an arc distance of 212.72 feet to a point being tangent to the South line of 67th Street, a street dedicated and shown on the final plat of said Bel Air Third Addition, said point of tangency bears S 70°31'49" E a chord distance of 208.65 feet from the previously described point, and with said point of tangency being on the West line of said Bel Air Third Addition; thence leaving said curve, non-tangent, NORTH and on the West line of said Bel Air Third Addition a distance of 66.00 feet to a point on the North line of said 67th Street; thence EAST on the North line of said 67th Street and continuing on the Northerly line of said Bel Air Third Addition a distance of 217.03 feet to the Southwest Corner of Lot 7, Block Two of said Bel Air Third Addition; thence leaving the North line of said 67th Street NORTH and continuing on the West line of said Bel Air Third Addition a distance of 957.93 feet to the place of beginning, containing 8.52 acres, more or less, Buffalo County, Nebraska; and

WHEREAS, the Kearney City Planning Commission has received and held a public hearing on March 16, 2012 on the inclusion of Bel Air Fifth Addition within the corporate limits and recommended the Kearney City Council approve said application; and

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

WHEREAS, a public hearing was held by the Kearney City Council relating to said application on April 10, 2012 who deemed the said addition to be included within the corporate limits to be advantageous to and in the best interests of the City.

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

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

PASSED AND APPROVED THIS 10TH DAY OF APRIL, 2012.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**VACATE PORTION OF ORIGINAL TOWN OF KEARNEY JUNCTION AND  
CONSIDER FINAL PLAT FOR KNOX ADDITION**

Mayor Clouse opened the public hearing on the Applications submitted by Trenton Snow (Applicant) for Sandra Adams, Successor Trustee of the Lucille Knox Living Trust as follows: (1) to vacate the east half of Lot 1755, Original Town of Kearney Junction now the City of Kearney, Buffalo County, Nebraska and consider Ordinance No. 7716; and (2) the Final Plat for Knox Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as the east half of Lot 1755, Original Town of Kearney Junction now the City of Kearney, Buffalo County, Nebraska (to be vacated), together with the vacated south 7.0 feet of 13th Street abutting said lot on the north and the vacated north half of 12th Street abutting said lot on the south, also together with the vacated west 17.0 feet of Avenue C as it abuts the vacated south 7.0 feet of 13th Street, Lot 1755 and the vacated north half of 12th Street all on the east (west side of Avenue C between 12th Street and 13th Street) and consider Resolution No. 2012-54. Planning Commission recommended approval.

The applicant is requesting approval to clean up an existing developed area of town that was never properly platted. The east half of Lot 1755, which is actually half of a city block, 140 feet by 300 feet, needs to be vacated so that four individual lots can be platted. There are three existing houses on this half block and an empty area large enough to accommodate a fourth house. The three existing houses and the open area become the four proposed lots.

Several street vacations have occurred over time on this half block. Therefore, the area to be vacated consists of the half block but the area to be platted includes street right-of-way that was previously vacated. The alley that would be on the west side of these lots was never dedicated but the residents in the area are driving on a gravel surfaced travel-way that functions like an alley. There is a ten-foot wide ingress-egress easement in this location shown on the plat to preserve access to the rear of the lots for the homeowners. The description of the land area reads as follows: The East half of Lot 1755, Original Town of Kearney Junction, together with the vacated south 7.0 feet of

13th Street abutting said lot on the north and the vacated north half of 12th Street abutting said lot on the south, together with the vacated west 17.0 feet of Avenue C as it abuts the vacated south 7.0 feet of 13th Street, Lot 1755 and the vacated north half of 12th Street all on the east.

The Preliminary and Final Plat of Knox Addition contain four lots on 1.25 acres. The Preliminary Plat was approved by Planning Commission on March 16, 2012. The proposed lots range from 65 feet to 102 feet in width. Three of the lots, Lots 1, 3 and 4 contain existing homes. Lot 2 can accommodate a house as well. No Public Works Plan is required as all improvements are in place. No Subdivision Agreement is required.

At the Planning Commission meeting, Commissioner McSweeney expressed concerns about the 10-foot ingress-egress easement that was previously mentioned. He asked if the City could somehow insure that the traveled surface will be maintained and that the traveled way would not be obstructed. City Planner explained that the City is no longer promoting the use of alleys and would not want to create one here. The ingress-egress easement is private in nature and disputes between the homeowners are civil disputes. The City will not get involved, nor will the City maintain the gravel within the easement. The City Attorney concurred with this opinion when the question was raised after the Planning Commission meeting.

Trenton Snow, 1309 Central Avenue, presented this matter to the Council. The whole block was originally one lot and Ms. Knox owned the east half of that lot, plus the vacated 12th Street below (half of that) and portion of the vacated Avenue C and 13th Street abutting those lots. Ms. Knox also owned three houses on that block and lived in the northwest home and rented out the bottom two. So to sell the property, they needed to vacate the original lot of the Original Town of Kearney Junction and replat these into four separate lots. Three of the lots have existing homes on them and Lot 2 is a buildable lot with the proper width for that area. City services are in existence in that area and homes have been lived in for numerous years. This is a way of making them salable lots for the open market.

There was no one present in opposition to this hearing.

Moved by Lammers to close the public hearing and introduced Ordinance No. 7716 on the Application submitted by Trenton Snow (Applicant) for Sandra Adams, Successor Trustee of the Lucille Knox Living Trust to vacate the east half of Lot 1755, Original Town of Kearney Junction now the City of Kearney, Buffalo County, Nebraska 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 close the hearing and suspend the rules for Ordinance No. 7716. 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. 7716 by number. Roll call of those in favor of

the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried. Ordinance was read by number.

