

Kearney, Nebraska
June 12, 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 June 12, 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. Absent: Bob Lammers. Michael Morgan, City Manager; Michael Tye, City Attorney; Suzanne Brodine, Assistant City Manager/Development Services Director; Wendell Wessels, Director of Finance; Kirk Stocker, Director of Utilities; Rod Wiederspan, Director of Public Works; Dan Lynch, Chief of Police; Shawna Erbsen, Administrative Services Director; and Jim Lynaugh, Airport Manager were also present. Some of the citizens present in the audience included: Mitch Humphrey, Joe Sobotka, Craig Bennett, Jacque Haupt, Phil Jossi, Mike Ostroski, Shannon Poggendorf, Noah Updegraf, Steve Altmaier from KGFW Radio, Mike Konz and Mary Jane Skala from Kearney Hub.

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

I. ROUTINE BUSINESS

INVOCATION

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

PLEDGE OF ALLEGIANCE

Two Boy Scouts from Troop 158 led the Council members and audience in the Pledge of Allegiance.

ANNOUNCEMENT

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

ORAL COMMUNICATIONS

There was no Oral Communications.

II. UNFINISHED BUSINESS

There was no Unfinished Business.

III. PUBLIC HEARINGS

REZONING NORTHEAST CORNER OF 20TH AVENUE AND 39TH STREET

Mayor Clouse opened the public hearing on the Application submitted by Joe Sobotka (Applicant and Owner) to rezone from District R-3/PD, Urban Residential Multi-Family District (Medium Density)/Planned Development Overlay District to District C-O/PD, Office/Planned Development Overlay District property described as Lot 2, Colonial Estates 5th Addition, a replat of Block 2, Colonial Estates 4th Addition to the City of Kearney, Buffalo County, Nebraska (northeast corner of 20th Avenue and 39th Street) and consider Ordinance No. 7728. Planning Commission recommended approval.

The applicant is requesting rezoning from District R-3/PD to District C-O/PD for the large undeveloped lot at the northeast corner of 20th Avenue and 39th Street for a potential medical office development. This parcel is platted as Lot 2 of Colonial Estates 5th Addition and is 1.287 acres in size. The 39th Street corridor is characterized by a mixture of uses with several apartment complexes, a bank, a counseling service and a convenience store in proximity to the subject site. The Future Land Use Map of the City of Kearney Comprehensive Development Plan depicts this property as "Mixed Use 1." Even though the property is surrounded by high density residential zoning, staff believes that the mixed use character of the area is accommodating to an office use type and therefore staff supports the rezoning. Staff also believes that it is important to keep the Planned District Overlay for this project. Development Plans will be submitted for Planning Commission and City Council review in the future.

Craig Bennett from Miller & Associates presented this matter to the Council. The comprehensive plan for this parcel is currently shown as a mixed use which is consistent with the zoning in this area. The proposed zoning will take it from R-3/PD to C-O/PD. Although this parcel is currently in the middle of R-3/PD, he noted that 39th Street corridor from east to west does have C-O inters pursued throughout. The proposed business will be a medical office building so it will be a consistent use for that area. The healthcare is a permitted use and the zoning requires a PD over the top of it. The access around the area is on the west side of this complex and around the east side of each of the apartment complexes. They are not asking to replat the parcel, only asking for the rezoning of the approximately 1.2 acres. There is a current pedestrian access on 39th Street with a flashing yellow for a school crossing with sidewalks encompassing it. There is currently water on the south and west side of this property, as well as sanitary sewer on both the south and west side.

There was no one present in opposition to this hearing.

Moved by Kearney to close the public hearing and introduced Ordinance No. 7728 on the Application submitted by Joe Sobotka (Applicant and Owner) to rezone from District R-3/PD, Urban Residential Multi-Family District (Medium Density)/Planned Development Overlay District to District C-O/PD, Office/Planned Development Overlay

District property described as Lot 2, Colonial Estates 5th Addition, a replat of Block 2, Colonial Estates 4th Addition to the City of Kearney, Buffalo County, Nebraska (northeast corner of 20th Avenue and 39th Street) and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Lear seconded the motion to close the hearing and suspend the rules for Ordinance No. 7728. 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, Kearney, Buschkoetter. Nay: None. Lammers absent. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7728 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Lear, Kearney, Buschkoetter. Nay: None. Lammers absent. Motion carried. Ordinance was read by number.

Moved by Lear seconded by Buschkoetter that Ordinance No. 7728 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear. Nay: None. Lammers absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7728 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.

AMEND LAND USE MAP FOR 1196 – 1202 62ND AVENUE

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

Mayor Clouse opened the public hearing on the Application submitted by Sutton Rentals, LLC (Applicant and Owner) for an amendment to the Land Use Map of the City of Kearney Comprehensive Development Plan from Agricultural Open to Rural Estates for property described as a tract of land being part of Government Lot 9 and part of Government Lot 10 together with and subject to a 30.0 foot ingress-egress easement road all located in Section 6, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (2,100 feet south of 62nd Avenue and 18th Street, and west 1,500 feet) and consider Resolution No. 2012-85. Planning Commission recommended approval.

The applicant is requesting a building permit to erect an outbuilding on property located west of town in the Two-Mile Extraterritorial Zoning District. The size of the property is 10.00 acres. The property takes access from a thirty-foot wide ingress-egress easement and can be reached by traveling 2,100 feet south of the intersection of 62nd Avenue and 18th Street and then west 1,500 feet on the easement road. This property has never been subdivided or rezoned and is zoned AG by default. In order for the Development Services Department to issue the required building permits, the property must be brought into conformance with City and State requirements.

Since the parcel is not more than 10 acres it must be put in a formal subdivision. The applicant is aware of this and has made application to Planning Commission to start the subdivision process.

In the meantime he is requesting approval to rezone the property to RR-1, Rural Residential District (Rural Standards). In order to rezone a parcel of property it must be in conformance with the Future Land Use Map of the City Comprehensive Development Plan, or the appropriate change to the land use map must be considered prior to rezoning. In this case, the current land use designation for the subject property is "Agricultural/Open" and the designation corresponding to the applicant's zoning request is "Rural Estates." The land use map and rezoning can move forward at this time while the applicant is working towards platting the land into a subdivision.

Mitch Humphrey from Buffalo Surveying presented this matter to the Council. Sutton Rentals owns this property which is located off of 62nd Avenue on the western fringe of Kearney's extraterritorial jurisdiction. The property in the 1970-1980's was developed initially by the owner into numerous 5-acre parcels with a 30-foot egress/ingress easement used along the property lines for the parcels for access. Since this property has been absorbed into the City's extraterritorial jurisdiction, the owner wants to rezone this property. However, in rezoning it to conform with City Code and to build on the property like he would like to do, they found that the state law reads that any parcel that is ten acres or less must be platted. After the action taken tonight, the same project will be presented before the Planning Commission to create a subdivision plat to be compliant with City Code. Mr. Humphrey stated that this will not have any adverse effect on any of the neighbors or use of their property. The area is a rural use now and that is what this owner will do with his property.

There was no one present in opposition to this hearing.

Moved by Buschkoetter seconded by Clouse to close the hearing and adopt **Resolution No. 2012-85** approving the Application submitted by Sutton Rentals, LLC (Applicant and Owner) for an amendment to the Land Use Map of the City of Kearney Comprehensive Development Plan from Agricultural Open to Rural Estates for property described as a tract of land being part of Government Lot 9 and part of Government Lot 10 together with and subject to a 30.0 foot ingress-egress easement road all located in Section 6, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (2,100 feet south of 62nd Avenue and 18th Street, and west 1,500 feet). Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear. Nay: None. Lammers absent. Motion carried.

RESOLUTION NO. 2012-85

WHEREAS, an application for a revision of the Land Use Map of the Comprehensive Plan has been filed in conjunction with and as a requisite part of its application for a change in the zoning for a tract of land being part of Government Lot 9 and part of Government Lot 10, located in Section 6, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Referring to the southeast corner of said Section 6 and assuming the east line of said Section 6 as bearing NORTH and all bearings contained herein are relative thereto; thence NORTH

on the east line of said Section 6 a distance of 525.7 feet; thence N87°19'20"W a distance of 1050.78 feet to the ACTUAL PLACE OF BEGINNING; thence continuing N87°19'20"W a distance of 1050.78 feet; thence NORTH a distance of 415.0 feet; thence S87°19'20"E a distance of 1050.78 feet; thence SOUTH a distance of 415.0 feet to the place of beginning, containing 10.0 acres, more or less. TOGETHER WITH AND SUBJECT TO, however, a 30.0 foot ingress-egress easement road with the centerline of said easement road being more particularly described as follows: Referring to the southeast corner of Section 6; thence NORTH on the east line of said Section a distance of 525.7 feet to the ACTUAL PLACE OF BEGINNING, said place of beginning being on the centerline of said 30 foot ingress-egress easement road; thence N87°19'20"W a distance of 1576.17 feet to the place of termination, all in Buffalo County, Nebraska (2,100 feet south of 62nd Avenue and 18th Street, and west 1,500 feet) from Agricultural Open to Rural Estates; and

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

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

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the Comprehensive Land Use Plan be and is hereby amended to change from Agricultural Open to Rural Estates the use classification for a tract of land being part of Government Lot 9 and part of Government Lot 10, located in Section 6, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Referring to the southeast corner of said Section 6 and assuming the east line of said Section 6 as bearing NORTH and all bearings contained herein are relative thereto; thence NORTH on the east line of said Section 6 a distance of 525.7 feet; thence N87°19'20"W a distance of 1050.78 feet to the ACTUAL PLACE OF BEGINNING; thence continuing N87°19'20"W a distance of 1050.78 feet; thence NORTH a distance of 415.0 feet; thence S87°19'20"E a distance of 1050.78 feet; thence SOUTH a distance of 415.0 feet to the place of beginning, containing 10.0 acres, more or less. TOGETHER WITH AND SUBJECT TO, however, a 30.0 foot ingress-egress easement road with the centerline of said easement road being more particularly described as follows: Referring to the southeast corner of Section 6; thence NORTH on the east line of said Section a distance of 525.7 feet to the ACTUAL PLACE OF BEGINNING, said place of beginning being on the centerline of said 30 foot ingress-egress easement road; thence N87°19'20"W a distance of 1576.17 feet to the place of termination, all in Buffalo County, Nebraska (2,100 feet south of 62nd Avenue and 18th Street, and west 1,500 feet).

