

*Kearney, Nebraska*  
*October 9, 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 October 9, 2012 in the Council Chambers at City Hall. Present were: Stanley A. Clouse, President of the Council; Michaëlle Trembly, City Clerk; Council Members Randy Buschkoetter, Bruce Lear, and Bob Lammers. Absent: Don Kearney. Michael Morgan, City Manager; Michael Tye, City Attorney; Wendell Wessels, Director of Finance; Suzanne Brodine, Assistant City Manager/Development Services Director; Kirk Stocker, Director of Utilities; Rod Wiederspan, Director of Public Works; Shawna Erbsen, Administrative Services Director; and Dan Lynch, Chief of Police were also present. Some of the citizens present in the audience included: Bryce Jensen, Jon Bokenkamp, Bryce Jensen, Mitch Humphrey, Keith Rodehorst, Jan Rodehorst, Sherry Dye, Brett Jacobitz, Matthew Schlitsh, Richard Stacy, Craig Bennett.

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

## **I. ROUTINE BUSINESS**

### **INVOCATION**

Pastor Charlie Gable from First Church of God provided the Invocation.

### **PLEDGE OF ALLEGIANCE**

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

### **ANNOUNCEMENT**

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

### **ORAL COMMUNICATIONS**

There was no Oral Communications.

## **II. UNFINISHED BUSINESS**

There was no Unfinished Business.

### III. PUBLIC HEARINGS

#### THE WORLD THEATRE LIQUOR LICENSE

Mayor Clouse opened the public hearing on the Application for a Class I-100700 liquor license submitted by World Theatre Foundation, dba The World Theatre located at 2318 Central Avenue, consider the manager application for Bryce Jensen, and consider Resolution No. 2012-175.

Jon Bokenkamp presented this matter to the Council. In 2008 they had a business plan put together which they have closely followed, other than the timeframe. The dollars of how it was going to work was an important part of it which is where a liquor permit comes in. They not only want to create an experience that is different from other movie theaters, but as part of their bottom line. They have special events such as Christmas parties and weddings on their future docket. Other events that have been held there are UNK Wrestling department fundraiser and statewide Chamber event. Bryce Jensen is the World Theatre house manager and is present at every show and is the only paid employee and is also their corporate manager. He and Mr. Jensen have been trained through the RBST (Responsible Beverage Service Training) program and anyone serving alcohol would also be trained. As people come to the concession stand to buy alcohol they would be asked to show their ID each time, they do not plan to issue wristbands.

Bryce Jensen was also present in the audience.

There was no one present in opposition to this hearing.

Moved by Lammers seconded by Lear to close the hearing and adopt **Resolution No. 2012-175** recommending approval to the Nebraska Liquor Control Commission the Application for a Class I-100700 liquor license submitted by World Theatre Foundation, dba The World Theatre located at 2318 Central Avenue, and approve the manager application for Bryce Jensen. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Buschkoetter. Nay: None. Kearney absent. Motion carried.

#### **RESOLUTION NO. 2012-175**

WHEREAS, World Theatre Foundation, dba The World Theatre has filed with the Nebraska Liquor Control Commission and the City Clerk of the City of Kearney, Nebraska, an application for a Class I-100700 (Beer, Wine, Distilled Spirits, On Sale) Liquor License to do business at 2318 Central Avenue, Kearney, Nebraska, and has paid all fees and done all things required by law as provided in the Nebraska Liquor Control Act; and

WHEREAS, World Theatre Foundation, dba The World Theatre also filed with the Nebraska Liquor Control Commission and the City Clerk of the City of Kearney, Nebraska, an application for Corporate Manager of Bryce Jensen; and

WHEREAS, a hearing was held relating to said application on October 9, 2012 and the cost of the published notice was \$11.29.

NOW, THEREFORE, BE IT RESOLVED that the President and City Council of the City of Kearney, Nebraska approve or recommend approval to the Nebraska Liquor

Control Commission of the issuance of a Class I-100700 (Beer, Wine, Distilled Spirits, On Sale) Liquor License to World Theatre Foundation, dba The World Theatre located at 2318 Central Avenue, Kearney, Nebraska, and to approve the application for Corporate Manager of Bryce Jensen.