Moved by Lear seconded by Buschkoetter that Ordinance No. 7716 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. 7716 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.

Moved by Buschkoetter seconded by Clouse to adopt **Resolution No. 2012-54** approving the Final Plat for Knox Addition, an addition to the City of Kearney, Buffalo County, Nebraska. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

#### **RESOLUTION NO. 2012-54**

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of Knox Addition, an addition to the City of Kearney, Buffalo County, Nebraska for a tract of land being the east half of Lot 1755, Original Town of Kearney Junction now the City of Kearney, Buffalo County, Nebraska (to be vacated), together with the vacated south 7.0 feet of 13th Street abutting said lot on the north and the vacated north half of 12th Street abutting said lot on the south, also together with the vacated west 17.0 feet of Avenue C as it abuts the vacated south 7.0 feet of 13th Street, Lot 1755 and the vacated north half of 12th Street all on the east, all in the City of Kearney, Buffalo County, Nebraska duly made out, acknowledged and certified, and the same hereby is approved in accordance with the provisions and requirements of Section 19-916 of the Nebraska Revised Statutes, be accepted and ordered filed and recorded in the Office of the Register of Deeds of Buffalo County, Nebraska; said addition is hereby included within the corporate limits of said City and shall be and become a part of said City for all purposes whatsoever, and the inhabitants of such addition shall be entitled to all the rights and privileges and shall be subject to all laws, ordinances, rules and regulations of said City.

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

PASSED AND APPROVED THIS 10TH DAY OF APRIL, 2012.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

#### **DEVELOPMENT PLANS FOR SCHROCK CHIROPRACTIC, 5911 2ND AVENUE**

Mayor Clouse opened the public hearing on the Application submitted by SKS Properties, LLC, a Nebraska Limited Liability Company, (Applicant) and Schrock

Chiropractic (Owner) for Planned District Development Plan Approval for the construction of an office building on property zoned District C-2/PD, Community Commercial/Planned Development Overlay District for property described as Lot 1 of Block 2, North Acre Fifth, an addition to the City of Kearney, Buffalo County, Nebraska (5911 2nd Avenue) and to consider Resolution No. 2012-55. Planning Commission recommend approval of the Development Plans for the office building subject to the submittal of a revised site plan.

The applicant is requesting approval of development plans for a proposed office building located at 5911 2nd Avenue. The property is zoned C-2/PD, Community Commercial District/Planned Development Overlay. The lot is approximately 1.40 acres in size. The project includes a free-standing office building with a footprint of 5,131 square feet and a second building to be constructed in the future. The second building is not part of this application. Staff has reviewed the development plans and offers the following comments:

a) The building has a full basement. Required parking is calculated based on the entire floor area at one parking space to 250 square feet of gross floor area. The applicant's calculations indicate 26 spaces are required and 30 are provided. It does not appear that the basement floor space was taken into account as 39 parking spaces are actually required. Therefore, the site plan must be revised to add nine additional parking spaces. At the Planning Commission meeting it was agreed that a revised site plan will be prepared for City Council showing all required parking.

b) The proposed stormwater cell is labeled as a "retention" cell and it appears to be designed to hold a minimum of four feet of water at all times with detention capacity above the existing pool elevation. The cell to the east also appears that it will hold water. The City of Kearney does not allow retention ponds. The City requires detention cells for stormwater runoff. The applicant indicated that the outfall pipe from the cell will be installed so that the cell drains properly and functions to the City's satisfaction as a detention cell.

c) The 35% required brick veneer on all street facing facades is provided.

d) A Landscape Plan is provided; however, street trees are required on all abutting streets and are only shown on two of the three streets abutting the site. The trees shown along 60th Street do not extend the length of the lot to the east. There are no trees along 2nd Avenue. The street trees need to be installed for the entire lot at this time. In this case, a total of 18 street trees are required and only 11 are provided. Seven more trees are required. At the Planning Commission meeting it was agreed that a revised site plan will be prepared for City Council showing all required tree plantings. The trees along 2nd Avenue are to be planted between the detention cell and the state right-of-way line.

e) The location of the trash enclosure is acceptable to the Utilities Department.

f) The applicant understands that the future building and associated improvements will require review and approval by Planning Commission and City Council in the future since the property is in a planned development overlay district.

Craig Thurston from Integrated Construction Management presented this matter to the Council. This will be a 4,980 square foot single story office building to be located in the northwest corner of the property. The plan is to build in the northwest corner to allow Dr. Schrock to develop the other half of the lot in the future. Tentatively, they have discussed using the other half for a tenant space or subdividing the property and selling

that other half of the lot. The site is a little over an acre, but he is only going to be using a half acre of the property.

There was no one present in opposition to this hearing.

Moved by Clouse seconded by Kearney to close the hearing and adopt **Resolution No. 2012-55** approving the Application submitted by SKS Properties, LLC, a Nebraska Limited Liability Company, (Applicant) and Schrock Chiropractic (Owner) for Planned District Development Plan Approval for the construction of an office building on property zoned District C-2/PD, Community Commercial/Planned Development Overlay District for property described as Lot 1 of Block 2, North Acre Fifth, an addition to the City of Kearney, Buffalo County, Nebraska (5911 2nd Avenue) subject to the submittal of a revised site plan addressing the following conditions: (1) The required parking is 39 parking spaces. (2) The City of Kearney does not allow retention ponds. The City requires detention cells for stormwater runoff. The outfall pipe from the cell will be installed so that the cell drains properly and functions to the City's satisfaction as a detention cell. (3) The 35 percent required brick veneer on all street facing facades is provided. (4) A Landscape Plan is provided; however, street trees are required on all abutting streets and are only shown on two of the three streets abutting the site. The trees shown along 60th Street shall extend the entire length of the lot to the east. The trees along 2nd Avenue are to be planted between the detention cell and the state right-of-way line. The street trees need to be installed for the entire lot at this time. In this case, a total of 18 street trees are required. (5) Any future building and associated improvements will require review and approval by Planning Commission and City Council. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried.