PASSED AND APPROVED THIS 12TH DAY OF JUNE, 2012.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

REZONING 1196 – 1202 62ND AVENUE

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

Mayor Clouse opened the public hearing on the Application submitted by Sutton Rentals, LLC (Applicant and Owner) to rezone from District AG, Agricultural District to District RR-1, Rural Residential District (Rural Standards) property described as a tract of land being part of Government Lot 9 and part of Government Lot 10 together with and subject to a 30.0 foot ingress-egress easement road all located in Section 6, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (2,100 feet south of 62nd Avenue and 18th Street, and west 1,500 feet) and consider Ordinance No. 7729. Planning Commission recommended approval.

There was no one present in opposition to this hearing.

Moved by Clouse to close the public hearing and introduced Ordinance No. 7729 on the Application submitted by Sutton Rentals, LLC (Applicant and Owner) to rezone from District AG, Agricultural District to District RR-1, Rural Residential District (Rural Standards) property described as a tract of land being part of Government Lot 9 and part of Government Lot 10 together with and subject to a 30.0 foot ingress-egress easement road all located in Section 6, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (2,100 feet south of 62nd Avenue and 18th Street, and west 1,500 feet) 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 Kearney seconded the motion to close the hearing and suspend the rules for Ordinance No. 7729. 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, Kearney. Nay: None. Lammers absent. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7729 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, Kearney. Nay: None. Lammers absent. Motion carried. Ordinance was read by number.

Moved by Kearney seconded by Lear that Ordinance No. 7729 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lear, Kearney, Buschkoetter. Nay: None. Lammers absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7729 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.

REVISED PLANNED DISTRICT DEVELOPMENT PLAN FOR WALMART WAREHOUSE

Mayor Clouse opened the public hearing on the Application submitted by Harrison French & Associates LTD (Applicant) and Walmart Real Estate Business Trust (Owner) for Revised Planned District Development Plan Approval for the Walmart warehouse expansion on property zoned District C-2/PD, Community Commercial/Planned

Development Overlay District for property described as Lot 4 of Block One, Skiview Addition, an addition to the City of Kearney, Buffalo County, Nebraska (5411 2nd Avenue) and consider Resolution No. 2012-86. Planning Commission recommended approval subject to compliance with the following conditions: (1) the addition match and conform with the exterior of the existing building, and (2) before a building permit will be issued WalMart representatives must replace any trees that have died on the back side of the store and around the detention cell.

The applicant is requesting approval of revised development plans to construct a 10,000 square foot warehouse addition at the Kearney Walmart Store. As you know, any development that occurs in a planned development overlay district requires submittal of development plans for review and approval by Planning Commission and City Council. This building addition will be attached to the east or rear side of the store and will be used to store and manage inventory. Several years ago Walmart was using ship-to-shore cargo containers for this purpose and City staff suggested at that time a more permanent solution would be much better. The addition will be constructed of materials to match the existing building.

As part of this project, staff requests Walmart representatives to replace any trees that have died on the back side of the store and around the detention cell. This was to be done as part of the discussion regarding the cargo containers but to staffs' knowledge was never followed through. The applicant agreed to inventory the trees and replace any missing, dead, or damaged trees at the Planning Commission hearing.

Noah Updegraff from Harrison French & Associates presented this matter to the Council. The Kearney Walmart needs this addition because they have issues with stock. This 10,000 square foot addition will be attached to the two corridors in the back of the store. He confirmed that the issues with the trees will be taken care of according to the agreement.

Mayor Clouse stated at one time there was a discussion about storage of trailers and things in back of the store and asked if this would eliminate that. Mr. Updegraff stated that it would and was the reason they calculated the need to address that issue.

There was no one present in opposition to this hearing.

Moved by Lear seconded by Buschkoetter to close the hearing and adopt **Resolution No. 2012-86** approving the Application submitted by Harrison French & Associates LTD (Applicant) and Walmart Real Estate Business Trust (Owner) for Revised Planned District Development Plan Approval for the Walmart warehouse expansion on property zoned District C-2/PD, Community Commercial/Planned Development Overlay District for property described as Lot 4 of Block One, Skiview Addition, an addition to the City of Kearney, Buffalo County, Nebraska (5411 2nd Avenue). Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear. Nay: None. Lammers absent. Motion carried.

RESOLUTION NO. 2012-86

WHEREAS, Harrison French & Associates LTD (Applicant) and Walmart Real Estate

Business Trust (Owner) have applied for Revised Planned District Development Plan Approval for the Walmart warehouse expansion on property zoned District C-2/PD, Community Commercial/Planned Development Overlay District and described as Lot 4 of Block One, Skiview Addition, an addition to the City of Kearney, Buffalo County, Nebraska (5411 2nd Avenue).

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the application of Harrison French & Associates LTD (Applicant) and Walmart Real Estate Business Trust (Owner) for Revised Planned District Development Plan Approval for the Walmart warehouse expansion on property zoned District C-2/PD, Community Commercial/Planned Development Overlay District and described as Lot 4 of Block One, Skiview Addition, an addition to the City of Kearney, Buffalo County, Nebraska (5411 2nd Avenue) be approved subject to compliance with the following conditions:

1. The materials for the construction of the said building addition attached to the east or rear side of the store shall match and conform to the existing building.

2. Prior to the issuance of a building permit, Walmart representatives shall replace any trees that have died on the back side of the store and around the detention cell.

PASSED AND APPROVED THIS 12TH DAY OF JUNE, 2012.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

**REVISED PLANNED DISTRICT DEVELOPMENT PLAN FOR RETAIL BUILDING AT
7310 2ND AVENUE**

Mayor Clouse stated that the applicant requested this hearing be considered towards the end of the meeting to allow Mr. Thurston additional time to attend the meeting.

Mayor Clouse opened the public hearing on the Application submitted by Cowpoke (Applicant) and Dave Classen (Owner) for Revised Planned District Development Plan Approval for the construction of a retail building on property zoned District C-2/PD, Community Commercial/Planned Development Overlay District for property described as Lot 1, Elken Subdivision, a subdivision being part of the Southeast Quarter of the Southeast Quarter of Section 14, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (7310 2nd Avenue) and consider Resolution No. 2012-87. Planning Commission recommended approval.

In late 2007/early 2008 the applicant rezoned and subdivided a 5.90 acre tract of land located at 7310 2nd Avenue to develop a western feed and farm variety store selling western style clothing, animal feed, tack room equipment, etc. The property is zoned C-2/PD, Community Commercial/Planned Development Overlay District. Development plans were approved but the project proved to be financially challenging. In the interim, the applicant has been working on revisions to the plans that will reduce cost and hopefully make the project feasible to build. The entire 5.90 acres of land that are encompassed in this parcel are not necessary for development of this project. The owner is negotiating with local excavation contractors to cut the hill down to the west making that area buildable for future phase two projects. The revised development plans address the following issues:

a) Two buildings are proposed on the phase one site. The primary building is a farm and ranch store to be known as the Cowpoke that has been downsized from the original 7,000 square feet to 5,000 square feet. A smaller building is proposed to the west of the main store for feed storage. The main building has a rural store look with a covered porch and split-face block on the street facing facades north and east. The other facades are metal. There is a gable roof with asphalt shingles.

b) No City services are available to this site, perhaps for many years. The applicant signed a subdivision agreement in 2008 which will now be updated and revised as a Development Agreement. The agreement waives future protest rights for improvement districts, requires connection to said improvements, and requires annexation at such time the property can be annexed into the corporate limits of the City. Because of low anticipated water and sewage demand, the owner intends to install a holding tank in lieu of a septic leach field as it is not feasible to install septic given the proximity of this site to the community water well in Clearview Subdivision. A 1,000-foot separation is required. The holding tank will be monitored and pumped as needed.

c) This property fronts on Nebraska State Highway 10 and access is controlled through this stretch of highway by Nebraska Department of Roads. This public road to be known as 74th Street must be constructed to adequately serve the larger surrounding area to the west and north as development expands in the area. The 66-foot right-of-way is flared out to 83 feet as it approaches the highway providing for turn lanes. A north-south frontage or rearage road will eventually be constructed to access other properties with frontage on the State Highway as NDOR has limited access points in this area to the one that was previously discussed. The owner intends to pave 74th Street to the west end of the proposed approach to the facility, approximately 200 lineal feet in length. In the agreement, the owner agrees to complete the paving to the west property line of the 5.90 acre tract subject to a time period of ten (10) years from the date of issuance of occupancy or when additional future development occurs that requires extension of the road, whichever occurs sooner. A temporary cul-de-sac shall be installed where 74th Street ends.

d) A Public Works Plan was submitted in 2008 to demonstrate drainage and detention and paving of the public street. Since the paving will be constructed prior to installation of water and sewer lines, easements are required for future installation of these services. A 15-foot wide easement is provided along the south side of 74th Street and along the west side of Highway 10 for this purpose.

e) All parking, drive lanes, accesses, and maneuvering areas are to be improved with hard surfacing, either Portland cement concrete or asphaltic concrete. Crushed rock is not an acceptable surface. The only exception to this is the temporary cul-de-sac turnaround at the terminus of 74th Street. Twenty-five parking spaces are required and 26 are provided.

f) Fourteen street trees are proposed. These trees must be a minimum of 2-inch caliper. The owner is requesting a waiver for an underground irrigation system at this time. A separate well for irrigation purposes is planned and the trees and grass will be hand watered. The owner intends to use drought tolerant native species such as Buffalo Grass as opposed to Bluegrass. The agreement will require the owner to install an underground irrigation system at such time as the public sidewalk is required.

g) Public sidewalks are not required at this time, but will be installed as future development warrants per the agreement.

h) The dumpster shall be screened from view with a wooden or masonry enclosure.

Mitch Humphrey from Buffalo Surveying presented this matter to the Council. He stated that this project was presented in 2007-2008 for a piece of property that was owned by Ken and Eileen Richter. This property is about ¼ mile south of Glenwood Corners and across the street to the east is the Clearview Subdivision. Mr. Claussen would like to make a few modifications to the plan. He wants to downsize the building a little which would make it more economically viable. 74th Street will be paved as requested and he has signed the agreement. He will develop a portion of the overall lot and the remainder will remain undeveloped because of a hill that rises there which will require some work that he will do overtime.

Mike Konz, 325 Northview Drive, stated he is the secretary for the board of directors of the Home Owners Association for Clearview Subdivision. The Clearview Subdivision is located a ½ mile north of Menard's and has 28 homes that depend on the community well. The prime concern of the proposed project is the quality of their community well. The plan calls for a holding tank to be installed in the project to hold sewage and he did not know how the water is to be obtained. He questioned if the holding tank is installed, how will it be monitored and how will they know if there is leakage.

