

*Kearney, Nebraska  
July 10, 2012  
7:00 p.m.*

A meeting of the City Council of Kearney, Nebraska, was convened in open and public session at 7:00 p.m. on July 10, 2012 in the Council Chambers at City Hall. Present were: Stanley A. Clouse, President of the Council; Michaelle Trembly, City Clerk; Council Members Randy Buschkoetter, Don Kearney and Bob Lammers. Absent: Bruce Lear. Michael Morgan, City Manager; Michael Tye, City Attorney; Wendell Wessels, Director of Finance; Kirk Stocker, Director of Utilities; Rod Wiederspan, Director of Public Works; and Dan Lynch, Chief of Police were also present. Some of the citizens present in the audience included: Mitch Humphrey, Larry Schmidt, Shelly Dummer, Ron Tolle, Belinda Tolle, Mark Darby, Jamie Darby, Joann Sawyer, Lee Polhemus, Pastor Kyle Belabo, Steve Altmaier from KGFW Radio, 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

#### AMENDMENT TO THE LAND USE MAP FOR 1650 46TH AVENUE

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

Mayor Clouse opened the public hearing on the Application submitted by Larry and Elena Schmidt (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 being part of the Northeast Quarter of the Southeast Quarter of Section 5, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (1650 46th Avenue) and to consider Resolution No. 2012-108. Planning Commission recommend that this map amendment and rezoning be approved noting the restrictions on commercial use of the property and proposed building.

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 11.36 acres. The property takes access from 46th Avenue. 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 more than ten acres, a formal subdivision is not required.

The Owner is requesting approval to rezone from AG 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."

City staff believes it is important to note that the proposed building cannot be used for commercial purposes in this zoning district. It cannot be rented out for storage. It can be used in conjunction with a farming operation operated by the owner. It can also be used for storage of personal property or for a workshop or "hobby shop" for the Owner's personal use. Planning Commission reiterated these restrictions with the applicant at the public hearing.

Larry Schmidt 823 12th Avenue presented this matter to the Council. They want to build a machine shed. In the process, they found out that because they have less than 12 acres, they would have to rezone. He agreed to all the restrictions as set forth by the Planning Commission.

There was no one present in opposition to this hearing.

Moved by Kearney seconded by Lammers to close the hearing and adopt **Resolution No. 2012-108** approving the Application submitted by Larry and Elena Schmidt (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 the Northeast Quarter of the Southeast

Quarter of Section 5, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (1650 46th Avenue). Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

### **RESOLUTION NO. 2012-108**

WHEREAS, an application for a revision of the Land Use Map of the Comprehensive Plan has been filed in conjunction with and as a requisite part of its application for a change in the zoning for a tract of land being part of the Northeast Quarter of the Southeast Quarter of Section 5, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Referring to the Northeast corner of the Southeast Quarter of said Section 5 and assuming the east line of said Southeast Quarter as bearing S01°41'W and all bearings contained herein are relative thereto; thence S01°41'W and on the East line of said Southeast Quarter a distance of 77.76 feet to the ACTUAL PLACE OF BEGINNING, thence continuing S01°41'W and on the East line of said Southeast Quarter a distance of 635.59 feet to the point of intersection of the north right-of-way line of the Union Pacific Railroad; thence S85°39'06"W and on the aforesaid north right-of-way line a distance of 693.8 feet; thence N01°10'35"E a distance of 756.4 feet to a point on the north line of the Southeast Quarter of said section; thence N89°14'E and on the aforesaid north line a distance of 145.2 feet to the point of curvature; thence leaving the north line of the Southeast Quarter and on a 1945.29 foot radius curve to the right forming a central angle of 14°04' a distance of 477.59 feet to the point of tangency; thence tangent S76°42'E a distance 5,6.05 feet to the point of curvature, thence on a 1199.18 foot radius curve to the left forming a central angle of 01°03'44" a distance of 22.96 feet to the place of beginning, containing 11.368 acres, more or less, of which 0.278 acres, more or less, are presently being used for road purposes on the east side and 0.531 acres, more or less, are presently being used for road purposes on the north side, leaving a balance of 10.559 acres, more or less, Buffalo County, Nebraska (1650 46th Avenue) from Agricultural Open to Rural Estates, and

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

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

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the Comprehensive Land Use Plan be and is hereby amended to change from Agricultural Open to Rural Estates the use classification for a tract of land being part of the Northeast Quarter of the Southeast Quarter of Section 5, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Referring to the Northeast corner of the Southeast Quarter of said Section 5 and assuming the east line of said Southeast Quarter as bearing S01°41'W and all bearings contained herein are relative thereto; thence S01°41'W and on the East line of said Southeast Quarter a distance of 77.76 feet to the ACTUAL PLACE OF BEGINNING, thence continuing S01°41'W and on the East line of said Southeast Quarter a distance of 635.59 feet to the point of intersection of the north right-of-way line of the Union Pacific Railroad; thence S85°39'06"W and on the aforesaid north right-of-way line a distance of 693.8 feet; thence N01°10'35"E a

distance of 756.4 feet to a point on the north line of the Southeast Quarter of said section; thence N89°14'E and on the aforesaid north line a distance of 145.2 feet to the point of curvature; thence leaving the north line of the Southeast Quarter and on a 1945.29 foot radius curve to the right forming a central angle of 14°04' a distance of 477.59 feet to the point of tangency; thence tangent S76°42'E a distance 5,6.05 feet to the point of curvature, thence on a 1199.18 foot radius curve to the left forming a central angle of 01°03'44" a distance of 22.96 feet to the place of beginning ,containing 11.368 acres, more or less, of which 0.278 acres, more or less, are presently being used for road purposes on the east side and 0.531 acres, more or less, are presently being used for road purposes on the north side, leaving a balance of 10.559 acres, more or less, Buffalo County, Nebraska (1650 46th Avenue).