### **RESOLUTION NO. 2012-55**

WHEREAS, SKS Properties, LLC, a Nebraska Limited Liability Company, (Applicant) and Schrock Chiropractic (Owner) have applied for Planned District Development Plan Approval for the construction of an office building on property zoned District C-2/PD, Community Commercial/Planned Development Overlay District and described as Lot 1 of Block 2, North Acre Fifth, an addition to the City of Kearney, Buffalo County, Nebraska (5911 2nd Avenue).

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the application of SKS Properties, LLC, a Nebraska Limited Liability Company, (Applicant) and Schrock Chiropractic (Owner) for Planned District Development Plan Approval for the construction of an office building on property zoned District C-2/PD, Community Commercial/Planned Development Overlay District and described as Lot 1 of Block 2, North Acre Fifth, an addition to the City of Kearney, Buffalo County, Nebraska (5911 2nd Avenue) be approved subject to the submittal of a revised site plan addressing the following conditions:

1. The required parking is 39 parking spaces.
2. The City of Kearney does not allow retention ponds. The City requires detention cells for stormwater runoff. The outfall pipe from the cell will be installed so that the cell drains properly and functions to the City's satisfaction as a detention cell.
3. The 35 percent required brick veneer on all street facing facades is provided.
4. A Landscape Plan is provided; however, street trees are required on all abutting

streets and are only shown on two of the three streets abutting the site. The trees shown along 60th Street shall extend the entire length of the lot to the east. The trees along 2nd Avenue are to be planted between the detention cell and the state right-of-way line. The street trees need to be installed for the entire lot at this time. In this case, a total of 18 street trees are required.

5. Any future building and associated improvements will require review and approval by Planning Commission and City Council.

PASSED AND APPROVED THIS 10TH DAY OF APRIL, 2012.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**FINAL PLAT AND SUBDIVISION AGREEMENT FOR NORTHEAST INDUSTRIAL SIXTH SUBDIVISION**

Mayor Clouse opened the public hearing on the Application submitted by Miller & Associates (Applicant) for Gary and Mary Jo Henderson for the Final Plat and Subdivision Agreement for Northeast Industrial Sixth Subdivision, Buffalo County, Nebraska for property described as being part of the Northeast Quarter of the Northwest Quarter of Section 32, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska (southeast corner of East 39th Street and Box Butte Avenue) and to consider Resolution No. 2012-56. Planning Commission recommended approval.

The applicant is requesting approval to create a one-lot subdivision for future industrial expansion on East 39th Street. This property is located just east of the City Recycling Center on the south side of the street. The parcel is zoned M-1, Limited Industrial District and it contains 14.88 acres. A subdivision agreement has been signed that allows for future annexation of this property and waives the owner's rights to protest future improvement districts. An existing field access for farming is maintained by showing an ingress-egress easement on the east end of the property. When the property develops in the future, access will be taken from a driveway that lines up with Box Butte Avenue. No curb cuts will be allowed on East 39th Street. In the future, when additional property develops to the south that requires Box Butte Avenue, the street, water, and sewer will be installed and the owner will pay assessments for the portion that abuts his property. A Public Works Plan was previously submitted when this area was preliminary platted.

Craig Bennett from Miller & Associates presented this matter to the Council. This is a 14.88 acre tract located on east 39th Street. The comprehensive plan was brought before the Council in 1999 as a preliminary plat and portions of what was known as Northeast Industrial Subdivision was platted at that time. The current zoning is light industrial. On the north side of this property is the Kearney Recycling Center, the east and south sides are agricultural and on the northwest is the Essam warehouse and storage units. This parcel is agricultural and on the west side of it is platted, but not developed, Box Butte Avenue. As a part of this final plat there is a subdivision agreement that states that the owner waives the right to protest water and sewer. Box Butte Avenue would essentially have sanitary sewer possibly extended up through that for this region from about the Eaton area. On the north side is an existing water main

that would serve this site. On the south side of 39th Street is a force main that would be extended west across the south side of 39th Street to a manhole. This will be a one lot subdivision. On the preliminary plat, the east part was shown as phase II and also shown as proposed M-1 zoning at that time and location of Box Butte Avenue. With this one-lot subdivision, they have dedicated ten feet to give the adequate 100-foot of right-of-way along an arterial road. In addition to that, they show an ingress/egress easement that they want to obtain for agricultural purposes for access so they do not have to have another access onto 39th Street to serve the farm ground to the east.

There was no one present in opposition to this hearing.

Moved by Clouse seconded by Kearney to close the hearing and adopt **Resolution No. 2012-56** approving the Application submitted by Miller & Associates (Applicant) for Gary and Mary Jo Henderson for the Final Plat and Subdivision Agreement for Northeast Industrial Sixth Subdivision, Buffalo County, Nebraska for property described as being part of the Northeast Quarter of the Northwest Quarter of Section 32, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska (southeast corner of East 39th Street and Box Butte Avenue). Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried.