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

PASSED AND APPROVED THIS 9TH DAY OF OCTOBER, 2012.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**LAND USE MAP AMENDMENT AT 1140 EAST 1ST STREET, NORTH OF EAST 1ST STREET AND WEST OF AVENUE M**

Public Hearings 2, 3 and 4 were discussed together but voted on separately. Planning Commission recommended approval.

Mayor Clouse opened the public hearing on the Application submitted by North Shore Marina, LLC (Applicant and Owner), Bradley Rodgers (Owner) and formerly owned by Tony and Kelli Bober for an amendment to the Land Use Map of the City of Kearney Comprehensive Development Plan from Low Density Residential and Mixed Use 1 to Agricultural/Open and Mixed Use 1 for property described as Lot 1, Bober Addition and part of Lot 3, Abood Second Addition, all in the City of Kearney, Buffalo County, Nebraska (1140 East 1st Street, north of East 1st Street and west of Avenue M) and consider Resolution No. 2012-176.

The applicant is requesting rezoning from District R-1 to District C-2 and District AG with the corresponding amendments to the Land Use Map. The property comprises 27.33 acres at the northwest corner of the intersection of Archway Parkway and Avenue M. Much of the property is currently zoned AG and will remain so. The proposed use is for Phase Two of Kearney RV Park. A Conditional Use Permit (CUP) is also required for campgrounds and RV parks.

There is a sandpit lake and an existing single-family house at this location. The house will be used for a caretaker's residence and check-in/check-out for customers. A remodeling permit to create a separate entrance for the office and upgrades to commercial grade wiring and plumbing will be required for that portion of the existing house to be used for the RV office. The access drive and interior circulation road will traverse the setback area in front of the house and extend northeast to the edge of the RV park itself. The interior drives within the RV park and the pad sites for campers will be crushed concrete and gravel. A second access point is proposed to the north on Avenue M and the circulation pattern is indicated on the Site Plan with arrows. The RV pads will be located along the east side of the site between Avenue M and the sandpit lake. There are 26 pull-through RV pads, each with water, sewer hook-up and electricity. The sewage system will be designed to meet Nebraska Department of Environmental Quality Title 123 standards and will be connected to City sanitary sewer. There are four pad sites on the west side of the lake that will be developed in the future

either as additional RV pads or small rental cabins. A small convenience store may be added in the future as well.

Current zoning of this property is AG and R-1. Lot 1, Bober Addition is the lot with the existing house that will be modified for the RV park and it contains 3.50 acres zoned R-1. This lot will be zoned C-2 to accommodate the proposed office use and possible future commercial convenience store. An amendment to the Future Land Use Map of the Comprehensive Development Plan from "Low Density Residential" to "Mixed Use 1" is required for rezoning of this parcel. There is an additional small area zoned R-1 containing a 0.47 acre sliver of land that is located near the house on the north end of the lake. This sliver of land is to be rezoned from R-1 to AG. The Land Use Map will be amended accordingly to "Agricultural/Open." The project then becomes 3.5 acres of C-2 property on the south and the remainder is AG.

The applicant had originally intended to rezone the existing house site from R-1 to AG so the entire project would consist of AG zoning. This course of action would have limited the size and type of signs that the applicant could legally erect on the property, basically forcing him to seek relief from the Board of Adjustment for a sign variance. During Planning Commission discussion, it became apparent that a variance request would likely be denied for lack of a demonstrable hardship. Therefore, the Planning Commission suggested amending the rezoning request to C-2 as you see before you tonight. C-2 zoning allows the free-standing sign that the applicant desires, and both AG and C-2 allow campgrounds and RV Parks by conditional use. The applicant has submitted all required documentation for a CUP.

There is a 50-foot NPPD setback for overhead electric which parallels the lake bank on the southeast side. NPPD will allow the circulation road to encroach 10 feet further north.