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

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**REZONING 1650 46TH AVENUE; ORDINANCE NO. 7732**

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

Mayor Clouse opened the public hearing on the Application submitted by Larry and Elena Schmidt (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 the Northeast Quarter of the Southeast Quarter of Section 5, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (1650 46th Avenue) and to consider Ordinance No. 7732.

There was no one present in opposition to this hearing.

Moved by Lammers to close the public hearing and introduced Ordinance No. 7732 on the Application submitted by Larry and Elena Schmidt (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 the Northeast Quarter of the Southeast Quarter of Section 5, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (1650 46th Avenue) and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Buschkoetter seconded the motion to close the hearing and suspend the rules for Ordinance No. 7732. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear 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. 7732 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried. Ordinance was read by number.

Moved by Buschkoetter seconded by Clouse that Ordinance No. 7732 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lammers. Nay: None. Lear absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7732 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.

### **AMENDMENT TO THE LAND USE MAP FOR 2223 14TH AVENUE**

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

Mayor Clouse opened the public hearing on the Application submitted by O'Brien RE Restorations, LLC (Applicant) and Kyle O'Brien (Owner) for an amendment to the Land Use Map of the City of Kearney Comprehensive Development Plan from Low Density Residential to Medium Density Residential for property described as Lot 12 of Block 10 together with the vacated south half of 23rd Street abutting said Lot 12, Kearney Land and Investment Company's Second Addition to the City of Kearney, Buffalo County, Nebraska (2223 14th Avenue) and to consider Resolution No. 2012-109. Planning Commission recommended approval, albeit on a split vote with four in favor and one dissenting vote.

The applicant is requesting a zone change to allow an existing single-family home at 2223 14th Avenue be converted into a duplex to offer additional housing opportunities for UNK students. Subway restaurant in UC zoning abuts the property to the north, additional commercial zoning is located west while R-1 extends to the south and east. All of these zoning districts are also included in the ND-1 Overlay District, the overlay that was developed to regulate further multi-family development within the Pioneer Park Neighborhood District. Duplex development is not affected by the ND-1 Overlay District.

The Owner is requesting approval to rezone from R-1/ND-1 to R-2/ND-1 District In order to remodel the house into an up/down duplex. Additional parking will be constructed behind the house off the alley. Since zoning of a parcel of property 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, a land use map amendment is required. In this case, the current land use designation for the subject property is "Low Density Residential" and the designation corresponding to the applicant's zoning request is "Medium Density Residential." Staff believes that the land use map amendment and rezoning are reasonable given the mixed-use character of the area, proximity to commercial uses, and proximity to the campus.

Representatives from the Pioneer Park Neighborhood Association spoke in protest to the rezoning at the Planning Commission hearing. They do not want single-family houses converted to higher density. They cited the fact that they had canvassed the neighborhood door to door a few years ago asking property owners to rezone their property to R-1, Single-Family Residential if it was otherwise zoned. Staff reminded the

Planning Commission that the door to door rezoning petition was voluntary, and while some property owners chose to participate, others did not. The results of the rezoning effort several years ago do not apply to this current rezoning request. The association also mentioned the ND-1 Pioneer Park Conservation Overlay District is one of the overlay zones in the zoning ordinance. This zone overlays the entire Pioneer Park neighborhood, including this lot. Its purpose is to prevent new apartment house projects within 300 feet of an existing apartment house. Apartments are a "High Density" land use corresponding to zones R-3 and R-4, while the applicant's request is for "Medium Density" or R-2 zoning. Therefore, duplex development is not affected by the ND-1 Overlay District.

Kyle O'Brien, 4012 Palomino Road, presented this matter to the Council. Christian Student Fellowship (CSF), which is a Campus Ministry at UNK, is directly across the street (2310 14th Avenue) from this property located at 2223 14th Avenue. Over the past couple of years CSF has had to turn down students for housing because they could only have 16 students. Many of these have been international students. He thought that the property across the street would be great for a duplex. Traveling for the international students is a little more difficult and the proximity to the university is very beneficial. They usually bike or walk as many of them do not have vehicles. The property is located on the outside edge of the Pioneer Park neighborhood.

Technically, there are other types of zonings on two sides of this property. The New China Express and other buildings cover about half of the backside of the property. The layout of the duplex would be four bedrooms upstairs and four bedrooms downstairs. As required by the zoning regulations, there would be access through multiple doors with egress windows so all would be legitimate bedrooms. There would be a concrete pad on the backside for additional off-street parking which was a big concern. The Code requirement is for a total of six off-street parking units (3 for the upstairs and 3 for the downstairs). He has talked to the City about putting in eight stalls so there is one for each room to have their own. CSF stated if the residents of the duplexes have visitors that their parking lot would be available to use for parking.

Council member Buschkoetter stated there had been concerns about going from single family housing to multi-family housing. He knows that the neighborhood has worked very hard to deal with that issue. He asked what Mr. O'Brien's response was to that concern. Mr. O'Brien responded the intention is for it to be housing for CSF as long as possible and have worked out a long term lease with them. As long as CSF is there, it will hopefully be a property to be used for their students. He believed that it would make a great buffer zone between the multi-use and the residential use. The City agreed that it would be a good buffer between the two types of zoning. He was aware that it would be out of their control if things were not to work out. He believed that whether it is a single family or multi-family dwelling, there is always the potential for issues that can come up.