#### **RESOLUTION NO. 2012-56**

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of Northeast Industrial Sixth Subdivision of Buffalo County, Nebraska for a tract of land being part of the Northeast Quarter of the Northwest Quarter in 32, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Beginning at the Northeast corner of said Northwest Quarter in said Section 32 and assuming the North line of said Quarter as bearing S 00°27'59" W and all bearings contained herein are relative thereto; thence S 00°27'59" E and on said North line a distance of 979.37 feet to the East line of Box Butte Avenue as platted in Northeast Industrial Second Subdivision, Buffalo County, Nebraska, said point being on the South line of 39th Street; thence S 89°30'47" E on said East line a distance of 660.13 feet to the South line of the North Half of the Northwest Quarter; thence N 00°28'43" E on said South line a distance of 984.89 feet to the East line of said Northwest Quarter; thence N 89°02'02" W on said East line a distance of 659.95 feet to the Place of Beginning, containing 14.88 acres, more or less, including 0.22 acres of road right-of-way, 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 Subdivision Agreement, marked as Exhibit "A" attached hereto and made a part hereof by reference, be and is hereby approved and that the President of the Council be and is hereby authorized and directed to execute said agreement on behalf of the City of Kearney, Nebraska. Said Subdivision Agreement shall be filed with the final plat with the Buffalo County Register of Deeds.

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

PASSED AND APPROVED THIS 10TH DAY OF APRIL, 2012.

ATTEST:  
 MICHAELLE E. TREMBLY  
 CITY CLERK

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

**56TH STREET SINCLAIR PLAZA AUTOMATIC LIQUOR LICENSE RENEWAL**

Mayor Clouse stated the hearing on the automatic renewal of the liquor license held by Silent City, Inc., dba 56th Street Sinclair Plaza in connection with their Class B-43121 liquor license located at 5605 2nd Avenue West was withdrawn for the reason the license holder has complied with the City Council’s Liquor License Policy by submitting Certificates for its employees. Therefore, no action was taken.

**TARGET STORE T-0857 AUTOMATIC LIQUOR LICENSE RENEWAL**

Mayor Clouse stated the hearing on the automatic renewal of the liquor license held by STL of Nebraska, Inc., dba Target Store T-0857 in connection with their Class DK-77550 liquor license located at 4800 3rd Avenue was withdrawn for the reason the license holder has complied with the City Council’s Liquor License Policy by submitting Certificates for its employees. Therefore, no action was taken.

**IV. CONSENT AGENDA**

Moved by Kearney seconded by Lammers that Subsections 1 through 9 of Consent Agenda Item IV be approved. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

1. Approve Minutes of Regular Meeting held March 27, 2012.
2. Approve the following Claims:

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

Aflac \$3,196.16 ps; Amer First Aid \$427.11 smcs; Archer,C \$36.02 smcs; Arrow Seed \$594.00 smcs; ASCAP \$323.21 smcs; Ask Supply \$760.34 smcs; Audio Go \$707.79 smcs; Baker & Taylor \$2,725.35 smcs; Bamford \$283.66 smcs; Barney Abstract \$225.00 smcs; Bertrand Construction \$9,200.00 co; Big Rack Shack \$67.90 co; Bluecross Blueshield \$92,495.82 smcs; Bosselman Energy \$33,660.45 smcs; Broadfoot's \$357.50 smcs; Brodine,S \$69.00 smcs; Bruha,S \$360.00 smcs; Buffalo Co Sheriff \$131,438.25 smcs; Cash-Wa \$608.50 smcs; CH Diagnostic \$570.00 smcs; Charter \$89.24 smcs; Child's World \$630.40 smcs; City of Ky \$437,116.14 smcs,ps; Clark Intl \$50.00 smcs; Community Action Partner \$178.50 smcs; Cook Construction \$41,263.75 co; Copycat Printing \$662.21 smcs; Cornhusker \$119.00 smcs; Crapson,B \$65.00 smcs; CrimeReports \$1,188.00 smcs; Crossroads Ford \$1,529.00 smcs; Crouch Recreational \$11,120.00 co; D&M Security \$64.50 smcs; Dandee Concrete \$11,613.00