Mitch Humphrey from Buffalo Surveying presented this matter to the Council. Mr. Rodehorst previously came before the Council to get approval of the first phase of this project. With the opportunity of the property located on East 1st Street (Archway Parkway) and on the west side of Avenue M, he decided to develop that piece of property. The site has a body of water on it which is a nice amenity. The site consists of 26 pull through/drive through camper stalls with restroom and shower facilities available in the middle. There is a generous amount of landscaping throughout the site with shade trees along the pad site lines. The Bober lot that consists of about 3 acres has a large shop building and a house structure which Mr. Rodehorst will remodel a portion of to be used as a check-in site for the campground. The remainder will be used for the caretaker's house. Due to the signage and use of the building, they agreed at Planning Commission that it should be zoned C-2 and any remodeling done will have to be in compliance with commercial codes.

There is a piece of property located in the northeast corner of this site that is presently zoned R-1 which was done when the original Abood subdivision was platted. They are requesting to split that property into two different zonings, the agricultural part will contain the pad sites and the tract to the north to be zoned R-1 with a minor subdivision to separate it from the balance of the property. That will allow Mr. Rodehorst to obtain a building permit in the future if he decides to put a single family residence in that area.

The lake would be for the use of the campground. It would be a private issue between the owner of the campground and the home owner if they want use of the lake. The majority of the pad sites is along the frontage of East 1st Street with an additional four pad sites on the west side of the lake to be developed in another phase of this expansion. The pad sites will be paved in the future, but in this phase will be crushed rock and gravel. The drives within the area that is zoned agricultural will be concrete pavement by the office and caretaker's building. Mr. Humphrey stated that the minimum setback from the street is 50 feet and they will meet or exceed that requirement. The 50-foot setback is adhered to on the southwesterly portion as you drive into the campground proper from the Bober lot and then from there it exceeds 75 feet.

Keith Rodehorst, proprietor of North Shore Marina, stated there are no storm shelters or provision in case of bad weather. He has talked to the Chief Building Inspector about a couple projects he wants to do on the existing campground. He was told there are no regulations to follow at this time, but he intends to do something on both sites for storm shelters.

City Manager Michael Morgan stated that a few years ago, there was an overlay district that went throughout this whole area and there was not a noticeable development for some time. Those requirements were eliminated and you can now see some of the benefits of having some flexibility in that area as evidence by Johnstone's Supply development. He hopes to see this continue and this expansion will be a nice addition to the area.

There was no one present in opposition to this hearing.

Moved by Lear seconded by Buschkoetter to close the hearing and adopt **Resolution No. 2012-176** approving the Application submitted by North Shore Marina, LLC (Applicant and Owner), Bradley Rodgers (Owner) and formerly owned by Tony and Kelli Bober for an amendment to the Land Use Map of the City of Kearney Comprehensive Development Plan from Low Density Residential and Mixed Use 1 to Agricultural/Open and Mixed Use 1 for property described as Lot 1, Bober Addition and part of Lot 3, Abood Second Addition, all in the City of Kearney, Buffalo County, Nebraska (1140 East 1st Street, north of East 1st Street and west of Avenue M). Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear. Nay: None. Kearney absent. Motion carried.

### **RESOLUTION NO. 2012-176**

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 described as Lot 1, Bober Addition, an addition to the City of Kearney, Buffalo County, Nebraska from Low Density Residential to Mixed Use 1; and

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 described as part of Lot 3, Abood Second