Mitch Humphrey stated that when Paul Brungardt, engineer for the project, made his presentation at the staff meetings he stated that the holding tank will have electronic monitoring. In layman's terms, it is very similar to how fuel tanks are monitored which are very safe and have been proven to work. He stated that it would be much safer than a septic system in that area. They could have that type system but they would have to move the leach field clear away from the municipal well. The optimal system for the neighborhood would be a sewer line which will happen eventually.

City Attorney Michael Tye added the placement of that system's leach field to a community well or other wells are governed by state law. Since those are state law issues, they will be monitored by the state rather than the City. They must comply with state law and the Department of Environment Quality (DEQ). Mr. Humphrey stated the 2008 plan showed a system that would pump the water up the hill to a leach field, but the new plan shows the holding tank. A new public works plan was submitted with the document that was presented to the Planning Commission showing the holding tank is to the west and little south of the building.

Mr. Konz stated the discussion did not really answer his question. Mr. Humphrey stated the tank would be similar to a fuel tank and the gauges were outside the tank so they could detect leakage. He did not know exactly how they work since he is not an engineer. City Attorney stated the State of Nebraska would monitor the system and if there were leakage or issues, they will come in and evaluate the problem. The City can assist in that process if they are asked to, but it is primarily the State's responsibility. The owner will submit reports based on the monitoring.

Mr. Konz asked if the Council approves this plan, would it be required that the holding tank be installed and used with no option for the leach field. City Attorney stated that is correct.

Mr. Konz stated their other concern was about traffic and stated he did not know if the

City could do anything about this. The highway has 5-lanes in that area and the speed limit is 55 mph. His concern is turning on to 2nd Avenue, the sight lines looking north and traffic entering the City is going to be 55 mph. It is possible with customers coming and going from the store that the traffic will tend to be in the inner lane. It could make it a little more complicated for people turning onto 2nd Avenue. They hope that the City would monitor this and if speed limit changes are necessary that they would ask the state to look at it. Mayor Clouse stated that it is under the state's control now, but with the completion of Cherry Avenue, the City would eventually have jurisdiction over it.

Director of Public Works Rod Wiederspan stated that north 2nd Avenue (Highway 10) was set up for the 5-lanes. The common turn lane in the middle is the fifth lane. This is one of the locations that was cited for an access onto 2nd Avenue. The State of Nebraska does have control access out there limiting that access. There is a street at Clearview and north of that the next drive will be for the Cowpoke. The road by the Cowpoke will be a public road so when any property to the north develops that will be their access point. They will not have direct access to the highway.

Mr. Konz commented the agreement the property owner signed agreed to waive any protest to connect to improvement districts and be annexed into the corporate limits of the City. He asked when they are annexed on the west into the City would the Clearview Subdivision on the east be required to be annexed. His neighborhood likes to be rural. City Manager Michael Tye stated that in order to be annexed the property has to be contiguous or adjacent to the property. The boundary lines have to touch. There is quite a ways to go before reaching their property.

Mr. Konz also noted there recently have been three house fires right outside the north boundaries of the City and the houses have burned to the ground. As the population grows northward, he asked that they take a look at fire protection strategies in that area. Mayor Clouse stated there is nothing planned in that particular area anytime soon, but is a concern in that rural area.

There was no one present in opposition to this hearing.

Moved by Kearney seconded by Lear to close the hearing and adopt **Resolution No. 2012-87** approving the Application submitted by Cowpoke (Applicant) and Dave Classen (Owner) for Revised Planned District Development Plan Approval for the construction of a retail building on property zoned District C-2/PD, Community Commercial/Planned Development Overlay District for property described as Lot 1, Elken Subdivision, a subdivision being part of the Southeast Quarter of the Southeast Quarter of Section 14, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (7310 2nd Avenue). Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear. Nay: None. Lammers absent. Motion carried.

RESOLUTION NO. 2012-87

WHEREAS, Cowpoke (Applicant) and Dave Classen (Owner) have applied for Revised Planned District Development Plan Approval for the construction of a retail building on property zoned District C-2/PD, Community Commercial/Planned Development Overlay District and described as Lot 1, Elken Subdivision, a subdivision

being part of the Southeast Quarter of the Southeast Quarter of Section 14, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (7310 2nd Avenue).

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the application of Cowpoke (Applicant) and Dave Classen (Owner) for Revised Planned District Development Plan Approval for the construction of a retail building on property zoned District C-2/PD, Community Commercial/Planned Development Overlay District and described as Lot 1, Elken Subdivision, a subdivision being part of the Southeast Quarter of the Southeast Quarter of Section 14, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (7310 2nd Avenue) be approved subject to compliance with the Development Agreement. Said Agreement, marked as Exhibit "A" is attached hereto and made a part hereof by reference.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized and directed to file the Development Agreement with the Buffalo County Register of Deeds.

PASSED AND APPROVED THIS 12TH DAY OF JUNE, 2012.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

PERMANENT UTILITY EASEMENT FOR 50TH STREET AND 17TH AVENUE

Mayor Clouse opened the public hearing on acquiring an interest in real property by purchase, dedication or eminent domain for a permanent utility easement of the following tract of land: the east ten feet of the north 45 feet of Lot 3, Block Two, Hoehner Estates Third Addition to the City of Kearney, Buffalo County, Nebraska AND the east 35 feet of the north 15 feet of Lot 1, Block One, Hoehner Estates Third Addition to the City of Kearney, Buffalo County, Nebraska and consider Resolution No. 2012-88.

Director of Public Works Rod Wiederspan presented this matter to the Council. At the February 28, 2012 Council meeting, the City Council approved the plans and specifications for the 2011 Part 9 Improvement Projects. These improvements included the construction of sanitary sewer, water main, storm sewer and paving for 50th Street from 17th Avenue to 300 feet west of 17th Avenue and the paving for 17th Avenue from 49th Street Place to 130 feet north of 50th Street. A permanent easement for the construction of the storm sewer is required to complete the construction. The owners of the property, Chris, Kyle, Sarah, Michele and Pat Hoehner have agreed to donate the permanent easement.

Section 18-1775 of the Nebraska Revised Statute requires that a City of the first class acquiring an interest in real property shall do so only after the governing body has authorized the acquisition by action taken in a public meeting after notice and a public hearing.

There was no one present in opposition to this hearing.

Moved by Buschkoetter seconded by Clouse to close the hearing and adopt **Resolution No. 2012-88** acquiring an interest in real property by purchase, dedication or eminent domain for a permanent utility easement of the following tract of land: the east ten feet

of the north 45 feet of Lot 3, Block Two, Hoehner Estates Third Addition to the City of Kearney, Buffalo County, Nebraska AND the east 35 feet of the north 15 feet of Lot 1, Block One, Hoehner Estates Third Addition to the City of Kearney, Buffalo County, Nebraska. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Kearney. Nay: None. Lammers absent. Motion carried.

RESOLUTION NO. 2012-88

WHEREAS, Section 18-1755, R.R.S., authorizes a city acquiring an interest in real property by purchase or eminent domain to do so only after the City Council has authorized the acquisition by action taken in a public meeting after notice and public hearing; and

WHEREAS, the City Council has held a public hearing upon the proposed acquisition for a permanent utility easement with regard to the expansion of 17th Avenue at approximately 50th Street and voted in favor to proceed with the acquisitions; and

WHEREAS, Christopher P. Hoehner, Kyle W. Hoehner, Sarah M. Hoehner, Michele D. Hoehner and Patricia L. Hoehner have granted to the City of Kearney, Nebraska a permanent utility easement as follows:

PERMANENT UTILITY EASEMENT

The east ten feet of the north 45 feet of Lot 3, Block Two, Hoehner Estates Third Addition to the City of Kearney, Buffalo County, Nebraska. AND the east 35 feet of the north 15 feet of Lot 1, Block 1, Hoehner Estates Third Addition to the City of Kearney, Buffalo County, Nebraska. The Easement and Map, marked as Exhibit "A", is attached hereto and made a part hereof by reference.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska that the permanent utility easement granted by Christopher P. Hoehner, Kyle W. Hoehner, Sarah M. Hoehner, Michele D. Hoehner and Patricia L. Hoehner to the City of Kearney be and are hereby approved and accepted.

PASSED AND APPROVED THIS 12TH DAY OF JUNE, 2012.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

CDBG APPLICATION FOR PHASE III COMMUNITY REVITALIZATION SUPPLEMENTAL FUNDS

Mayor Clouse opened the public hearing on the application to the Department of Economic Development for Community Development Block Grant for Phase III community revitalization supplemental funds and consider Resolution No. 2012-89.

Jacque Haupt from Miller & Associates presented this matter to the Council. The Comprehensive Revitalization program is a funding category within the Community Development Block Grant program funded and developed by the Nebraska Department of Economic Development. This program allows DED to conditionally guarantee grant

awards in 2009 and 2010 for 8 non-entitlement local governments, between 20,000 and 49,999 populations, based on the number of low- and moderate-income (LMI) persons residing in the community. The method for allocating funds through the CR category presents the following advantages:

- Ability to make greater impact through guaranteed funding for longer period of time;
- Larger, urban municipalities who are non-entitlement communities are eligible;
- CDBG funding is more effectively targeted to persons with lower incomes.

The targeted census tracts span an area west to east from Avenue C to Avenue N and north to south from 31st Street to Railroad Street. The census tracts are located in east central Kearney. These blocks require significant improvements to sidewalks to meet ADA guidelines and address paving gaps. Accessibility in the community is a top priority for the City as identified by the community surveys conducted for consideration of the special ½ cent sales tax.

The proposed project will encompass one year of funding for Community Revitalization activities. The total funds for the project from CDBG are estimated at \$175,000. Matching funds in the amount of \$163,000 will come from local sales tax funds, which brings the total cost of the project, including administration, to \$338,000.

The City is responsible for 1:1 leverage. Combining program funding and the sales tax money will provide the opportunity to serve the low- and moderate-income populations and to improve accessibility to the public facilities, business communities, and along major arterial streets that is the responsibility of the community.

The project will be completed Fall 2013, during which residents can expect to see a combination of improvements to sidewalks and accessible sidewalk ramps at intersections.

There was no one present in opposition to this hearing.

Moved by Clouse seconded by Kearney to close the hearing and adopt **Resolution No. 2012-89** approving the application to the Department of Economic Development for Community Development Block Grant for Phase III community revitalization supplemental funds. Roll call resulted as follows: Aye: Clouse, Lear, Kearney, Buschkoetter. Nay: None. Lammers absent. Motion carried.