co; Dish Network \$68.70 smcs; DPC Industries \$2,154.27 smcs; Dugan \$300.24 smcs; Dutton-Lainson \$42.06 smcs; Eakes \$37,467.80 smcs,co; Easy Picker Golf Products \$579.90 smcs; Eirich,T \$50.00 smcs; Elliott Equipment \$2,411.00 smcs; ESRI \$6,768.22 smcs; Essam's Decorating \$5,547.94 co; Eustler,E \$40.00 smcs; Fireguard \$6,167.35 smcs,co; Flinn Paving \$4,018.70 smcs; Footjoy \$81.22 smcs; Frontier \$32.22 smcs; Gale \$1,460.38 smcs; Galls \$7.78 smcs; Gannon Travel Associates \$2,905.00 smcs; Gear for Sports \$569.76 smcs; Gough,P \$270.00 smcs; Great Amer Outdoor \$897.39 smcs; H&H Distributing \$1,080.60 smcs; Holiday Inn \$8,112.69 smcs; Hometown Leasing \$207.71 smcs; Honeywell First Responder \$19,623.81 smcs; ICMA RC \$3,755.71 ps; IRS \$108,642.36 ps; J&B Powder Coating \$600.00 smcs; Jack Lederman \$344.06 smcs; Jack's Uniforms \$248.94 smcs; Jacobs,J \$79.30 smcs; James,D \$140.00 smcs; Johnson Service \$2,364.90 smcs; Ky Crete & Block \$2,470.35 co; Ky Hub \$2,383.20 smcs; Ky United Way \$1,073.61 ps; Krull Ins \$1,950.00 smcs; Lawn Builders \$35.63 co; League of NE Municipalities \$425.00 smcs; Lindner,S \$111.00 smcs; Logan Contractors \$14,385.00 smcs; Lynaugh,J \$82.19 smcs; Magic Cleaning \$1,350.00 smcs; Marlatt Machine \$1,073.97 smcs; Matheson Tri-Gas \$550.21 smcs; McCarty,D \$59.80 smcs; Menards \$38.99 co; Metlife \$10,798.15 ps; Mid-American Signal \$342.96 smcs; Midlands Contracting \$55,502.40 smcs; Midwest Turf \$71,634.00 co; Miller & Associates \$119,106.49 smcs,co; Moonlight Embroidery \$167.00 smcs; Mostek Electric \$361.80 smcs; MPH Industries \$433.63 co; NDHHS \$40.00 smcs; NE Camera \$57.08 smcs; NE Child Support \$2,138.82 ps; NE Dept of Revenue \$52,215.88 smcs,ps; NE DOL/Office of Safety \$200.00 smcs; NE Planning & Zoning \$40.00 smcs; NE Public Health \$1,694.00 smcs; NE Society of CPAs \$125.00 smcs; NEland Distributors \$1,143.72 smcs; Neopost \$6,000.00 smcs; Northwestern Energy \$2,541.11 smcs; O'Keefe Elevator \$367.97 smcs; Olsson Associates \$4,060.00 smcs; Omaha World Herald \$88.40 smcs; Orr,L \$50.03 smcs; Pace,A \$75.00 smcs; Paramount \$64.69 smcs; Paulsen \$34,939.03 co; Payflex Systems \$535.50 smcs,ps; Peerless Machine \$15,830.00 co; Plexer Intl \$795.00 smcs; Presto-X \$85.00 smcs; Pulliam,R \$40.00 smcs; Random House \$100.00 smcs; Recorded Books \$738.92 smcs; Remington Arms \$675.00 smcs; Richardson,M \$266.00 smcs; Ritchie,L \$35.00 smcs; Roberts,J \$240.00 smcs; Rogers,K \$60.00 smcs; Sahling Kenworth \$2,666.24 smcs; Schindler Elevator \$1,156.23 smcs; Sign Center \$58.95 smcs; Sixel Consulting Group \$7,888.42 smcs; Snap-On Tools \$1,500.00 co; Snow,T \$300.00 smcs; Sorensen Group \$15,735.60 co; Stamm,D \$25.33 smcs; Star Tran \$336.00 smcs; State of NE/AS Central \$3,676.59 smcs,co; Sun Life Financial \$52,748.15 smcs; Sungard Public Sector \$12,200.00 co; Superior Signals \$8,315.00 smcs; Swails,K \$50.00 smcs; Taylormade \$100.42 smcs; Thompson Publishing \$323.99 smcs; Thompson,J \$19.99 smcs; Tielke's \$20.28 smcs; Titleist \$372.19 smcs; Tri-County Glass \$80.00 smcs; Turner's Body Shop \$6,462.85 smcs; Tye & Rademacher \$10,796.52 smcs; Union Bank & Trust \$55,049.61 ps; Unispace \$21,738.07 co; UNK \$3,473.71 smcs,ps; Van Diest Supply \$337.50 smcs; Verizon Wireless \$1,075.37 smcs; Village Uniform \$543.14 smcs; WT Cox Subscriptions \$10,007.09 smcs; Walters Electric \$582.89 smcs; Wellness Works \$250.00 ps; Wells Fargo Bank \$2,000.00 smcs; Wilke's True Value \$73.97 smcs; Williams,M \$436.50 smcs; Wilson,F \$40.00 smcs; Payroll Ending 3-24-2012 -- \$350,592.59. 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 to extend Conditional Use Permit No. 1995-02 granted to

Cathleen Headlee to locate a dog grooming business at 211 East 30th Street for a period of one year.

4. Adopt **Resolution No. 2012-58** approving the Developer Constructed Infrastructure Agreement between the City of Kearney and Dan Roeder for the construction of paving, water and sanitary sewer improvements for East 56th Street Estates.

**RESOLUTION NO. 2012-58**

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA that the agreement entitled "Developer Constructed Infrastructure Agreement for East 56th Street Estates" between the City of Kearney and Dan Roeder, to construct paving, storm sewer, water and sanitary sewer to serve East 56th Street Estates, an addition to the City of Kearney, Buffalo County, Nebraska be and is hereby accepted and approved. The Agreement, marked as Exhibit 1 is attached hereto, negotiated with Dan Roeder to construct said paving, storm sewer, water and sanitary sewer as stated above.

BE IT FURTHER RESOLVED that the President of the Council be and is hereby authorized and directed to execute the same agreement on behalf of the City of Kearney.

PASSED AND APPROVED THIS 10TH DAY OF APRIL, 2012.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

5. Adopt **Resolution No. 2012-59** approving the revised Kearney Public Library Policy Manual.

**RESOLUTION NO. 2012-59**

WHEREAS, the "Policy Manual for the Kearney Public Library and Information Center" of the Kearney Public Library and Information Center was adopted on September 12, 2006 by Resolution No. 2006-156; and

WHEREAS, the Library Advisory Board has determined it necessary to revamp the entire policy and has brought forward a new policy which was adopted by the City Council by Resolution No. 2008-57 on April 8, 2008.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the recommendation from the Library Advisory Board, on adopting a revised Kearney Public Library Policy Manual, a copy marked as Exhibit "A", attached hereto and made a part hereof, be and is hereby adopted.

BE IT FURTHER RESOLVED that the revised policy adopted in 2008 by Resolution No. 2008-57 be and is hereby repealed in its entirety.