City Planner Lance Lang stated that the egress windows and parking issues have been discussed with the City and the project does meet City Code. This property is not in the middle of a residential R-1 zone. There is commercial zoning of C-2 on the west and the urban corridor on the north with R-1 that extends to the south. The staff would have been more concerned if this was a R-1 type use in the middle of a R-1 neighborhood

that was proposed to be rezoned rather than on the fringe with transitional zoning in place there.

There is an apartment complex that may or may not get built that went through the planning process recently to the southwest on that C-2 property. There is commercial and even some industrial in fairly close proximity to this property. Mr. Lang stated that in his mind, this is not in the middle of pristine R-1 even though there is a very nice neighborhood to the south. That is the reasoning that the City staff used and there is certainly a need for student housing. The extra parking that Mr. O'Brien would be providing is a plus because parking is always an issue. Although Mr. O'Brien could not guarantee that the Christian Student Fellowship people would be the only people that would stay there because they could not discriminate that way, hopefully that relationship would provide a solution for their housing needs as well.

City Planner further stated that the neighbors have expressed some concerns about whether or not trees would have to be removed to meet the parking. At the Planning Commission meeting, Mr. O'Brien stated that no trees would have to be removed. Chief Building Inspector checked the impervious coverage to make sure that the parking pad would not put them over the limit and found that it would all meet code.

Joann Sawyer, President of the Pioneer Neighborhood Association, 2108 4th Avenue, stated in October 2009, the Pioneer Neighborhood Association finished a 4-year project to rezone 121 homes from multi-family into single family homes. Prior to starting that project, the members took a vote and stated that they wanted their neighborhood to move in the direction of single family homes as much as possible. They did not call a membership meeting to discuss this zoning project as they had already set the policy that established that they would oppose any zoning that is not R-1. They do realize the initial intent is to help Christian Student Fellowship with its international student waiting list, but rezoning is not a conditional process. Rezoning a property to R-2 creates new rules far into the future. The property could be rented as two units to any perspective tenants. While the idea of international students would not create as big a population density issue with cars and trucks as other tenants may, the rezoning opens the rental to anyone.

Fair housing law states that the owner cannot discriminate against any possible tenant because he or she was or was not from a different country. Ms. Sawyer stated that after the Planning Commission meeting on June 15, they called a board meeting to discuss the Commission's vote and their options going forward. They did not want this zoning to set a precedent for future rezoning requests. Given that the property is located adjacent to several restaurants and an apartment complex has been approved to be built down the street in the near future, the property is not an ideal location for a single family to rent or to purchase. While they still oppose the rezoning from single family to multi-family, they will not oppose the rezoning of this property. Ms. Sawyer stated that they don't like it, but if not there then somewhere else.

Lee Polhemus, 2215 14th Avenue, stated his opposition. After his initial conversation with Mr. O'Brien about the duplex for international students, he left with the impression that it would be occupied by four people because they had discussed providing four parking spaces. Mr. Polhemus discussed this with his wife and they had no problem

with it at that point. After he saw articles in the paper where it went from four people to eight and possibly 12, he questioned if a dwelling of this size would be safe in case of a fire for that number of tenants. He did not want to get into the parking and traffic flow issues because they are separate, but related issues. He believed that a single family dwelling was as good a buffer zone as a duplex.

City Attorney Michael Tye stated that the fire safety issue is taken care of in the building code. As The City Planner indicated multiple accesses and egress windows are required as part of the building code and so there is not a fire safety concern with this plan. Mayor Clouse stated that if there were more than eight residents in this dwelling that would be a violation of City Code which could be investigated by the City. City Attorney confirmed.

Pastor Kyle Belabo from Christian Student Fellowship, 418 East 33rd Street, stated that obviously they have something to gain because they have wanted to make more housing available for quite a while and it is their intention to use it for that need. He stated from a neighbor standpoint, they have seen the improvements Mr. O'Brien has made to that property already which is a 100 percent improvement from what it was. It also gave them the initiative to get out and clean up their property on the outside. He believed that Mr. O'Brien will be a tremendous property owner regardless of whether it is their students in there or not. This is not the traditional 25th Street slum college living sort of environment. Mr. O'Brien has done renovations inside and outside. He was confident that will continue.

Pastor Belabo further stated they have an arrangement with Mr. O'Brien to place international students in his property as soon as it is available. They have two of their interns who are working with international students who will live in the property for the foreseeable future, regardless of whether the rezoning takes place or not. These interns are college graduates who work with their ministry.

Moved by Clouse seconded by Kearney to close the hearing and adopt **Resolution No. 2012-109** approving the Application submitted by O'Brien RE Restorations, LLC (Applicant) and Kyle O'Brien (Owner) for an amendment to the Land Use Map of the City of Kearney Comprehensive Development Plan from Low Density Residential to Medium Density Residential for property described as Lot 12 of Block 10 together with the vacated south half of 23rd Street abutting said Lot 12, Kearney Land and Investment Company's Second Addition to the City of Kearney, Buffalo County, Nebraska (2223 14th Avenue). Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion carried.

### **RESOLUTION NO. 2012-109**

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 Lot 12 of Block 10 together with the vacated south half of 23rd Street abutting said Lot 12, Kearney Land and Investment Company's Second Addition to the City of Kearney, Buffalo County, Nebraska (2223 14th Avenue) from Low Density Residential to Medium Density Residential, and

WHEREAS, the said application for change in the Comprehensive Land Use Plan

has been approved by the City Planning Commission, after a public hearing properly published and held, and

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

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the Comprehensive Land Use Plan be and is hereby amended to change from Low Density Residential to Medium Density Residential the use classification for a tract of land being Lot 12 of Block 10 together with the vacated south half of 23rd Street abutting said Lot 12, Kearney Land and Investment Company's Second Addition to the City of Kearney, Buffalo County, Nebraska (2223 14th Avenue).