Addition, an addition to the City of Kearney, Buffalo County, Nebraska, more particularly described as follows: Referring to the Northeast Corner of Lot 3, Abood Second Addition and assuming the East line of Lot 3 as bearing S00°55'06"E and all bearings contained herein are relative thereto; thence S00°55'06"E and on the East line of said Lot 3 a distance of 155.09 feet; thence leaving the East line of said Lot 3, S59°29'46"W a distance of 72.96 feet to the ACTUAL PLACE OF BEGINNING; thence continuing S59°29'46"W a distance of 52.00 feet; thence N55°24'33"W a distance of 275.27 feet; thence N01°11'08"W a distance of 55.00 feet; thence S67°39'40"E a distance of 154.92 feet; thence S56°31'21"E a distance of 80.00 feet; thence S37°22'26"E a distance of 103.00 feet to the place of beginning, containing 0.47 acres, more or less, Buffalo County, Nebraska (1140 East 1st Street, north of East 1st Street and west of Avenue M) from Low Density Residential to Agricultural/Open; 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 Mixed Use 1 the use classification for a tract of land described as Lot 1, Bober Addition, an addition to the City of Kearney, Buffalo County, Nebraska AND from Low Density Residential to Agricultural/Open a tract of land described as part of Lot 3, Abood Second Addition, an addition to the City of Kearney, Buffalo County, Nebraska, more particularly described as follows: Referring to the Northeast Corner of Lot 3, Abood Second Addition and assuming the East line of Lot 3 as bearing S00°55'06"E and all bearings contained herein are relative thereto; thence S00°55'06"E and on the East line of said Lot 3 a distance of 155.09 feet; thence leaving the East line of said Lot 3, S59°29'46"W a distance of 72.96 feet to the ACTUAL PLACE OF BEGINNING; thence continuing S59°29'46"W a distance of 52.00 feet; thence N55°24'33"W a distance of 275.27 feet; thence N01°11'08"W a distance of 55.00 feet; thence S67°39'40"E a distance of 154.92 feet; thence S56°31'21"E a distance of 80.00 feet; thence S37°22'26"E a distance of 103.00 feet to the place of beginning, containing 0.47 acres, more or less, Buffalo County, Nebraska (1140 East 1st Street, north of East 1st Street and west of Avenue M).

PASSED AND APPROVED THIS 9TH DAY OF OCTOBER, 2012.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**REZONING AT 1140 EAST 1ST STREET, NORTH OF EAST 1ST STREET AND WEST OF AVENUE M**

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

Mayor Clouse opened the public hearing on the Application submitted by North Shore Marina, LLC (Applicant and Owner), Bradley Rodgers (Owner) and formerly owned by Tony and Kelli Bober to rezone from District R-1, Urban Residential Single-Family

District (Low Density) to District AG, Agricultural District and District C-2, Community Commercial District property described as Lot 1, Bober Addition and part of Lot 3, Abood Second Addition, all in the City of Kearney, Buffalo County, Nebraska (1140 East 1st Street, north of East 1st Street and west of Avenue M) and consider Ordinance No. 7743. Planning Commission recommended approval.

There was no one present in opposition to this hearing.

Moved by Buschkoetter to close the public hearing on the Application submitted by North Shore Marina, (Applicant and Owner), Bradley Rodgers (Owner) and formerly owned by Tony and Kelli Bober to rezone from District R-1, Urban Residential Single-Family District (Low Density) to District AG, Agricultural District and District C-2, Community Commercial District property described as Lot 1, Bober Addition and part of Lot 3, Abood Second Addition, all in the City of Kearney, Buffalo County, Nebraska (1140 East 1st Street, north of East 1st Street and west of Avenue M) and introduced Ordinance No. 7743 and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Clouse seconded the motion to close the hearing and suspend the rules for Ordinance No. 7743. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney 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. 7743 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney absent. Motion carried. Ordinance was read by number.

Moved by Clouse seconded by Lammers that Ordinance No. 7743 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7743 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.

### **CONDITIONAL USE PERMIT TO EXPAND KEARNEY RV AND CAMPGROUND**

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

Mayor Clouse opened the public hearing on the Application submitted by North Shore Marina, LLC (Applicant and Owner), Bradley Rodgers (Owner) and formerly owned by Tony and Kelli Bober for a Conditional Use Permit to expand Kearney RV and Campground on property to be zoned District AG, Agricultural District and District C-2, Community Commercial District and described as Lot 1, Bober Addition and part of Lot 3, Abood Second Addition, all in the City of Kearney, Buffalo County, Nebraska (1140

East 1st Street, north of East 1st Street and west of Avenue M) and consider Ordinance No. 7744. Planning Commission recommended approval.

There was no one present in opposition to this hearing.