PASSED AND APPROVED THIS 10TH DAY OF APRIL, 2012.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

6. Rebid the 2011 Part 6 Improvements consisting of Paving Improvement District No. 2010-946, Water District No. 2011-562 and Sanitary Sewer District No. 2011-502 for Country Club Lane from the south lot line of Lot 1 of Block Two, Aspen Meadows Second north to the north lot line of Lot 1 of Block One, Aspen Meadows Second; 37th Street from the west line of Country Club Lane to the west line of Lot 2 of Block Four, Meadowlark Estates Addition; and 25th Avenue Place from the north line of 37th Street to its terminus in a cul-de-sac and set the bid opening date for May 1, 2012 at 2:00 p.m.
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 Ag Pavilion located at the Buffalo County Fairgrounds, 3807 Avenue N, on May 5, 2012 from 4:00 p.m. until 12:00 a.m. for a reception.
8. 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 in a tent and fenced area located in the parking lot of Kearney Yamaha, 511 2nd Avenue, on May 17, 2012 from 4:00 p.m. until 10:00 p.m. for a sampling/tasting (alternate location inside Kearney Yamaha).
9. 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 located at the Buffalo County Fairgrounds, 3807 Avenue N, on May 19, 2012 from 4:00 p.m. until 12:00 a.m. for a fund raiser.

## **V. CONSENT AGENDA ORDINANCES**

### **ORDINANCE NO. 7717 AMENDING THE SALARY ORDINANCE**

Due to reorganization of the Development and Administrative Services functions it is recommended that the Salary Ordinance be amended as follows:

- The Assistant City Manager position will be reclassified to Assistant City Manager/Development Services Director with a pay grade adjustment from 33 to 37. The position will continue to serve as Assistant City Manager while directing the Development Services Department.
- The Human Resources Director position will be reclassified to Director of Administrative Services with a pay grade adjustment from 32 to 35. The position will act as Director of Human Resources, Risk Management, Information Systems and the Peterson Senior Activity Center.
- Additionally, the current Park Supervisor will receive Arborist Certification on April 4<sup>th</sup> becoming the only certified Arborist in Kearney.
- The Park Supervisor position will be reclassified to City Forester with a pay grade adjustment from 28 to 29.

The 2012 budgetary impact would be \$6,709.

Council Member Lammers introduced Ordinance No. 7717, being Subsection 1 of Agenda Item V repealing Ordinance No. 7699 and classify the officers and employees of the City; fix the ranges of compensation of such officers and employees; establish the hours and work period for overtime eligibility; provide for payments of clothing and/or uniform allowances; provide for payment of vehicle allowance; and provide for payment of cell phone allowance with an effective date of April 22, 2012, 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, Kearney, Buschkoetter, Lear, Lammers. 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. 7717 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, Lammers. Nay: None. Motion carried. Ordinance was read by number.

Moved by Lear seconded by Buschkoetter that Ordinance No. 7717 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7717 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. 7718 GRANTING FRANCHISE TO WINDSTREAM**

The City of Kearney has been working with Windstream to finalize a Franchise Agreement which complies with City Code. Windstream would like to expand its network within the City of Kearney. Sections 3-2801 through 3-2870 of the City Code govern telecommunications agreements and franchises within the City and require the provider to enter into a franchise Agreement with the City. Windstream has accepted the Franchise Agreement and provided a signed acceptance to the City. The Franchise Grant outlines the requirements for the placing of cabling or other facilities within the City right-of-way and also establishes insurance coverage requirements. There is no separate franchise fee; however, Windstream is obligated to pay the City occupation tax on telecommunication services.

Council Member Lammers introduced Ordinance No. 7718, being Subsection 2 of Agenda Item V granting Windstream of the Midwest, Inc. a non-exclusive franchise to construct, install, operate, maintain or otherwise locate telecommunication facilities in public ways within the City of Kearney, 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, Kearney, Buschkoetter, Lear, Lammers. 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. 7718 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, Lammers. Nay: None. Motion carried. Ordinance was read by number.

Moved by Lear seconded by Buschkoetter that Ordinance No. 7718 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers, Kearney. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7718 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

## **VI. REGULAR AGENDA**

### **ORDINANCE NO. 7718 VACATING ALLEY NORTH OF 22ND STREET AND EAST OF AVENUE M, SOUTH OF UPRR'S RIGHT-OF-WAY**

Mayor Clouse opened for discussion the application submitted by Buffalo Surveying (Applicant) for Gary Schaub and Daniel Roeder (Owner) to vacate the alley in Block 8, Whiteaker's Grove Addition to the City of Kearney lying north of the north right-of-way line of 22nd Street and south and west of the Union Pacific Railroad Company's right-of-way on the north and described as Lots 4 through 7, inclusive, that part of Lot 3 lying south of the Union Pacific Railroad right-of-way abutting on the east side of said alley, and Lots 8 through 13, inclusive, abutting on the west side of said alley (north of 22nd Street and east of Avenue M, south of the UPRR's right-of-way) and to consider Ordinance No. 7718. Planning Commission recommended that the alley be vacated in accordance with state law and a utility easement be retained.

The applicant is requesting approval to vacate the 14-foot wide north-south alley located just east of the Avenue N/M Overpass between 22nd Street and the railroad tracks. Section 16-611 of Nebraska Revised Statutes sets forth the requirements for vacation of streets and alleys in First Class Cities. After the alley is vacated, one half of the vacated right-of-way reverts to the property owner on each side and a utilities easement is established. In other words, the west property owner gets the west half of the vacated right-of-way and the east property owner gets the east half. The vacated alley right-of-way is retained as a utilities easement. Alternatively, since the City owns the alley right-of-way, the City Council could negotiate with the owners abutting the right-of-way to purchase it from the City.