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

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**REZONING 2223 14TH AVENUE; ORDINANCE NO. 7733**

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

Mayor Clouse opened the public hearing on the Application submitted by O'Brien RE Restorations, LLC (Applicant) and Kyle O'Brien (Owner) to rezone from District R-1/ND-1, Urban Residential Single-Family (Low Density)/Pioneer Park Neighborhood Conservation Overlay District to District R-2/ND-1, Urban Residential Mixed-Density/Pioneer Park Neighborhood Conservation Overlay District property described as Lot 12 of Block 10 together with the vacated south half of 23rd Street abutting said Lot 12, Kearney Land and Investment Company's Second Addition to the City of Kearney, Buffalo County, Nebraska (2223 14th Avenue) and to consider Ordinance No. 7733.

Moved by Kearney to close the public hearing and introduced Ordinance No. 7733 on the Application submitted by O'Brien RE Restorations, LLC (Applicant) and Kyle O'Brien (Owner) to rezone from District R-1/ND-1, Urban Residential Single-Family (Low Density)/Pioneer Park Neighborhood Conservation Overlay District to District R-2/ND-1, Urban Residential Mixed-Density/Pioneer Park Neighborhood Conservation Overlay District property described as Lot 12 of Block 10 together with the vacated south half of 23rd Street abutting said Lot 12, Kearney Land and Investment Company's Second Addition to the City of Kearney, Buffalo County, Nebraska (2223 14th Avenue) and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Lammers seconded the motion to close the hearing and suspend the rules for Ordinance No. 7733. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear 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. 7733 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried. Ordinance was read by number.

Moved by Lammers seconded by Buschkoetter that Ordinance No. 7733 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7733 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

### **FINAL PLAT FOR OVERTURF SUBDIVISION**

Mayor Clouse opened the public hearing on the Application submitted by Buffalo Surveying (Applicant) for Sutton Rentals, LLC (Owner) for the Final Plat for Overturf Subdivision, Buffalo County, Nebraska 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 (south of the Union Pacific Railroad and 1,050 feet west of 62nd Avenue) and to consider Resolution No. 2012-110. Planning Commission recommended approval.

The applicant was before the Commission and Council last month requesting rezoning from AG to RR-1 in order to get a building permit to erect an accessory building in the Two-Mile Extraterritorial zoning district west of town. The property takes access from a 30-foot wide ingress-egress easement and can be reached by traveling 2,100 feet south of the intersection of 62nd Street and 18th Avenue and then west 1,500 feet on the easement road. This property has never been subdivided, but State statutes require any parcel 10 acres in size, or less, be placed in a formal subdivision. The size of the property is 10.00 acres. Therefore, the applicant is requesting a 2-lot subdivision to be known as Overturf Subdivision.

Overturf Subdivision will consist of two 5-acre lots. The Preliminary Plat for Overturf Subdivision was approved by the Planning Commission on June 15, 2012. Thirty-three feet of road right-of-way is being dedicated as it abuts this property. As other property develops along this corridor additional road right-of-way can be dedicated such that eventually, in the future, a 66-foot wide public road may be constructed to replace the 30-foot wide ingress-egress easement.

Mitch Humphrey from Buffalo Surveying presented this matter to the Council. This property is located as you go west on Highway 30 and cross what is called 62nd Avenue and proceed across the railroad tracks about a quarter mile south and then turn west and go approximately 1,000 feet. That will bring you to a road which is an ingress/egress easement road that has development on either side of it. The owner has purchased ten acres which he owned for just a month before this rezone from AG to RR-1. He would like to do some building and redevelopment of that site, but to conform

to City codes and comply with the State statute, he needs to do a little platting because the tract of land is ten acres or less which requires platting. To accommodate the City and the owner, with the approval of the Council, they will then dedicate 33 feet (or half of a street) as a street that will be known as 13th Street. The City will essentially grab the rest of that street right-of-way as further development should occur in the area. The comments were written up as creating two 5-acre lots which is essentially true, but they have to take 33 feet off the south side of the parcel which will reduce the net acreage.

There was no one present in opposition to this hearing.

Moved by Buschkoetter seconded by Clouse to close the hearing and adopt **Resolution No. 2012-110** approving the Application submitted by Buffalo Surveying (Applicant) for Sutton Rentals, LLC (Owner) for the Final Plat for Overturf Subdivision, Buffalo County, Nebraska 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 (south of the Union Pacific Railroad and 1,050 feet west of 62nd Avenue). Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

#### **RESOLUTION NO. 2012-110**

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of Overturf Subdivision of Buffalo County, Nebraska 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 duly made out, acknowledged and certified, and the same hereby is approved in accordance with the terms and requirements of Sections 16-901 through 16-904 inclusive, R.R.S. 1943 (as amended) be accepted and ordered filed and recorded in the Office of the Register of Deeds, Buffalo County, Nebraska.

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

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

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**BOARD OF EQUALIZATION FOR PAVING, WATER AND SEWER DISTRICTS**

Mayor Clouse opened the public hearing for the Council to meet as a Board of Equalization to assess costs in connection with Paving Improvement District Nos. 2010-942, 2010-943, 2010-944, 2010-945; Water District No. 2010-561; Sanitary Sewer District No. 2010-501 and to consider Resolution No. 2012-111.