RESOLUTION NO. 2012-89

WHEREAS, the Nebraska Department of Economic Development is offering an opportunity for Community Development Block Grant (CDBG) Community Revitalization (CR) grantee communities to submit an application to the Department for 2009 CDBG CR supplemental funds based on a reallocation of CDBG funds; and

WHEREAS, the City of Kearney, Nebraska, has obtained its citizens' comments on community development needs; and has conducted public hearing(s) upon the proposed application and received favorable public comment respecting the application which for an amount of \$175,000 for paving activities in the targeted area lying west to

east from Avenue C to Avenue N and north to south from 31st Street to Railroad Street in Kearney.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the City Council of the City of Kearney, that the Mayor be authorized and directed to proceed with the formulation of any and all contracts, documents or other memoranda between the City of Kearney and the Nebraska Department of Economic Development so as to effect acceptance of the community revitalization supplemental funds application.

PASSED AND APPROVED THIS 12TH DAY OF JUNE, 2012.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

IV. CONSENT AGENDA

Mayor Clouse stated that because he has a conflict of interest, Subsection 14 of the Consent Agenda will be removed and voted on separately.

Moved by Kearney seconded by Lear that Subsections 1 through 13 of Consent Agenda Item IV be approved. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Kearney, Lear. Nay: None. Lammers absent. Motion carried.

1. Approve Minutes of Regular Meeting held May 22, 2012.

2. Approve the following Claims:

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

Ace Hardware \$23.22 smcs; Aflac \$2,904.26 ps; Alamar Uniforms \$9,376.15 smcs,ps; Alfred Benesch \$2,242.29 co; Al-Jon Mfg \$986.21 smcs; Amer First Aid \$331.50 smcs; Anderson Ford \$19,837.00 co; Arctic Refrigeration \$125.94 smcs; Area Services \$157.50 smcs; Ask Supply \$743.19 smcs; Audio Go \$371.85 smcs; Baker & Taylor Books \$5,527.83 smcs; Bamford \$200.00 smcs; Barney Abstract \$1,590.00 smcs; Beau Jo's \$960.00 smcs; Beshaler,K \$45.00 smcs; Best Western \$1,741.99 smcs; Bike Shed \$3,060.00 co; Blankenship,C \$23.55 smcs; Bluecross Blueshield \$91,198.41 smcs; Bosselman \$39,929.47 smcs; Bradley,J \$8.00 smcs; Broadfoot's \$3,166.00 smcs; Bruha,S \$990.00 smcs; Buettner,M \$60.00 smcs; Buffalo Co Reg Deeds \$224.00 smcs; Buffalo Co Treasurer \$42,295.00 smcs; Bugay,A \$33.86 smcs; Builders Warehouse \$859.81 smcs,co; Cacy,A \$2.91 smcs; Canela,A \$12.94 smcs; Capital Business Systems \$1,031.98 smcs; Casey's \$359.92 smcs; Cash-Wa \$5,254.40 smcs; Central Contracting \$169.00 smcs; Central Fire & Safety \$65.00 co; Central States Wire \$5,360.85 smcs; CH Diagnostic \$585.00 smcs; Charter \$574.17 smcs; Chesterman \$1,715.61 smcs; CHS Agri Service \$1,644.53 smcs; City Glass \$50.00 smcs; City of Ky \$321,169.53 co,ps,smcs; Cole,J \$50.00 smcs; Colling,G \$1,230.00 co; Comfort Inn \$5,006.29 smcs; Community Action Partner \$101.50 smcs; Construction Rental

\$117.00 co; Copycat Printing \$289.37 smcs; Crites,C \$40.00 smcs; Crop Production Services \$83.50 smcs; Cummins Central Power \$655.20 smcs; Curb-It \$2,664.00 co; CVI Ky \$436.50 smcs; D&D Industries \$64.00 smcs; Dan Roeder Concrete \$472,220.10 co; Day Design \$1,850.00 co; Depository Trust \$1,645,840.00 ds; Dimas,J \$50.00 smcs; Dish Network \$137.40 smcs; Dmilaco \$70.46 smcs; DPC Industries \$20,977.15 smcs; DW Management \$2,500.00 smcs; Eakes \$2,834.27 smcs,co; Easy Picker Golf Products \$67.47 smcs; Eirich,T \$50.00 smcs; Elliott Equipment \$790.83 smcs; EMC Ins \$1,064.47 smcs; Emerson Network Power \$1,583.28 smcs; Engineered Controls \$1,700.00 smcs; Enslow Publishers \$15.95 smcs; Envision Ware \$1,866.85 smcs; Eppley Express \$4,155.00 smcs; Falk,S \$30.00 smcs; Faz,A \$578.96 smcs; Feld Fire \$619.23 smcs; Fireguard \$885.38 smcs; Fly,K \$500.00 smcs; Frontier \$176.68 smcs; Gale \$1,081.54 smcs; Galloway,D \$37.42 smcs; Galls \$491.46 smcs; Gangwish Turf \$160.20 smcs; Garrett Tires \$375.00 smcs; Gaylord Bros \$165.35 smcs; GE Money Bank \$2,595.81 smcs; Gear for Sports \$603.91 smcs; Gifstad,D \$11.37 smcs; Grand Island Independent \$187.48 smcs; Grand West \$2,000.00 co; Gronewoller,S \$22.56 smcs; H&H Distributing \$2,835.51 smcs; Hastings Tribune \$76.40 smcs; HD Supply \$6,858.00 co; Heibrun,K \$15.21 smcs; Hemshrot,D \$27.00 smcs; Highsmith \$90.58 smcs; HOA Solutions \$164.20 smcs; Home Thyme \$53.68 smcs; Hometown Leasing \$693.97 smcs,co; Horner,K \$359.00 smcs; ICMA RC \$3,876.91 ps; IRS \$113,233.45 ps; Investment Property \$3,750.00 smcs; Jack Lederman \$236.85 smcs; James,D \$1,550.00 smcs; Java Junction Espresso \$300.00 smcs; Jelineck,T \$800.00 smcs; Johnson Hardware \$1,919.00 co; Johnson Service \$13,540.00 smcs; Ky Comm Foundation \$30,386.00 smcs; Ky Concrete \$16,479.35 co; Ky Crete & Block \$305.65 co; Ky Humane Society \$6,825.00 smcs; Ky Implement \$99.22 smcs; Ky United Way \$678.74 ps; Ky Visitors Bureau \$32,510.50 smcs; Kehl Tree Service \$5,690.00 smcs; Kelly Electric \$3,059.47 smcs; Kendrick,C \$19.25 smcs; Knust,A \$43.36 smcs; Konica Minolta \$1,152.75 smcs; Kowalek,G \$211.52 smcs; Krepel,J \$248.00 smcs; Krull Ins \$1,950.00 smcs; Kushnick,K \$1,750.00 smcs; L&M Concrete \$100.00 smcs; Landstrom,C \$250.00 smcs; Larue Distributing \$92.95 smcs; Lundgrin,J \$21.47 smcs; Magic Cleaning \$650.00 smcs; Magical Paradise Animal \$153.00 smcs; Mail Express \$103.73 smcs; Malzacher,S \$25.00 smcs; Marlatt Machine Shop \$8.40 co; Martin,A \$20.89 smcs; Martin,L \$40.00 smcs; Matheson Tri-Gas \$138.85 smcs; Medina,P \$39.00 smcs; Menards \$33.96 smcs; Metlife \$7,340.35 ps; Meyers,C \$10.57 smcs; Microfilm Imaging \$770.00 smcs; Middleton Electric \$236.23 smcs; Midwest Mailing \$102.39 smcs; Midwest Striping \$14,390.00 smcs; Milco Environmental \$1,703.20 smcs; Miller & Associates \$4,000.00 smcs; Minitex \$2,186.00 smcs; Moonlight Embroidery \$2,410.50 smcs; MSI Systems Integrators \$2,376.00 smcs; Municipal Supply \$4,203.30 smcs,co; NCS Equipment \$4,309.99 co; NE Central Seniors Golf \$63.00 smcs; NE Child Support \$2,138.82 ps; NE Crime Commission \$30.00 smcs; NE Dept of Revenue \$74,688.19 smcs,ps; NE Environmental Products \$1,586.52 smcs; NE Humanities Council \$100.00 smcs; NE Library Commission \$697.00 smcs; NE Public Health \$508.25 smcs; NE Safety & Fire \$270.00 smcs; NE Secretary of State \$30.00 smcs; NEland Distributors \$2,457.69 smcs; Nelson,M \$52.00 smcs; Neopost \$6,000.00 smcs; Norfolk Daily News \$28.60 smcs; Northwestern Energy \$2,817.01 smcs; Novus \$35.00 smcs; Oberle,E \$29.98 smcs; Ohri,R \$77.62 smcs; O'Keefe Elevator \$465.72 smcs; Olivarez,Z \$38.34 smcs; Omaha World Herald \$204.12 smcs; Oolman,A \$23.27 smcs; Outdoor Recreation \$31,188.10 smcs,co; Paramount Linen \$174.52 smcs; Parker,A \$47.72 smcs; Payflex Systems \$527.00 smcs,ps; Pep \$53.66 smcs; Pettit,B \$115.50 smcs; Platte River Radio \$500.00 smcs; Platte Valley Comm \$2,940.36 smcs; Plymthon, S

\$13.52 smcs; Potter,B \$50.00 ps; Powerplan \$351.75 smcs; Presto-X \$363.42 smcs; Pulliam,R \$40.00 smcs; Random House \$290.24 smcs; Ready Mixed Concrete \$18,773.85 co; Reams Sprinkler Supply \$4,454.57 co; Recorded Books \$2,066.59 smcs; Research Technology \$609.95 smcs; Rheome Tree Service \$1,920.00 smcs; Ricks' Sod Farm \$2,668.00 co; Riverside Mfg \$34.02 ps; Rose,J \$70.00 smcs; Safe Center \$3,244.00 smcs; Salient Stills \$2,400.00 smcs; Sapp Brothers \$29,017.20 smcs; Schindler Elevator \$349.74 smcs; Schneider,B \$19.50 smcs; Select Sprayers \$54.90 co; Sherwood,A \$28.16 smcs; Sherwood,J \$29.00 smcs; Showcases \$1,177.42 smcs; Sikes,W \$65.00 smcs; Snap-On Tools \$350.00 smcs; Snow,T \$50.00 smcs; SOS Portable Toilets \$105.00 smcs; Southwestern Sales \$7,592.36 smcs; Sporting Edge \$3,134.00 smcs; St of NE/AS Central \$4,067.95 smcs,co; Staudacher,C \$33.20 smcs; Steinbrink Landscaping \$980.00 smcs; Strategic Insights \$675.00 smcs; Strategic Materials \$700.70 smcs; Sun Life Financial \$52,305.50 smcs; Swarm,E \$29.00 smcs; Tallbott Brothers \$500.00 smcs; Tan,K \$45.76 smcs; Taylormade \$1,481.37 smcs; Telegraph \$283.93 smcs; Theis,J \$60.00 smcs; Thome,B \$72.80 smcs; Tielke's Sandwiches \$114.44 smcs; Titleist \$662.56 smcs; Tracy,K \$128.75 smcs; Tri-City Sign \$180.00 co; Trish Place \$250.00 smcs; TruGreen ChemLawn \$161.00 smcs; Turfwerks \$59.18 smcs; Tye & Rademacher \$11,086.47 smcs; Uline \$58.73 smcs; Union Bank & Trust \$54,529.80 ps; Upstart \$342.85 smcs; Verizon Wireless \$1,000.39 smcs; Vernon \$732.33 smcs; Village Uniform \$520.19 smcs; Volunteers of America \$153.25 smcs; Walters Electric \$375.98 smcs; Watchguard Video \$256.00 co; Webster,S \$25.37 smcs; Wick's Sterling Trucks \$430.95 smcs; Wilkins Hinrichs Stober \$5,221.57 smcs; Yanda's Music \$1,500.00 smcs; Yelden,F \$37.00 smcs; Zimmerman Printing \$238.73 smcs; Payroll Ending 5-19-2012 -- \$366,665.86; Payroll Ending 6-2-2012 -- \$395,748.46. The foregoing schedule of claims is published in accordance with Section 19-1102 of the Revised Statutes of Nebraska, and is published at an expense of \$_____ to the City of Kearney.