City Attorney Mike Tye has contacted the Union Pacific Railroad corporate office to investigate the railroad's interest, if any, in this parcel. At the time of the Planning

Commission meeting he had not heard back from the railroad representatives. Hopefully, by the City Council meeting on April 10 he will have an answer.

Mitch Humphrey from Buffalo Surveying presented this matter. The interesting thing about this property is the proximity of this site relative to the railroad right-of-way. Back in the day, the Union Pacific Railroad was granted a lot of land that they could either retain as right-of-way or sell. Through the City of Kearney, they elected to retain the right-of-way as shown northerly. Back in the 1800's the Whiteaker family platted Whiteaker's Grove Addition and mapped Lots 1, 2, part of 3 and 17, 16 and part of 15 across that right-of-way. He found that fascinating to believe that a surveyor would make such a mistake because the Whiteakers could not plat and dedicate land because they did not own it.

He and City Attorney Mike Tye also have quite a history on this trying to figure out how to handle it. Mr. Tye has contacted the Union Pacific Railroad and made sure that they did not have any interest in the property consisting of half that alley. He did not think they would because they were not part of the platting process. Mr. Schaub initiated the request to vacate this alley. Gary Schaub owns the lots to the east side of the alley and Daniel Roeder owns the lots on the west side of the alley. The standard practice would be to split that alley 50/50. In this case, Mr. Schaub wants to acquire the half of the alley abutting his property and the balance of the alley being the west half of the alley. The little strip along that railroad right-of-way would go to Mr. Roeder.

Council Member Buschkoetter introduced Ordinance No. 7718, being Subsection 1 of Agenda Item VI vacating the alley in Block 8, Whiteaker's Grove Addition to the City of Kearney lying north of the north right-of-way line of 22nd Street and south and west of the Union Pacific Railroad Company's right-of-way on the north and described as Lots 4 through 7, inclusive, that part of Lot 3 lying south of the Union Pacific Railroad right-of-way abutting on the east side of said alley, and Lots 8 through 13, inclusive, abutting on the west side of said alley (north of 22nd Street and east of Avenue M, south of the UPRR's right-of-way), 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, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7718 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried. Ordinance was read by number.

Moved by Clouse seconded by Kearney that Ordinance No. 7718 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance,

Ordinance No. 7718 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.

**REDEVELOPMENT PROJECT IN AREA 5; LOPER SUITES, 2114 14TH AVENUE**

Mayor Clouse opened for discussion the redevelopment project known as Loper Suites in Redevelopment Area #5 for an area described as the south 49 feet of Lot 2, all of Lots 3, 4, 5, 6, 9, 10, and the south 49 feet of Lot 11, all in Block 9, Kearney Land & Investment Company 2nd Addition to the City of Kearney, Buffalo County, Nebraska, excepting therefrom the west 92 feet of Lot 7 and the west 92 feet of the south 30 feet of Lot 8, Block 9 thereof (2214 14th Avenue) and to consider Resolution No. 2012-60.

Assistant City Manager Suzanne Brodine presented this matter to the Council. He stated on April 2, 2012 the Kearney Community Redevelopment Authority (CRA) considered a Tax Increment Financing (TIF) application submitted by Mark Benjamin and Mike Kalb, on behalf of Great Western Properties for a 25-unit housing development project located in Area 5.

The CRA recognized that significant blight and substandard factors exist in the area and that redevelopment in Area 5, particularly housing, would be beneficial to the City of Kearney. This TIF project ameliorates such factors on the project site and creates a substantial investment in land purchase, site preparation and infrastructure which would not be possible without tax increment financing. The property has not yet been purchased by the developer, although an option agreement is in place. Purchase price and infrastructure costs including dirt work, water and sewer infrastructure, drainage, and paved parking pose a significant impact on development. Total estimated eligible costs are \$398,465.46.

The total new valuation of the property is estimated to be \$1,275,000. The most recent valuation was \$234,755.00. This project is estimated to generate an increased tax increment of \$1,040,245.00.

Up to \$325,000 of the increased tax increment will be used to pay for eligible land, site preparation, and infrastructure costs over a period of up to 15 years. The TIF period will end as soon as the cap has been met to provide the quickest increase in revenues to taxing authorities.

Moved by Kearney seconded by Lammers to adopt **Resolution No. 2012-60** approving redevelopment project known as Loper Suites in Redevelopment Area #5 for an area described as the south 49 feet of Lot 2, all of Lots 3, 4, 5, 6, 9, 10, and the south 49 feet of Lot 11, all in Block 9, Kearney Land & Investment Company 2nd Addition to the City of Kearney, Buffalo County, Nebraska, excepting therefrom the west 92 feet of Lot 7 and the west 92 feet of the south 30 feet of Lot 8, Block 9 thereof (2214 14th Avenue) . Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear, Lammers. Nay: None. Motion carried.