On April 13, 2010 the City received letters from property owners requesting paving 18th Street from 8th Avenue to 9th Avenue and for 7th Avenue from 18th Street to 19th Street. These two streets are graveled streets. In accordance with the City's paving assessment policy (Resolution No. 2006-103), residential properties that have graveled streets wherein the special assessments would be paid as follows: 50 percent by special sales tax funds and the other 50 percent would be assessed against the property in the district. Therefore, the City created the following districts:

- Paving Improvement District No. 2010-942 for 18th Street from 8th Avenue to 9th Avenue.
- Paving Improvement District No. 2010-943 for 7th Avenue from 18th Street to 19th Street.

Through a Subdivision Agreement between the City and the Developer, the City agreed to create improvement districts and assess the assessable costs of the public improvements back to the property abutting the improvements. The Subdivision Agreement also outlined the cost share between the property owner and the City for infrastructure that is not typically assessed back to the property owners. The public infrastructure will also serve Spruce Hollow Estates Fourth Addition which is located just south of Spruce Hollow Estates Fifth along the east side of 11th Avenue and just north of 56th Street. Therefore, on September 14, 2010 the City created the following districts:

- Paving Improvement District No. 2010-944 from a point 250 feet east of 11th Avenue and from a point 250 feet west of 11th Avenue in and including all of 56th Street, and commencing at the south line of 56th Street thence northerly to the north line of Spruce Hollow Boulevard in and including all 11th Avenue, 57th Street Place, 59th Street, 61st Street, 61st Street Place, 62nd Street Place and Spruce Hollow Boulevard.
- Water District No. 2010-561 and Sanitary Sewer District No. 2010-501 from the south line of 56th Street thence northerly to the north line of Spruce Hollow Boulevard in and including all 11th Avenue, 57th Street Place, 59th Street, 61st Street, 61st Street Place, 62nd Street Place and Spruce Hollow Boulevard.

After completion of the construction projects, the City hired a title company to complete property abstracts so that assessments could be levied. These districts have been completed and, in order to satisfy state law, when paving, water and sanitary sewer districts are completed, the City Council must act as a Board of Equalization to levy assessments on properties so benefited. Property owners will then be required to pay the first installment within 50 days (August 29, 2012) or will be able to pay the entire assessment without any interest prior to this date.

The costs of the improvements shall be assessed against the property in said districts on a basis of special benefit to the property, if any, as provided by law. As part of the Redevelopment Contract, the City will pay the full cost of the Central Avenue project up front. Johnstone Supply will be assessed one half of the cost of the project.

Ron and Belinda Tolle, 1810 7th Avenue, and Mark and Jamie Darby, 1802 7th Avenue, addressed the Council. Ms. Tolle stated that when this first started she protested this. She was "out land owned". The gentleman who filed for this street to be paved does not even have an address on this street. His garage is off this street. Railroad Street is not being paved and this street went to nowhere and it has not been paved since her house has been there for 140 years. They did not want it paved, no one else asked for it to be paved except for this one gentleman. She and her husband are very unhappy about this project.

Mark Darby stated that he moved into his residence a year ago on June 29th. On their closing date, they found out that the road had been approved to be paved. At that time, they were in a position they had to close on the house because they didn't have any place to live. They were told that they could turn down the house or sign and the road costs would be assessed to them. They learned later from their neighbors what had happened. He attested to the fact as stated by Ms. Tolle that the gentleman's address is on 18th Street, not 7th Avenue. His garage takes up about half the street and he has a rental property next to them and that is why they were "out-landed".

Ms. Tolle stated if 19th Street is not going to be finished, she did not understand why some of these streets were done. It has opened up a road that some people like to go up and down a lot. None of them on that block use that street because they use the alley where their garages are. Mr. Tolle stated the former owner of their house also opposed this same resolution.

City Manager Michael Morgan stated assessment districts are covered by State law and the City does not have options. If a property owner requests a street, regardless of the type of building on the property and they have sufficient frontage, the district must be created. Ms. Tolle believed the property owner who requested it should pay for the paving himself since he does not have a residence on that side of the street.

City Attorney Michael Tye stated it is based on the footage of land that the property owner has on the street. The term "out-landed" is not a legal term, but what that means in this case is that the Tolles and the Darbys do not have enough footage to protest this district. Ms. Tolle stated between them and the Darbys they own half the block on one side. The other gentleman owns the rental property next to them (approximately 1¼ lots) and he has 3 or 4 lots on the other side of the street.

City Attorney stated he apparently has enough footage that they cannot protest it out. That means that the neighbors cannot stop the process because he has enough footage to petition through the process. Ms. Tolle asked if Railroad Street is going to be paved. City Manager stated that Railroad Street is not tied to this project, but could be addressed by City staff.

Ms. Tolle asked how they are supposed to pay for the \$6,686 assessment. City Manager stated there is a calculation where the payments are spread over a period of years and they would be provided with that calculation. The terms are to pay within 50 days of the notice with no interest or over 10 years at 6% interest. The project is now finished and the cost is known so the calculation can be made. The City Clerk along with Finance Department will be sending a notice explaining these options to make payment. The decision was based on what the owners of the majority of the land wanted and in this case, it happens to be one individual.

Council member Buschkoetter stated that being on a paved street will eventually increase the value of their house. He stated that he understood how frustrating this can be. Without a process like this however, the City would not have paved streets. Council member Lammers stated perhaps this is someone who wants to develop that property for other homes to be built or commercial property depending on how it is zoned. Mayor Clouse stated the process has happened in reverse, in other cases where someone wanted paving, but those with more frontages did not and paving could not be done.

Moved by Clouse seconded by Kearney to close the hearing for the Council meeting as the Board of Equalization and adopt **Resolution No. 2012-111** assessing costs for Paving Improvement District Nos. 2010-942, 2010-943, 2010-944, 2010-945; Water District No. 2010-561; Sanitary Sewer District No. 2010-501. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lammers, Kearney. Nay: None. Lear absent. Motion carried.