3. Approve the recommendation from the Development Services Division on the annual renewal of the following manufactured home court licenses until May 31, 2013: Cornhusker Mobile Home Park, 1115 Avenue C; Cottonmill Mobile Home Court, 2675 Cottonmill Avenue; Countryside Mobile Park, 1920 15th Avenue; East Lawn Mobile Homes Estates, 2900 Grand Avenue; L & M Properties, 1110 Central Avenue; Merriweather Mobile Home Village, 914 West 17th Street; Rodeo Court, 2414 West 24th Street; R-Villa East, West and South, 2424, 2719, 2803 West 24th Street; Schnase Trailer Court, 1282 62nd Avenue; Valley View Mobile Home Court, 2701 Grand Avenue; Van Vleet Trailer Court, 550 30th Avenue; Villa Park, 2703 West 24th Street; Westside Trailer Court, 1282 62nd Avenue; Woodriver Valley Trailer Court, 865 West 78th Street.

4. Adopt **Resolution No. 2012-90** approving Change Order No. 11 showing an increase in the amount of \$20,446.00 submitted by JLC, Inc. and approved by Wilkins Hinrichs Stober Architects in connection with the Kearney Public Library Addition & Renovation Project.

RESOLUTION NO. 2012-90

WHEREAS, JLC, Inc. of York, Nebraska has performed services in connection with the Kearney Public Library Addition & Renovation Project, and the City's engineer, Wilkins Hinrichs Stober Architects, have filed with the City Clerk Change Order No. 11

showing an increase to the contract sum in the amount of \$20,446.00, as shown on Exhibit "A", attached hereto and made a part hereof by reference as follows:

Original Contract Sum	\$4,548,220.00
Change Order No. 1 (12-22-2009)	- 75,500.00
Change Order No. 2 (7-13-2010)	+ 2,128.00
Change Order No. 3 (9-14-2010)	+ 6,565.00
Change Order No. 4 (1-11-2011)	+ 15,556.00
Change Order No. 5 (1-11-2011)	+ 76,099.00
Change Order No. 6 (4-12-2011)	+ 14,494.00
Change Order No. 7 (7-26-2011)	+ 11,545.00
Change Order No. 8 (8-9-2011)	+ 43,513.00
Change Order No. 9 (9-27-2011)	+ 17,146.00
Change Order No. 10 (12-27-2011)	+ 36,667.00
Change Order No. 11 (6-12-2012)	+ <u>20,446.00</u>
Contract Sum to Date	\$4,716,879.00

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, and hereby find and determine that Change Order No. 11, as shown on Exhibits "A", be and is hereby accepted and approved.

PASSED AND APPROVED THIS 12TH DAY OF JUNE, 2012.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

5. Approve the application for a Special Designated License submitted by Juan Lazo, dba El Tropic in connection with their IBK-37623 catering liquor license to dispense beer and distilled spirits in the Exposition Building located at the Buffalo County Fairgrounds, 3807 Avenue N, on July 1, 2012 from 4:00 p.m. until 12:00 a.m. for a dance.

6. Adopt **Resolution No. 2012-91** approving the Development Agreement for Lots 1, 2, 3, 4, 5, 6 of Block One; and Lots 2, 3, 4, 5, 6 of Block Two, Hoehner Estates Third Addition to the City of Kearney, Buffalo County, Nebraska.

RESOLUTION NO. 2012-91

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA that the agreement entitled "Development Agreement for Lots 1, 2, 3, 4, 5, 6 of Block One; and Lots 2, 3, 4, 5, 6 of Block Two, Hoehner Estates Third Addition to the City of Kearney, Buffalo County, Nebraska" between the City of Kearney and Christopher P. Hoehner and Sarah M. Hoehner, Husband and Wife, Kyle W. Hoehner and Michele D. Hoehner, Husband and Wife, and Patricia L. Hoehner, a single person to construct paving, water and sanitary sewer with regard to the 50th Street and 17th Avenue project be and is hereby accepted and approved. The Agreement, marked as Exhibit 1 is attached hereto, negotiated with Christopher P. Hoehner and Sarah M. Hoehner, Husband and Wife, Kyle W. Hoehner and Michele D. Hoehner, Husband and Wife, and Patricia L. Hoehner, a single person to construct said paving, water and

sanitary sewer improvements 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.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized and directed to file said Agreement with the Buffalo County Register of Deeds.

PASSED AND APPROVED THIS 12TH DAY OF JUNE, 2012.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

7. Approve the Plans and Specifications for the 2012 Part 2 Improvements consisting of Water Extension District No. 2012-1 for 56th Street from the existing water main located ½ mile east of Antelope Avenue eastward approximately 5,446 feet to connect to the existing water main and set the bid opening date for July 10, 2012 at 2:00 p.m.

8. Accept the bids received for 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 adopt **Resolution No. 2012-92** awarding the bid to Midlands Contracting in the amount of \$231,818.00 for Bid A (water and sanitary sewer) and to Paulsen, Inc. in the amount of \$407,796.50 for Bid B (paving).

RESOLUTION NO. 2012-92

WHEREAS, Miller & Associates and the City of Kearney have reviewed the sealed bids which were opened on May 1, 2012 at 2:00 p.m. for 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

WHEREAS, the Engineer’s Opinion of Probable Construction Cost was \$283,040.00 for Bid A (water and sanitary sewer) and \$512,160.00 for Bid B (paving); and

WHEREAS, the said engineers have recommended the bid offered by Midlands Contracting of Kearney, Nebraska in the sum of \$231,818.00 be accepted as the lowest responsible bid for Bid A (water and sanitary sewer); and

WHEREAS, the said engineers have recommended the bid offered by Paulsen, Inc. of Cozad, Nebraska in the sum of \$407,796.50 be accepted as the lowest responsible bid for Bid B (paving).

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska that the Engineers recommendation is hereby accepted and

approved, that Midlands Contracting be and is the lowest responsible bidder for the 2011 Part 6 Improvements – Bid A consisting of 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 to be constructed in accordance with the plans and specifications on file with the City Clerk and that the bid of Midlands Contracting in the sum of \$231,818.00 be and is hereby accepted.

BE IT FURTHER RESOLVED that the Engineers recommendation is hereby accepted and approved, that Paulsen, Inc. be and is the lowest responsible bidder for the 2011 Part 6 Improvements – Bid B consisting of Paving Improvement District No. 2011-946 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 to be constructed in accordance with the plans and specifications on file with the City Clerk and that the bid of Paulsen, Inc. in the sum of \$407,796.50 be and is hereby accepted.

BE IT FURTHER RESOLVED the Engineer's Opinion of Probable Construction Cost in the amount of \$283,040.00 for Bid A (water and sanitary sewer) and \$512,160.00 for Bid B (paving) be and is hereby accepted.

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

PASSED AND APPROVED THIS 12TH DAY OF JUNE, 2012.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

9. Approve the recommendation submitted by the Downtown Improvement Board for the temporary closing of 24th Street from 1st Avenue to Avenue A, excluding the intersections, on June 16, 23, 30, July 7, 14, 28, August 4, 11, 18, 25, September 1, 8, 15, 22, 29, October 6, 13, 2012 from 8:00 a.m. until 4:00 p.m.; July 12, 13, 2012 from 8:00 a.m. until 10:00 p.m.; and on September 27, 2012 from 12:00 p.m. until 10:00 p.m. to conduct MarketPlace.

10. Approve the recommendation submitted by the Downtown Improvement Board for the temporary closing of ten parking spaces on the south side of 24th Street from the alley east to Avenue A on July 13, 2012 from 7:30 a.m. until 2:00 a.m. as requested by The Garage.

11. Approve the recommendation submitted by the Downtown Improvement Board for the temporary closing of Central Avenue from 23rd Street to 25th Street and the sidewalk on the south side of 24th Street from the alley east to Central Avenue located north of the World Theatre from 8:00 a.m. July 13, 2012 until 4:00 p.m. July 15, 2012 for Old Navy's Funnovation.

12. 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 the Ag Pavilion located at the Buffalo County Fairgrounds, 3807 Avenue N, on June 30, 2012 from 3:00 p.m. until 12:00 a.m. for a reception.

13. Adopt **Resolution No. 2012-93** repealing Resolution No. 2011-91 and amend the Comprehensive Fee Schedule to adjust the fees for weed removal and associated services.

RESOLUTION NO. 2012-93

WHEREAS, the Mayor and City Council of the City of Kearney have established fees for items and services provided to its citizens; and

WHEREAS, the Comprehensive Fee Schedule setting forth the fees for such items and services to be provided during the 2011-2012 fiscal year was adopted by Resolution No. 2011-91 on August 9, 2011 by the City Council; and

WHEREAS, the Comprehensive Fee Schedule attached hereto as Exhibit "A" sets out the proposed fees for such items and services to be provided beginning June 12, 2012; and

WHEREAS, it is recommended that such Comprehensive Fee Schedule be adopted.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the Comprehensive Fee Schedule attached hereto as Exhibit "A" is hereby approved and adopted with an effective date of June 12, 2012.

BE IT FURTHER RESOLVED that Resolution No. 2011-91 be and is hereby repealed in its entirety.