**RESOLUTION NO. 2012-60**

WHEREAS, the City of Kearney, Nebraska, a municipal corporation and city of the first class, has determined it be desirable to undertake and carry out urban redevelopment projects in areas of the City which are determined to be substandard and blighted and in need of redevelopment; and

WHEREAS, the Nebraska Community Development Law, Chapter 18, Article 21, Nebraska Reissue Revised Statutes of 1991, as amended (the "Act"), prescribes the requirements and procedures for the planning and implementation of redevelopment projects; and

WHEREAS, the City has declared an area of the City to be substandard and blighted and in need of redevelopment pursuant to the Act; and

WHEREAS, the Community Redevelopment Authority of the City of Kearney, Nebraska (the "Authority"), has prepared a Redevelopment Plan for Area #5 pursuant to Section 18-2111 of the Act ("Redevelopment Plan"), and recommended the Redevelopment Plan to the Planning Commission of the City; and

WHEREAS, the Planning Commission of the City reviewed the Redevelopment Plan pursuant to the Act and submitted its recommendations, if any, to the Authority, pursuant to Section 18-2114 of the Act; and

WHEREAS, in accordance with Section 18-2114 of the Act, the Authority submitted its recommendation, along with the recommendation from the Planning Commission to the City Council; and

WHEREAS, following consideration of the recommendations of the Planning Commission and the Authority, and following the public hearing with respect to the Redevelopment Plan, the City approved the Plan; and

WHEREAS, there has been presented to the City by the Authority for approval pursuant to and in accordance with Section 18-2119 of the Act a specific Redevelopment Project within the Redevelopment Plan and as authorized in the Redevelopment Plan, as legally described as a tract of land described as the south 49 feet of Lot 2, all of Lots 3, 4, 5, 6, 9, 10, and the south 49 feet of Lot 11, all in Block 9, Kearney Land & Investment Company 2nd Addition to the City of Kearney, Buffalo County, Nebraska, excepting therefrom the west 92 feet of Lot 7 and the west 92 feet of the south 30 feet of Lot 8, Block 9 thereof; and

WHEREAS, the City Council has determined that the proposed Redevelopment Project would not be economically feasible without the use of tax increment financing; that the proposed Redevelopment Project would not occur in the community without the use of tax increment financing, and; that the costs and benefits of the proposed Redevelopment Project have been found to be in the long-term best interests of the community.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska that:

1. The Redevelopment Plan of the City previously approved for the area described on the attached Exhibit "A", including the Redevelopment Project legally described as a tract of land described as the south 49 feet of Lot 2, all of Lots 3, 4, 5, 6, 9, 10, and the south 49 feet of Lot 11, all in Block 9, Kearney Land & Investment Company 2nd Addition to the City of Kearney, Buffalo County, Nebraska, excepting therefrom the west 92 feet of Lot 7 and the west 92 feet of the south 30 feet of Lot 8, Block 9 thereof, is hereby determined to be feasible and in conformity with the general plan for the development of the City of Kearney as a whole and the Redevelopment

Plan, including the Redevelopment Project identified on Exhibit "A", is in conformity with the legislative declarations and determinations set forth in the Act.

2. The City Council hereby determines that the proposed Redevelopment Project would not be economically feasible without the use of tax increment financing; that the proposed Redevelopment Project would not occur in the community without the use of tax increment financing, and; that the costs and benefits of the proposed Redevelopment Project are found to be in the long-term interests of the community.

3. Approval of the Redevelopment Plan is hereby ratified and reaffirmed, as amended by this Resolution, and the Authority is hereby directed to implement the Redevelopment Plan in accordance with the Act.

4. Pursuant to Section 18-2147 of the Act, ad valorem taxes levied upon real property in a redevelopment project for the benefit of any public body, included or authorized in the Plan which is legally described as a tract of land described as the south 49 feet of Lot 2, all of Lots 3, 4, 5, 6, 9, 10, and the south 49 feet of Lot 11, all in Block 9, Kearney Land & Investment Company 2nd Addition to the City of Kearney, Buffalo County, Nebraska, excepting therefrom the west 92 feet of Lot 7 and the west 92 feet of the south 30 feet of Lot 8, Block 9 thereof, shall be divided, for a period not to exceed 15 years after the effective date of the provision, which effective date shall be identified in the Project Redevelopment Contract, as follows:

a. That portion of the ad valorem tax which is produced by the levy at the rate fixed each year by or for each public body upon the redevelopment project valuation (as defined in the Act) shall be paid into the funds of each such public body in the same proportion as are all other taxes collected by or for the body; and

b. That portion of the ad valorem tax on real property in the redevelopment project in excess of such amount, if any, shall be allocated to and, when collected, paid into a special fund of the Authority to be used solely to pay the principal of, the interest on, and any premiums due in connection with the bonds, of loans, notes or advances of money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such Authority for financing or refinancing, in whole or in part, the redevelopment project. When such bonds, loans, notes, advances of money, or indebtedness, including interest and premiums due, have been paid, the Authority shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon taxable real property in such a redevelopment project shall be paid into the funds of the respective public bodies.

c. Any interest and penalties due for delinquent taxes shall be paid into the funds of each public body in the same proportion as are all other taxes collected by or for the public body.

5. The President and City Clerk are authorized and directed to execute and file with the Treasurer and Assessor of Buffalo County, Nebraska, an Allocation Agreement and Notice of Pledge of Taxes with respect to the Redevelopment Project substantially in the form attached hereto as Exhibit "B" with appropriate insertions.

PASSED AND APPROVED THIS 10TH DAY OF APRIL, 2012.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**OPEN ACCOUNT CLAIMS: NPPD - \$2,760.00**

Moved by Lammers seconded by Lear that the Account Claim in the amount of \$2,760.00 payable to Nebraska Public Power District be allowed. Roll call resulted as follows: Aye: Buschkoetter, Lear, Lammers, Kearney. Nay: None. Clouse abstained. Motion carried.

## **VII. REPORTS**

None.

## **VIII. ADJOURN**

Moved by Kearney seconded by Lammers that Council adjourn at 8:44 p.m. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Kearney, Buschkoetter. Nay: None. Motion carried.

**ATTEST:**

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

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**MICHAELLE E. TREMBLY  
CITY CLERK**