### **RESOLUTION NO. 2012-111**

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA:

Section 1. The President and Council find and determine that the streets in Paving Improvement District Nos. 2010-942, 2010-943, 2010-944, and 2010-945 have been improved by paving, curbing and guttering and incidental work, that none of the properties listed, which list is marked Exhibit "A" and made a part hereof by reference, were damaged thereby and that the amounts shown in the attached schedules do not exceed the amounts which each of said lots and parcels of ground were specially benefited by said improvements and the total amount of said special assessments does not exceed the costs of said improvements exclusive of the cost of the intersections and areas formed by the crossing of streets, avenues and alleys as heretofore determined by the Mayor and City Council.

Section 2. The President and Council find and determine that the water main heretofore ordered installed in Water District No. 2010-561 has been installed, together with all incidental work thereto by the City Utilities Department, and that none of the properties listed, which is marked "Exhibit "A" and made a part hereof by reference, were damaged thereby and that the amounts shown in the attached schedule does not exceed the amounts which each of said lots and parcels of ground were specially benefited by said water main and the total amount of said special assessments does not exceed the costs of said improvements as heretofore determined by the Mayor and City Council.

Section 3. The President and Council find and determine that the sanitary sewer main heretofore ordered installed in Sanitary Sewer District No. 2010-501 has been

installed, together with all incidental work thereto by the City Utilities Department, and that none of the properties listed, which is marked "Exhibit "A" and made a part hereof by reference, were damaged thereby and that the amounts shown in the attached schedule does not exceed the amounts which each of said lots and parcels of ground were specially benefited by said sanitary sewer main and the total amount of said special assessments does not exceed the costs of said improvements as heretofore determined by the Mayor and City Council.

Section 4. Notice of the time and purpose of hearing on special assessments for equalizing said special assessments has been published as provided by law in the Kearney Hub, and a copy of said notice mailed by certified mail to each party known to have a direct legal interest therein.

Section 5. That there be and there is hereby levied against each lot and parcel of ground set out in Exhibit "A" the amount set opposite each lot and parcel of ground. Said assessments for Paving Improvement District Nos. 2010-942, 2010-943, 2010-944, and 2010-945 shall become delinquent as follows:

- 1/10th fifty days after date of this Resolution
- 1/10th one year after date of this Resolution
- 1/10th two years after date of this Resolution
- 1/10th three years after date of this Resolution
- 1/10th four years after date of this Resolution
- 1/10th five years after date of this Resolution
- 1/10th six years after date of this Resolution
- 1/10th seven years after date of this Resolution
- 1/10th eight years after date of this Resolution
- 1/10th nine years after date of this Resolution

Each installment, except the first, shall draw interest at the rate of six per centum per annum from date of this Resolution until the same become delinquent and after they become delinquent at the rate of fourteen per centum per annum until paid.

Section 6. That there be and there is hereby levied against each lot and parcel of ground set out in Exhibit "A" the amount set opposite each lot and parcel of ground. Said assessments for Water District No. 2010-561 shall become delinquent as follows:

- 1/5th fifty days after date of this Resolution
- 1/5th one year after date of this Resolution
- 1/5th two years after date of this Resolution
- 1/5th three years after date of this Resolution
- 1/5th four years after date of this Resolution

Each installment, except the first, shall draw interest at the rate of six per centum per annum from date of this Resolution until the same become delinquent and after they become delinquent at the rate of fourteen per centum per annum until paid.

Section 7. That there be and there is hereby levied against each lot and parcel of ground set out in Exhibit "A" the amount set opposite each lot and parcel of ground. Said assessments for Sanitary Sewer District No. 2010-501 shall become delinquent as follows:

- 1/5th fifty days after date of this Resolution
- 1/5th one year after date of this Resolution
- 1/5th two years after date of this Resolution
- 1/5th three years after date of this Resolution
- 1/5th four years after date of this Resolution

Each installment, except the first, shall draw interest at the rate of six per centum per annum from date of this Resolution until the same become delinquent and after they become delinquent at the rate of fourteen per centum per annum until paid.