PASSED AND APPROVED THIS 12TH DAY OF JUNE, 2012.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

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

Moved by Lear seconded by Buschkoetter that Subsection 14 of Consent Agenda Item IV be approved. Roll call resulted as follows: Aye: Kearney, Buschkoetter Lear. Nay: None. Clouse abstaining and Lammers absent. Motion carried.

14. Adopt **Resolution No. 2012-94** authorizing the City of Kearney to join with NPPD as a co-applicant to the Nebraska Power Review Board for an amendment to NPPD's retail service area which comprises the City to include the annexed land described as a tract of land being part of the Northeast Quarter of Section 24, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (40-acre storm water detention cell in northeast Kearney).

RESOLUTION NO. 2012-94

WHEREAS, on October 9, 2007 the Kearney City Council passed and approved Ordinance No. 7371 extending to include within the corporate limits of the said City the contiguous and adjacent tract of land described as a tract of land being part 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 southeast corner of the Northeast Quarter of said Section 24 and assuming the east line of said Northeast Quarter as bearing north and all bearings contained herein are relative thereto; thence north on the aforesaid east line a distance of 770.0 feet to the ACTUAL PLACE OF BEGINNING; thence continuing north on the aforesaid course a distance of 232.16 feet; thence S89°59'W and parallel with the south line of the Northeast Quarter of said section a distance of 196.0 feet; thence N51°03'37"W a distance of 1864.08 feet to the point of curvature; thence on a 5754.58 foot radius curve to the left forming a central angle of 02°39'48" a distance of 267.5 feet; thence leaving said curve non-tangent S00°08'09"W parallel with and 785.0 feet easterly of the west line of said Northeast Quarter a distance of 1889.48 feet; thence N89°59'E and parallel with the south line of said Northeast Quarter a distance of 631.26 feet; thence south and parallel with the east line of said Northeast Quarter a distance of 448.0 feet to a point on the south line of said Northeast Quarter; thence N89°59'E and on the aforesaid south line a distance of 150.0 feet; thence north parallel with the east line of said Northeast Quarter a distance of 530.0 feet; thence N89°59'E and parallel with the south line of said Northeast Quarter a distance of 731.0 feet; thence north and parallel with the east line of said Northeast Quarter a distance of 240.0 feet; thence N89°59'E and parallel with the south line of said Northeast quarter a distance of 350.0 feet to the place of beginning. Containing 46.921 acres, more or less, of which 0.176 acres, more or less, are presently being used for road purposes on the east side. Subject to, however, a 60.0 foot strip of land which is to be reserved for future ingress-egress easement purposes with said 60.0 foot strip of land being more particularly described as follows: Referring to the southeast corner of the Northeast Quarter of said Section 24; thence S89°59'W and on the south line of said Northeast Quarter a distance of 1081.0 feet to the ACTUAL PLACE OF BEGINNING; thence continuing S89°59'W and on the aforesaid south line a distance of 150.0 feet; thence north and parallel with the east line of said Northeast Quarter a distance of 60.0 feet; thence N89°59'E and parallel with the south line of said Northeast Quarter a distance of 150.0 feet; thence south and parallel with the east line of said Northeast Quarter a distance of 60.0 feet to the place of beginning, all located in Buffalo County, Nebraska; and

WHEREAS, the Nebraska Public Power District (NPPD) will apply to the Nebraska Power Review Board for an order amending its existing retail service area, which includes the City of Kearney, to include the above described property into the corporate boundaries of the City of Kearney, Nebraska; and

WHEREAS, the City of Kearney has an interest in the outcome of such application by reason of its rights under the Professional Retail Operations Agreement with NPPD approved on July 11, 1989, pursuant to which NPPD operates and maintains the electric distribution system owned by the City of Kearney; and

WHEREAS, it is determined by the City Council that it would be desirable and in the best interests of the City of Kearney to join with NPPD as a co-applicant to the Nebraska Power Review Board.

NOW, THEREFORE, BE IT RESOLVED by the Vice-President and Council of the City of Kearney, Nebraska, that the City of Kearney, Nebraska, be authorized to join with NPPD as a co-applicant to the Nebraska Power Review Board for an amendment to NPPD's retail service area which includes the City to include the above described property into the corporate boundaries of the City of Kearney, Nebraska in said retail service area.

BE IT FURTHER RESOLVED that the Vice-President be and is hereby authorized to execute on behalf of the City of Kearney a joint application with NPPD to the Nebraska Power Review Board and to cooperate with NPPD in the prosecution of its application.

BE IT FURTHER RESOLVED that such joint application shall be prosecuted at the sole cost and expense of NPPD.

PASSED AND APPROVED THIS 12TH DAY OF JUNE, 2012.

ATTEST:
MICHAELLE E. TREMBLY
CITY CLERK

RANDY BUSCHKOETTER
VICE-PRESIDENT OF THE COUNCIL

V. CONSENT AGENDA ORDINANCES

ORDINANCE NO. 7730 REPEAL ORDINANCE NO. 7725 AND VACATE AVENUE G

The matter vacating the 60-foot wide right-of-way platted as Avenue G between vacated 10th Street and 11th Street as submitted by Mid-Nebraska Community Action was presented to you on May 8, 2012. When the City attempted to file the ordinance with the Buffalo County Register of Deeds, it was noted that the subdivision name was misspelled. Therefore, Ordinance No. 7730 repeals Ordinance No. 7725 and vacates Avenue G as requested. This is merely a housekeeping matter.

Council Member Buschkoetter introduced Ordinance No. 7730, being Subsection 1 of Agenda Item V repealing Ordinance No. 7725 and to vacate a portion of Avenue G abutting Lot 6 of Pennocks Subdivision and Lots 13 through 22, inclusive of South Park Addition to the City of Kearney, Buffalo County, Nebraska (north of vacated 10th Street and south of 11th Street), and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Clouse seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Buschkoetter, Lear, Kearney. Nay: None. Lammers absent. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7730 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, Kearney. Nay: None. Lammers absent. Motion carried. Ordinance was read by number.

Moved by Clouse seconded by Kearney that Ordinance No. 7730 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lear, Kearney, Buschkoetter. Nay: None. Lammers absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7730 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

REVOKE SUNSET VIEW MOBILE HOME COURT LICENSE

Mayor Clouse opened for discussion the revocation of the manufactured home court license for Sunset View Mobile Home Court located at 4664 West Highway 30. However, the court has remedied the issues and concerns and is in compliant with City Code and can be renewed.

Moved by Lear seconded by Buschkoetter to approve renewing the manufactured home court license for Sunset View Mobile Home Court located at 4664 West Highway 30. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear. Nay: None. Lammers absent. Motion carried.

KEARNEY AVIATION CENTER CHATER CERTIFICATE

Mayor Clouse opened for discussion extending the time for Kearney Aviation Center to receive its Part 135 Charter Certificate.

City Attorney Michael Tye stated this request is to grant some additional time to Kearney Aviation Center in order to obtain a 135 Charter Certificate. There are two Fixed Base Operators at the Kearney Municipal Airport and each have an agreement with the City which the Council has approved. As a part of those agreements, they are obligated to provide charter service. In order to provide charter service, they have to get a 135 Charter Certificate from the FAA. They were recently advised that Kearney Aviation Center had not obtained their certificate within the one year requirement of their contract.

He contacted Kearney Aviation to determine if they had obtained that certificate. They stated they had done some paperwork and applied, but do not have it in hand as of yet. Mr. Tye communicated with the FAA to determine if there were any issues or problems with the application or anything that might result in that operator not being able to receive their certificate. The FAA indicated it was just a matter of time before that certificate would be issued. He did receive a letter from Kearney Aviation Center requesting an extension of time to get it and took a little longer to get it in place. Mr. Tye recommended granting a 90-day extension so they can complete that process.

It has been brought to the Council because the issue is outside the provision of the agreement that requires that certificate be in place. They believe it is important for those providers to have charter service available and to be able to offer it and that is why it is stated in the contract.

Mayor Clouse asked if 90 days would be a sufficient amount of time to allow them to obtain the certificate. Mr. Tye stated according to the FAA representative, there were two things that needed to be completed. One thing was a fly around and another was their hazmat plan needed to be reviewed. The gentlemen that he talked to indicated that would not be a problem and anticipated that certificate would be issued shortly and 90 days would be ample to do that.

Phil Jossi, 2104 West 50th Street, owner of the Kearney Aviation Center stated that last

week the fly around had been completed by the FAA. The only remaining factor is the hazmat program which is actually sitting in a government office. It is not a FAA approval, but done by somebody else. The process is they send their hazmat program to the FAA and they submit it to this other agency. When they approve it, then it comes back to the FAA and their certificate is issued. Kearney Aviation is a non-hazmat carrier so the 50-page document they have prepared and submitted simply states they will not carry hazardous material. They do have to know what a hazardous material is, so it is more educational for them to train their pilots. The FAA is ready to issue the certificate and he already knows the number, they are just waiting on the hazmat approval.

Michael Ostroski, 4985 Airport Road, owner of Otis Air Service stated this issue speaks to a lot of different things that have happened since Mr. Jossi has been awarded a FBO contract a little over a year ago. His company has paid over \$200,000 in rents and fees to the City since October 1, 2008, averaging over \$58,500 a year for 3½ years. He spoke in opposition to altering the contract that Kearney Aviation Center has defaulted on April 26, 2012. The failure of Kearney Aviation Center to meet its contractual obligations and the City's attempt to change their contract is another example of a troubling pattern of discriminatory behavior of the City towards his company. He did not use the term "discriminatory behavior" lightly. He does not put motivation behind it, it might just be ignorance of the law, but that is what he thinks it is.

In order to explain what has been going on, he gave some background on what he believes is the discriminatory practices that have occurred over the last 14-15 months. The City of Kearney is not the owner of the Airport. The federal government calls the City of Kearney a sponsor of the airport. Those sponsors might go back decades, so it feels like ownership, but it is not. Federal government obligates the sponsor to assume and accept control of the airport as mandated by federal statutes. The FAA has a responsibility to insure the sponsor's compliance with those obligations. These are quite complex and some of these agreements go back decades.

In this case the City (sponsor) has to abide by all the regulations of all the programs that affect the airport. It is so complex that the FAA has created an airport compliance manual. That manual is not actually regulatory on the sponsor, but is what the FAA uses to determine if the sponsor is running the airport properly. It is so complex that in reality the sponsors throughout the country use the FAA compliance document to comply with their obligations. They cannot go through all these different deeds and program regulations so they use the actual document. The document is written so the sponsor is reading it and seeing what they have to do.