Moved by Lammers to close the public hearing on the Application submitted by North Shore Marina, LLC (Applicant and Owner), Bradley Rodgers (Owner) and formerly owned by Tony and Kelli Bober for a Conditional Use Permit to expand Kearney RV and Campground on property to be zoned District AG, Agricultural District and District C-2, Community Commercial District and described as Lot 1, Bober Addition and part of Lot 3, Abood Second Addition, all in the City of Kearney, Buffalo County, Nebraska (1140 East 1st Street, north of East 1st Street and west of Avenue M) and introduced Ordinance No. 7744 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. 7744. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Lear, Lammers, Buschkoetter. Nay: None. Kearney 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. 7744 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Lear, Lammers, Buschkoetter. Nay: None. Kearney absent. Motion carried. Ordinance was read by number.

Moved by Lear seconded by Buschkoetter that Ordinance No. 7744 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear. Nay: None. Kearney absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7744 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.

### **REZONING AT LAPLATTE ROAD AT MEADOW LANE**

Public Hearings 5 and 6 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Richard Stacy (Applicant) for Scott and Tracy Moser (Owner) to rezone from District C-1, Limited Commercial District to District C-1/PD, Limited Commercial/Planned Development Overlay District property described as the south 115 feet of Lot 2, Kearney Plaza Fifth Subdivision to the City of Kearney, Buffalo County, Nebraska (LaPlatte Road at Meadow Lane) and consider Ordinance No. 7745. Planning Commission recommended approval subject to a 6-foot tall privacy fence being erected along the north property line.

The applicant is pursuing an apartment development just south of the Kearney School of Dance at the intersection of LaPlatte Road and Meadow Lane. The proposed building is two stories with eight 1-bedroom and eight 2-bedroom apartments. This project requires rezoning and approval of development plans.

The property is currently zoned C-1, Limited Commercial District and comprises just over one acre. Multi-family residential development is allowable by right in C-1 zones; however, the Unified Land Development Ordinance requires the developer to refer back to R-3 standards for site development regulations. R-3 standards require 3,000 square feet of lot area per dwelling unit in conventional development scenarios, but allow increased density to 2,500 square feet of lot area per unit for Planned District scenarios. In this case, the applicant is requesting a density of 2,730 square feet of lot area per unit thus requiring that the property be rezoned to include the Planned District Overlay. Therefore, the rezoning request is from C-1 to C-1/PD. Use of the Planned Overlay District allows the site to be developed to full capacity while maintaining thresholds for setbacks, parking, green space, etc. The land use designation on the City Comprehensive Development Plan is "High Density Residential" and does not need to be amended.

The Development Plan depicts the 7,500 square foot footprint of the building centered on the site with adequate setbacks on all sides. There are two parking garages and parking lots, one on each end of the apartment building. The parking garages can accommodate five cars each. There are a total of 28 parking spaces required and 28 provided including one handicap stall. Parking requirements are met through a combination of surface and garage parking. The "deadhead" parking arrangement in both parking lots that prohibits through circulation is less desirable; however these parking lots are relatively small. Maximum impervious coverage in this zone is 65 percent and the project layout is at 48 percent. Architectural building elevations are provided and the building design proves to be quite handsome. The proposed building will be virtually the same as the existing apartment located two blocks north on Villa Drive, albeit one story shorter. A six-foot tall privacy fence will be erected along the north property line. A Landscape Plan is provided and was updated to show additional street trees at the City's request.

Richard Stacy from Miller & Associates presented this matter to the Council. The property is now vacant and zoned C-1 limited commercial. The property is actually being redeveloped by the Downings through a purchase contract with the Mosers. They want to develop it in a higher density than the C-2. The property is in a dense commercial overlay. It has City utilities, sanitary sewer and water. There is a multi-family in the area, one formerly known as Campus House and also the Plaza Apartments. They are requesting to build 16 apartments, (8-2 bedroom units). There would be several garages which are arranged to leave both ends open to the street to keep from being cluttered. These would be two-level apartments with the required exterior similar to recent apartment complexes that have been built. The 6-foot fence is in the purchase agreement with the Mosers, who own the property immediately adjacent.