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

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

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

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

1. Approve Minutes of Regular Meeting held June 26, 2012.

2. Approve the following Claims:

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

3M \$22,804.00 smcs; Aflac \$2,904.26 ps; Agrium Advanced \$86.48 smcs; Alamar Uniforms \$92.15 smcs; Amer Fence \$255.47 smcs; Anderson Bros \$974.43 smcs; Applegate,A \$30.00 smcs; Arctic Refrigeration \$503.18 smcs; Ask Supply \$491.62 smcs; Baker & Taylor Books \$4,336.07 smcs; Bamford \$353.90 smcs; Barco Municipal \$3,565.80 smcs; Bells Curb Grinding \$1,260.00 co; Berg,B \$122.00 smcs; Bert Gurney & Associates \$616.53 co; Blessing \$122,169.11 co; Bluecross Blueshield \$28,588.10 smcs; Bosselman \$30,023.38 smcs; Botts,D \$221.00 smcs; Broadfoot's \$1,280.00 co; Bruha,S \$810.00 smcs; Buffalo Co Register Deeds \$194.00 smcs; Buffalo Co Treasurer \$82.00 co; Buffalo Outdoor Power \$18,336.00 co; Builders \$976.50 smcs,co; Campbell Pet Co \$66.34 smcs; Capital Business Systems \$181.82 smcs; Cash Wa \$1,619.61 smcs; Center Point Large Print \$182.58 smcs; Central Fire \$24.00 smcs; Cenveo \$1,979.00 smcs; CH Diagnostic \$1,140.00 smcs; Chesterman \$947.00 smcs; Christensen,J \$125.00 smcs; City of Ky \$264,729.33 co,smcs,ps; CMI \$192.02 smcs; CNA Surety \$40.00 smcs; Consolidated Management \$19.00 smcs; Copycat Printing \$145.34 smcs; Crop Production Services \$245.05 smcs; Cummins Central Power \$620.92 smcs; Curb-It \$594.00 co; D&M Security \$64.50 smcs; Dan Roeder Concrete \$192,812.40 co; Danko Emergency \$7.50 smcs; Delta Medical Systems \$186.80 smcs; Demco \$3,630.76 co; Depository Trust \$267,191.25 ds; Dowhy Towing \$225.00 smcs; Dutton-Lainson \$389.02 smcs; Eakes \$5,177.67 co; Eirich,T \$50.00 smcs; EMC Ins \$208.00 smcs; Fiddelke \$134.00 smcs; FireGuard \$138.28 smcs; Fox,J \$483.76 co; Fred Pryor Seminars \$79.00 smcs; Gale \$1,613.34 smcs; Gangwish Turf \$102.60 smcs,co; Garrett Tires \$2,927.53 smcs; GE Money Bank \$1,447.05 smcs; Gear for Sports \$458.42 smcs; Golden Rule Creations \$750.68 smcs; Government Finance \$225.00 smcs; H&H Distributing \$1,096.80 smcs; Haack,S \$212.57 smcs; HD Supply \$6,011.39 smcs; Hill,M \$94.10 smcs; Hoehner Turf \$462.56 smcs; Holy Cross Lutheran

\$80.00 smcs; Hometown Leasing \$207.71 smcs; Hotwoods \$2,047.50 co; ICMA RC \$3,855.71 ps; IRS \$121,953.85 ps; J.J. Keller \$679.20 smcs; Jack Lederman \$95.91 smcs; James,D \$307.83 smcs; Kart-Mart \$977.35 smcs; Ky United Way \$663.74 ps; Ky Visitors Bureau \$36,025.75 smcs; Kehl Tree Service \$1,200.00 smcs; Kirkham Michael & Assoc \$8,783.62 co; Kirkwood,M \$25.37 smcs; Konica Minolta \$1,365.32 smcs; Krull Ins \$1,950.00 smcs; Labun,C \$250.00 smcs; Ledesman,L \$54.00 smcs; Lind Optical \$200.00 smcs; Logan Contractors \$123.75 smcs; Magic Cleaning \$3,040.00 smcs; Masek Golf Car \$8,030.00 smcs; Matheson Tri-Gas \$19.50 smcs; Menards \$2,233.36 smcs; Metlife \$7,427.08 ps; Mid-State Units \$440.00 smcs; Miller & Associates \$14,503.14 smcs,co; Miller Signs \$133.00 smcs; Municipal Emergency \$140.29 smcs; Municipal Supply \$7,939.44 smcs,co; NE Child Support \$1,982.13 ps; NE Dept Agriculture \$49.10 smcs; NE Dept.of Environmental \$125.00 smcs; NE Dept of Revenue \$37,990.28 ps; NE LE Training Center \$100.00 smcs; NE Library Assn \$66.20 smcs; NE Library Comm \$5,736.00 smcs; NE Liquor Control \$40.00 smcs; NE Safety & Fire \$445.00 smcs; NE State Fair \$660.00 smcs; NE State Fire Marshall \$50.00 smcs; NEland Distributors \$1,687.30 smcs; NeFSMA \$35.00 smcs; Neopost \$6,000.00 smcs; New World Systems \$600.00 co; Northwestern Energy \$4,328.90 smcs; Ohri,R \$11.40 smcs; Outdoor Recreation \$10,799.00 smcs,co; Paramount \$186.54 smcs; Patterson,B \$115.21 smcs; Payflex Systems \$527.00 smcs,ps; Platte Valley Comm \$890.51 smcs; Presto-X \$237.30 smcs; Psota,K \$485.00 co; Pulliam,R \$40.00 smcs; Random House \$165.75 smcs; Ready Mixed Concrete \$1,290.15 smcs; Reams \$29,800.21 co; Recorded Books \$542.16 smcs; Reinke's Heating \$958.34 smcs; Reliable Printing \$65.41 smcs; Reserve Account \$750.00 smcs; Rick's Sod Farm \$1,560.80 co; Riverside Mfg \$381.43 ps; Rohde,K \$10.00 smcs; Safety-Kleen \$90.95 smcs; Sam's Direct \$984.35 smcs; Sanchez,R \$100.00 smcs; Sapp Brothers \$7,104.00 smcs; Sargent Drilling \$16,545.73 smcs; SG Leasing \$38.71 smcs; Sign Center \$210.00 smcs; Sirchie Finger Print \$406.68 smcs; Snap-On Tools \$92.65 smcs; Snow,T \$50.00 smcs; Snyder,S \$30.00 smcs; Spracklen/Russell Const \$1,229.97 smcs; State of NE/AS Central \$3,418.36 smcs,co; Steel Mailbox \$1,507.12 co; Steffensmeier,J \$5.75 smcs; Steinbrink Landscaping \$990.00 smcs; Sterling West \$478.23 smcs; Sun Life Financial \$52,305.50 smcs; Tee-Signs \$487.03 smcs; Thayer,S \$100.00 smcs; Thome,B \$35.38 smcs; Thompson,J \$18.64 smcs; Tielke's Sandwiches \$88.09 smcs; Titleist \$1,641.08 smcs; Tye & Rademacher \$10,805.47 smcs; Union Bank \$54,130.46 ps; Verizon \$40.01 smcs; Village Uniform \$603.92 smcs; Walsh,C \$197.02 smcs; Watchguard Video \$182.25 co; Weis Fires & Safety \$260.00 smcs; Wells Fargo Equipment \$53,598.20 ds; World Theatre Foundation \$20,000.00 co; Zimmerman Printers \$756.77 smcs; Payroll Ending 6-30-2012 -- \$410,734.24. 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.** Adopt **Resolution No. 2012-112** approving the Lease between the City of Kearney and Kurt Nelson leasing a piece of property adjacent to 2610 Avenue Q.