There are really only two things they have to do. One is to set reasonable standards for the use of the airport. That means that it would be unreasonable for Kearney to build a terminal the size of Omaha because it does not match the community. Likewise in Omaha, they could not build a terminal the size of Kearney. There is a wide gap there of what the sponsor can do. The second thing which affects what he is talking about tonight is the sponsor is required to set standards to enforce how the operators, tenants and users of that airport comply with the federal regulations. The airport compliance document recommends that they set minimum standards.

Mr. Ostroski stated he could not find an airport in the United States, the size of Kearney

or greater that does not have these standards written down. Kearney is the only airport he could find that does not have them. He did find lots of examples of airports smaller than Kearney that do have them written down. It is not required that they write them down, but they still have to enforce the standards. That means that City decides what any operator has to do to form their business. The requirements for an FBO, for example, would be different in Kearney than Omaha.

In May of last year, his attorney contacted City Attorney Michael Tye and asked him where the standards for the Kearney airport were. Even though they knew there were none, they decided to ask. Mr. Tye stated they did not have any written standards. He quoted what Mr. Tye said to his attorney, "Since we don't publish minimum standards, whatever Mike does is the minimum". He was in agreement with that because that is the only way it can be done. If you have one FBO and he has a certain standard as to how he is doing business then that sets the standards for how he has been doing business since October 2008.

So you might ask how he is injured. On May 16, 2011, the Aviation Center had just got their FBO contract a couple weeks earlier and airport manager made a comment to Mr. Ostroski's manager and he quoted, "We are going to do everything we can to get rid of Mike." He stated there could not be a more discriminatory comment that he could think of. So maybe it was just a comment with no action. However, what occurred three days later was that his manager decided to leave which was logical and he probably would have done the same thing. If you have an employee who is told by the controlling agency at the airport, that they are going to get rid of your boss and do everything that we can to close his business down, of course he would jump to the other guy.

Mr. Ostroski went on to state that he had to do things in the bid process that Aviation Center did not have to do. First of all, he had a RFP published around January 2008, there was a 5-6 month deadline to submit a proposal, a marketing plan, financial data. If he remembers correctly someone put in a proposal after the deadline and was rejected. He had to go through an interview process and then he was awarded an FBO contract sometime in July 2008. He started operations in October 2008. He stated that Kearney Aviation Center did not have to go through a bid process; did not submit a marketing plan that they could find and no proposal. In fact, they had to do zero. What the City of Kearney did for him and the others that applied was reasonable and basically standard. He could not find another airport that does not do it that way, but the City of Kearney decided not to do that. Right off the bat the City was not following the standards that were set for the sponsor.

Mr. Jossi was given a building. The City terminated a lease with Thrifty Car Rental and that is how he got the hangar out there. In the airport compliance document, it says that they should always defer to aviation businesses in the airport. Since Thrifty Car Rental is not aviation business, it was reasonable to say we are going to terminate your agreement and put an aviation business in there. The problem is that a year prior an aviation business did want that building and were denied in the spring of 2010, but suddenly open in 2011. There are standards for FBOs and they must be met from day one. The Kearney Aviation building is a hangar and does not even have an office, they started with a card table. You do not get to start by pumping gas out of the back of a truck. He stated that he would like to say, I don't want to meet the standards for six

months. I think I will steal some business from the other guy and then when I have enough money, I will meet the standards. It just does not work that way.

There are other differences in their business; he has 6,000 feet of aircraft hangar space, and 12,000 feet of unheated aircraft hangar space. He has maybe 3,000 feet and he has none unheated. Comparing hours of operation; his crew is out there at 5:30 a.m. to 8:00 p.m. Monday-Friday to service the airlines through the entire winter and 6:00 a.m. to 8:00 p.m. the rest of the year. Aviation does not keep those kinds of hours. Here again under the airport compliance document, the sponsor needs to determine the standard of what they want at the airport. Part 139 refueling is a fairly easy process to certify that you are able to fuel the airliner that is part of the contract.

There is an ATA Regulation 103 that requires airlines to only accept fuel after it has gone through a fuel farm and then into a fuel truck. Kearney Aviation did not have a fuel farm for nine months, so he was in violation of that part of his contract. Just to confirm that fact, Mr. Ostroski called the head of Phillips fuel division (largest provider of aviation fuel in the U.S.) and he said only one time did someone try to fuel airliners out of the back of a truck and it was shut down. There is not an example in the United States because of ATA 103 that an airliner can fuel without a fuel farm. Mr. Jossi clearly did not have one to start with. Mr. Ostroski stated that his air service has a fuel farm for both low lead and jet fuel. So sometime in November 2011, Mr. Jossi had a fuel farm installed. Again, he did not understand the process of how the fuel farm got installed before the City Council approved it. There are a variety of things that have to be approved before the work gets done, but both fuel farms were installed and operational before it came to this Council for vote. In his opinion, the Kearney Aviation Center fuel farm would not pass inspection even though it has been in operation for nine months because they have no steel posts. One of the things that it has to have is steel posts in front of it to prevent a vehicle hitting into it. When there are no plans submitted and nothing approved things like this get by. He noted that he saw someone had cut some holes, so maybe some posts are going to be installed.

About six weeks after the fuel farm was installed, he wondered how the electricity was getting there. He found that the City wired Kearney Aviation Center electricity to his electric and he was paying for both. He went to the Airport Manager with the issue and he said they would take over the electric and bill each of the businesses separately. The City installed the pads. He questioned how City employees are allowed to build pads for private businesses. They also put in the foundation for the Kearney Aviation lean-to building.

Mr. Ostroski stated that as soon as Mr. Jossi started business he had planes all over in T-hangars. Slowly he came before this Council and rented T-hangars. If he recalled correctly Kearney Aviation got approved for a hangar June 14th, approved for a hangar July 26th and another in February 2012. He felt that maybe he had forgotten to check a box somewhere on the application that said "free hangar rent". That issue was not as disturbing to him as the next example that he gave on the T-hangars. Their business is to service the customers out there and, over time, planes move their hangars all over the place.

Last summer he asked the Airport Manager for a list of the airplanes and where they are

located so they could better serve their customers. Mr. Lynaugh refused to give it to them. He directed them to the City Clerk Michaelle Trembly. The only way she could compile the list was to go through every T-hangar contract and she suggested they go back to the Airport Manager, which they did. He has asked him five times and has never received the information. He has two customers right now who have their airplanes in their common hangar who want a T-hangar and have been told there are none available. He stated by his calculation there should be. They have been denied the rental information for ten months. He is also aware that Thrifty Car Rental has equipment in a T-hangar. They must have checked the box that said free rent or maybe they have an old agreement that goes back years, he did not know. However, he has tenants that want T-hangars and their airplanes should take priority over the rental car company storing equipment.

Mr. Ostroski and his attorney had a meeting with City Attorney Mike Tye in June 2011. At that time, they believed the City just did not understand how standards are applied. However, they suspected differently because a couple months prior to that, the Airport Manager had no problem telling a crop duster who wanted to start an operation there that he must meet the standards of Buffalo Air. The applicant must have whatever is required of crop dusters such as a tank, hangar, etc. It seems the City is still having a problem figuring out the standards for the FBOs. He made an analogy to the healthcare in the Supreme Court, you can have a very smart attorney who looks ridiculous coming out and defending the indefensible. He felt their meeting in June was ridiculous. Mr. Tye's response to their questions about why Kearney Aviation Center did not have a fuel farm or a building and the standards were not being met was "The City would be happy to take your fuel farm back and to take your building back." He concluded from that response that he would have to put himself out of business in order for him to lower the standards to meet Kearney Aviation Center. It was quite confusing to him.

He waited this long to come before the City Council because he wanted an absolute clear line where the City stepped across. He did not want any grey area where they could say, oh well he finally has what he needs. He has watched Kearney Aviation Center operate for a year. Three times, he has had customers come to them in the middle of the night because they called Kearney Aviation Center and they did not respond. Kearney Aviation Center has run out of gas twice. They could not fuel a customer just two weeks ago who came to them.

He figured that they would not get their Charter Certificate and would not meet their contract obligations and that is what happened. Mr. Ostroski stated he did get his Charter Certificate on time and met his contract obligations. He did not start his contract work until January of the year he got the contract and he finished in 6½ months. They have had a year and a full time employee who is partially paid for by the University and they cannot get a Charter Certificate done on time.

The response he received from the City Attorney when he pointed out that Kearney Aviation was in default of their contract on April 26th was the Council will give them 60-90 days more. He questioned, at what point do we follow contracts and follow standards or is there any point. The City Council has the ability, and he believed the obligation, to correct these injustices today.

He respectfully asked three items of the Council. First, deny the extension of the time for Kearney Aviation Center to acquire a Charter Certificate and direct the City Attorney to default them on their contract, terminating operations immediately. Second, if the City wants a second FBO, follow a similar process that he went through and make the requirements those he had to meet. This would give the option for others to take advantage of that business location like the one who wanted to do in the spring 2012. Third, empower individuals or a special commission to look into the discriminatory actions of the City Manager, Airport Manager and the City Attorney towards his company. This commission would be to meet with him to discuss a reasonable way forward. Mr. Ostroski stated that he welcomes free and open competition on the same basis. What has happened at the Airport over the last 12 months has been ridiculous.

A year ago when the Airport Manager stated to his manager, Steve: "Don't worry Mike will be out of business quickly." What has actually happened is that this fiscal year, they are up 3.9% in fuel sales. Some of that is due to the economy, but he felt the biggest factor is that customers are loyal. Despite all these under rumors and articles in the paper indicating that Mike's not doing a very good job: customers are still loyal and his business is still up. He wanted to know when they are going to demand that Kearney Aviation Center meet the standards that the City of Kearney as a sponsor of the Airport has an obligation to enforce.

He could not believe he was at this meeting reporting on what he just presented. The last time he was at this podium was in August 2008 and he thought he was coming to Kearney, Nebraska not Washington D.C. He again stated, "This is ridiculous what has gone on." If the Charter was the only issue, it would not be a big deal, but this is the final straw. This is the black and white in the contract and he did not meet his obligations.

Council member Buschkoetter stated extending the Charter Certificate is the issue that is currently on the Council Agenda at this meeting. Regarding Mr. Ostroski's comment that this is not Washington D.C., clearly this is not. From his vantage point, Mr. Jossi made a good faith effort to be able to get his certificate and bureaucracy in the hollowed hall of Washington D.C. is a major reason he was not able to have that occur. The issue before them is whether or not they are that community, that Mr. Ostroski hoped we are, that tries to have things that are reasonable and fit within the community. So they consider whether they would offer a 30-day extension to somebody that offers a good faith effort to follow through on the rules and regulations. This Council does it all the time when certain things happen. He believed that the Cowpoke project is good example. They have been working a long time with the developer to try to make that work.

Mr. Ostroski stated he does not have the ability to make that decision because there are laws in this document (which is a very easy read) preventing discrimination. There is a whole chapter on it. If they were the only FBO, the standards could be changed at any time. The Council could say for the good of the community, absolutely we can give you more time. This is not the case, because he is also in the community and he has to meet those standards which he did. He did not believe that the Council has the authority to do it, but will see what happens if they do. He again stated that would be discrimination. These standards are set by federal statutes, not City of Kearney.

Council member Buschkoetter stated the Cowpoke will have competition too.

Mr. Ostroski stated this is not a private deal, this is what happens at the Airport. This is a very different deal. For example, aviation gas is about 5%-10% of his business. If he had a business out in the community, he would get rid of aviation gas. It costs him the same to operate that as jet fuel and the reason that he does that is because he has the privilege of working at the airport, but he also has the obligation to provide that service. It is quite different than a normal private business downtown. He has the absolute obligation to provide that service although it may not be in his business interest. He could know that aviation gas is going to drop 20 cents and so he just won't have aviation fuel for a week because the price is going down. He does not have that option, so that is why things are a little bit different at the airport.

Council member Kearney stated he is going to look up the definition of "discrimination".

City Attorney clarified the Council does have the legal authority to make or modify this contract. Mayor Clouse stated they do understand that fact. Mayor Clouse further stated regarding all the other issues that were brought out, instead of airing all that out, he thought there should be some discussion on that and did not know that this was the forum to do that. He suggested having a meeting with Mr. Ostroski including the City Attorney, City Manager and other Council members. Based on what Mr. Ostroski stated – it is a question of where the standards are and where is the FAA compliance and if we are not in compliance why is the FAA not all over us? If they are not all over us, then are we so terribly wrong?

Mr. Ostroski responded that he has never seen a case where this was adjudicated by the FAA. If someone is wrong, then they take it to court. This is the FAA responsibility and if it goes to court, they use their documents. The FAA cannot keep track of what is going on with charters, forget about looking at standards. In his meeting with the City Attorney last year, he asked him do you understand how standards are applied, not is this contract legitimate. Sure the contract looks legitimate. There is nothing wrong with the physical contract that Kearney Aviation Center got; it is the standards. That is the reason why countrywide, you can go to the internet and find the standards. There is a quote in the Airport Compliance Document that states: "We recommend you to use standards that are written for this specific reason to prevent this problem."

He stated that he misspoke when he said the Council did not have the authority to change the contract. However, when the contract is changed it triggers a couple of things. It triggers the City of Kearney has the obligation not to discriminate against him by the contract or the standards set. If they do something that causes discrimination against him, he might have a place to go with that.

Mayor Clouse stated he did not want to argue but in his view their responsibility is what is in the best interest of this community right now. The issues Mr. Ostroski brought up should have been brought up a long time ago instead of waiting until the 11th hour. Now we are in the 11th hour and the question is what is in the best interest of the City. The best interest of the City is to approve this extension and take whatever consequences may happen.

City Manager Michael Morgan stated that they could certainly respond to the questions Mr. Ostroski brought up. There is a legal matter, so he cautioned the Council. This gentleman has threatened legal action to some degree. There are no hours of operation stated in his contract. Mr. Ostroski answered since there were no published standards and not everything at the airport is in the contract. Mr. Morgan stated that he was referencing something that is a distinction, his contract mirrors Kearney Aviation. Actually there are additional standards in Kearney Aviation's contract. Kearney Aviation does not fuel airlines because they cannot. Kearney Aviation's fuel farm was approved by the State Fire Marshall and they will find out why it was approved. Mr. Morgan stated they will respond to Mr. Ostroski and his lawyer on these issues.

City Attorney stated when these issues were raised with him, he then talked to the FAA, as did the Airport Manager, about this issue. They discussed an airport circular that he brought to the attention of Mr. Ostroski and his legal counsel that essentially indicated that the obligation of the City of Kearney is to offer this on equal of terms as is possible. That is what they have done. He has discussed it directly with the FAA representatives about how they have approached this situation and they have not indicated that they have any concerns about how the City is managing the situation. This is not a matter that we have not communicated with FAA about. Both he and the Airport Manager have discussed with the FAA the specific situation of having two FBOs at the Kearney Airport. The FAA is aware of this and have evaluated how they are approaching it and have raised no concerns to them.

City Manager stated that the City could require additional standards as mentioned in minimum standards and many airports obviously do. In the contracts they have used, they are not so we are consistent in that. With the exception of Mr. Ostroski's comment, there are some additional standards in Kearney Aviation that are not in the other. There are standards across the country that are suggested and minimum, but do not confuse those with minimum safety standards per se. They may be standards of operations, etc. Both of the Kearney FBOs are meeting all their requirements, they believe, in those areas of safety, etc. The only distinction is the charter certificate at this point. Some of his questions were legitimate questions and will be glad to respond to those. There is no national requirement for hours of operation. We allow the competing interests to determine those hours and what is in the best interest of the customers they serve. They both serve customers in a certain way. In the future, they could possibly adopt more stringent and specific standards in FBO contracts. The original contract before the one Mr. Ostroski obtained for a number of years did not have those standards either. That is where the original contract came from to begin with.

Mayor Clouse stated he has heard positives on behalf of both FBOs. He believed that if it is in the best interest of the community to extend this that is what they need to do. If there are other allegations and issues that Mr. Ostroski believes he needs to bring forth then he needs to do that. That is not for the Council to debate because they have not heard these things before and should have been brought up a long time ago.

Mr. Ostroski stated he did not want to speak on this out of turn, but with this issue coming forward he thought this was the time. He would be willing to discuss it in any forum the City wishes. He had just not gotten anywhere before when he tried. He tried

to use the process. This meeting looked like the "last game in town". The Airport Manager has been in his facility one time in twelve months.

Mayor Clouse stated the Council is always open and available and he could have spoken to this body some time ago. Mr. Ostroski responded he waited for this time when Kearney Aviation was clearly not meeting his obligation. He wanted the Council to be aware when making their decision, make it in the context of what has been going on. He disagreed with the City Manager's statement about airport standards. Anyone could read the Airport Compliance Document and there are no standards required to make a document, but the half standards is an absolute obligation of the sponsor. He had never seen a FBO contract enumerate those standards because that would be ridiculous. What they do is state in the contract the FBO must meet the standards of the airport. If it is written you take out standards of the airport and if it is not written then whatever is written in the RFP is applicable.

City Manager stated that he did not recall Mr. Ostroski questioning where the standards were when he entered into the RFP. Mr. Ostroski stated that his attorney at the time knew nothing about aviation asked him, "What protects you in this business." His reply was the standards that the sponsor must enforce. If there are no written standards (and there does not have to be written standards) it is the standard of the first FBO operator. He gave the example: in Lexington, Kentucky, the FBO contract was just given out for 20 years. It required the person to spend \$5 million over two years to build 40,000 sq. ft. of hangar space. Once that was built that becomes the standard for any FBO that wanted to operate there. The FAA says it a good idea to have them, but you still have to enforce them. Mr. Morgan's idea is that if we do not have them, then there are no standards because they are not in the contract. Mr. Morgan stated his contract does call for the fuel farm and various functions but has the other standards in it.

Mr. Jossi stated that customer service is the reason they are at the airport. Contrary to what his competitor might like have you believe, they have many customers doing business with them out of frustration. It is easy to stand here and say we do not do this and we do this. Prove it. He wanted to address a couple things that were said. They do have stated hours and have been on call 24 hours for the last seven months serving Good Samaritan Hospital. They have had a truck break down once in a while. They actually called Otis Air to help them out. When Mr. Ostroski stated that he loves competition, he does, but in a controlled situation. There is a large hangar at the south end of the airport that his competition has control of. He has airplanes sitting on the ramp when there is a perfectly good hangar available that they do not have access to because his competitor has it. That was fine with him because they had the contract and as Mr. Ostroski pointed out he wanted everything on the airport including the one he has. He just wanted to clarify that they are out there all the time and provide customer service.

Mr. Jossi further stated the State of Colorado had an airplane here during the Kearney Crane promotion and the pilot told them that their FBO hours are 8:00 p.m. and if you are there one minute after 8:00 p.m. then you have to go sit in your airplane. They stay until the plane is ready to go home. He was at the airport until 11:00 p.m. last night. His business is out there to serve the public and the City of Kearney and to make that airport a gateway for Buffalo County and Central Nebraska. That is exactly what they

are going to do.

As far as an investment, Mr. Jossi stated he has about \$700,000 invested in that little operation out there in the first year including airplanes, and \$120,000 in a fuel farm. He pays 7 cents a gallon for fuel, which is the same as his competitor pays and Mr. Ostroski does not have \$120,000 invested in a fuel farm. He is a little at a disadvantage. He is not going to make an argument out of some of the statements that Mr. Ostroski made because they are not true. He has been in the banking business for 38 years on the other side of his life and they have contracts every day and they probably extend the maturity date on 30 percent of them because the cows and calves are not fat yet or for various other reasons. He stated that he does appreciate the fact that the staff has looked at this situation that they have started the application for this Charter Certificate in December. Receiving it is right around the corner and he appreciates the recommendation and they will continue to do everything they can to make it a good airport.

Moved by Clouse seconded by Kearney to approve extending the time of 90 days for Kearney Aviation Center to receive its Part 135 Charter Certificate. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear. Nay: None. Lammers absent. Motion carried.

OPEN ACCOUNT CLAIMS: GOODWILL INDUSTRIES - \$1,999.94

Moved by Lear seconded by Clouse that the Open Account Claim in the amount of \$1,999.94 payable to Goodwill Industries be allowed. Roll call resulted as follows: Aye: Clouse, Lear, Kearney. Nay: None. Buschkoetter abstained and Lammers absent. Motion carried.

CLOSED SESSION

Moved by Clouse seconded by Kearney that Council adjourn into closed session at 8:20 p.m. for the protection of the public interest to conduct the City Manager's annual performance evaluation. Roll call resulted as follows: Aye: Clouse, Lear, Kearney, Buschkoetter. Nay: None. Lammers absent. Motion carried.

Mayor Clouse restated the purpose for the closed session is for the protection of the public interest to conduct the City Manager's annual performance evaluation. According to law, the Council has the option to reconvene back into open session and may take any formal action it deems appropriate.

Moved by Clouse seconded by Kearney that Council reconvene in regular session at 9:13 p.m. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear. Nay: None. Motion carried.

VIII. ADJOURN

Moved by Kearney seconded by Lear that Council adjourn at 9:13 p.m. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lear. Nay: None. Lammers absent. Motion carried.

ATTEST:

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

**MICHAELLE E. TREMBLY
CITY CLERK**