### **RESOLUTION NO. 2012-112**

BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the Mayor be and is hereby authorized and directed to execute the Lease, on behalf of the City of Kearney, Nebraska, with Kurt Nelson for a period of five

years. The Lease, marked Exhibit "1", is attached hereto and made a part hereof by reference.

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

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

4. Approve the Plans and Specifications for the 2012 Part 1 Improvements consisting of Paving Improvement District No. 2012-951, Water District No. 2012-563 and Sanitary Sewer District No. 2012-503 for 13th Street Place from 17th Avenue to its terminus in a cul-de-sac; Paving Improvement District No. 2012-952, Water District No. 2012-564 and Sanitary Sewer District No. 2012-504 for 12th Street Place from 17th Avenue to its terminus in a cul-de-sac and set the bid opening date for August 7, 2012 at 2:00 p.m.

5. Repeal Resolution No. 2012-60 and adopt **Resolution No. 2012-113** approving the redevelopment project for Redevelopment Area #5 for an area described as the south 49 feet of Lot 2, all of Lots 3, 4, 5, 6, 7, 8, 9, 10, and the south 49 feet of Lot 11, all in Block 9, Kearney Land & Investment Company 2nd Addition to the City of Kearney, Buffalo County, Nebraska, excepting therefrom the west 92 feet of Lot 7 and the west 92 feet of the south 30 feet of Lot 8, Block 9 thereof (2214 14th Avenue).

#### **RESOLUTION NO. 2012-113**

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

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

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

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

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

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

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

WHEREAS, there has been presented to the City by the Authority for approval

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

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

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska that Resolution No. 2012-60 passed and approved by the Kearney City Council on April 10, 2012 be and is hereby repealed in its entirety.

BE IT FURTHER RESOLVED that:

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

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

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

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

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

b. That portion of the ad valorem tax on real property in the redevelopment

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

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

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

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

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

6. Adopt **Resolution No. 2012-114** approving the T-Hangar B-5 Lease Agreement between the City of Kearney and Brandon Potter for storage at the Kearney Regional Airport.

#### **RESOLUTION NO. 2012-114**

BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the President be and is hereby authorized and directed to execute the T-Hangar B-5 Lease Agreement, on behalf of the City of Kearney, Nebraska, with Brandon Potter, the Agreement, marked Exhibit "1", is attached hereto and made a part hereof by reference.

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

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

7. Adopt **Resolution No. 2012-115** approving the T-Hangar B-B Lease Agreement between the City of Kearney and Buck Enterprises, dba Thrifty Car Rental for storage at the Kearney Regional Airport.

#### **RESOLUTION NO. 2012-115**

BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the President be and is hereby authorized and directed to execute the T-Hangar B-B Lease Agreement, on behalf of the City of Kearney, Nebraska, with Buck

Enterprises, dba Thrifty Car Rental, the Agreement, marked Exhibit "1", is attached hereto and made a part hereof by reference.

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

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

## **V. CONSENT AGENDA ORDINANCES**

None.

## **VI. REGULAR AGENDA**

### **VFW MANAGER APPLICATION**

Mayor Clouse opened for discussion the Manager Application for Shelly Dummer submitted by Veterans FW #759 located at 2215 1st Avenue in connection with their Class C-09025 liquor license.

A background was conducted by the Police Department on Shelly Dummer as the applicant for Manager for the VFW and nothing was found that would prohibit Ms. Dummer from functioning as the manager. According to the records at the Liquor Commission, the VFW had a violation for Selling to Minors in 2009. Ms. Dummer has returned the Liquor License Training Compliance form and copies of their Certificates of Training have been filed with the City Clerk.

Shelly Dummer, 3208 22nd Avenue, presented this matter to the Council. She stated all three employees have done their TIPS training. She is a stickler about the training due to the fact that she believes it is very important. She has nothing on her record and requested approval.

Moved by Lammers seconded by Buschkoetter to approve the Manager Application for Shelly Dummer submitted by Veterans FW #759 located at 2215 1st Avenue in connection with their Class C-09025 liquor license. Roll call resulted as follows: Aye: Clouse, Kearney, Buschkoetter, Lammers. Nay: None. Lear absent. Motion carried.

### **OPEN ACCOUNT CLAIM: NPPD - \$7,607.84**

Moved by Buschkoetter seconded by Kearney that Open Account Claim in the amount of \$7,607.84 payable to Nebraska Public Power District be allowed. Roll call resulted as follows: Aye: Buschkoetter, Lammers, Kearney. Nay: None. Clouse abstained. Lear absent. Motion carried.

## **VII. REPORTS**

None.

**VIII. ADJOURN**

Moved by Kearney seconded by Lammers that Council adjourn at 7:38 p.m. Roll call resulted as follows: Aye: Clouse, Lammers, Kearney, Buschkoetter. Nay: None. Lear absent. Motion carried.

**ATTEST:**

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

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**MICHAELLE E. TREMBLY  
CITY CLERK**