Sherry Dye, 89 LaPlatte Road stated she has a concern about the parking. The apartment that is directly to the east of the proposed site had nine cars parked on the

street that she saw on her way to this meeting. There is parking for those apartments, but they park on the street anyway. In the mornings when she leaves for work at 7:30 a.m. there are anywhere from 9 to 18 cars parked along there. In the winter time, the homes on the south side of LaPlatte Road park on the street, although they have driveways. That makes it treacherous because only one car can get through there at a time when there is snow. The parking and traffic flow are her concerns.

City Manager Michael Morgan stated that the project presented does provide adequate parking according to the City Code. Ms. Dye's concern is a separate issue which they can certainly follow up on. They will check to see if there should be some restrictions in that area and if there is adequate parking. The City will check on it to see if the street is being used instead of the provided lot and if there is a safety issue there.

Brett Jacobitz, 43 Plaza Boulevard, President of the Plaza Neighborhood Association stated he also has parking concerns in the area and with the traffic. The apartments that are directly to the west of this proposed site have a considerable amount of Police calls which their neighborhood has been concerned about because they are very family based. They would like to know if these apartments are going to be low income and what can be done to address this situation.

City Manager Michael Morgan stated that he suggested meeting with the Neighborhood Association to address the Police calls issue. The low income housing is irrelevant; however, it was stated this proposed project is not designated for elderly or low-income.

Moved by Buschkoetter to close the public hearing on the Application submitted by Richard Stacy (Applicant) for Scott and Tracy Moser (Owner) to rezone from District C-1, Limited Commercial District to District C-1/PD, Limited Commercial/Planned Development Overlay District property described as the south 115 feet of Lot 2, Kearney Plaza Fifth Subdivision to the City of Kearney, Buffalo County, Nebraska (LaPlatte Road at Meadow Lane) and introduced Ordinance No. 7745 and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Clouse seconded the motion to close the hearing and suspend the rules for Ordinance No. 7745. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney 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. 7745 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney absent. Motion carried. Ordinance was read by number.

Moved by Clouse seconded by Lammers that Ordinance No. 7745 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7745 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.

### **DEVELOPMENT OF 16 UNIT COMPLEX AT LAPLATTE ROAD AT MEADOW LANE**

Public Hearings 5 and 6 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Richard Stacy (Applicant) for Scott and Tracy Moser (Owner) for Planned District Development Plan Approval for an apartment complex development on property to be zoned District C-1/PD, Limited Commercial/Planned Development Overlay District for property described as the south 115 of Lot 2, Kearney Plaza Fifth Subdivision to the City of Kearney, Buffalo County, Nebraska (LaPlatte Road at Meadow Lane) and consider Resolution No. 2012-177. Planning Commission recommended approval subject to a 6-foot tall privacy fence being erected along the north property line.

Moved by Lammers seconded by Lear to close the hearing and adopt **Resolution No. 2012-177** approving the Application submitted by Richard Stacy (Applicant) for Scott and Tracy Moser (Owner) for Planned District Development Plan Approval for an apartment complex development on property to be zoned District C-1/PD, Limited Commercial/Planned Development Overlay District for property described as the south 115 of Lot 2, Kearney Plaza Fifth Subdivision to the City of Kearney, Buffalo County, Nebraska (LaPlatte Road at Meadow Lane) subject to a 6-foot tall privacy fence will be erected along the north property line. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Buschkoetter. Nay: None. Kearney absent. Motion carried.

### **RESOLUTION NO. 2012-177**

WHEREAS, Richard Stacy (Applicant) for Scott and Tracy Moser (Owner) have applied for Planned District Development Plan Approval for an apartment complex development on property being zoned District C-1/PD, Limited Commercial/Planned Development Overlay District and described as the south 115 of Lot 2, Kearney Plaza Fifth Subdivision to the City of Kearney, Buffalo County, Nebraska (LaPlatte Road at Meadow Lane).

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the application of Richard Stacy (Applicant) for Scott and Tracy Moser (Owner) for Planned District Development Plan Approval for an apartment complex development on property being zoned District C-1/PD, Limited Commercial/Planned Development Overlay District and described as the south 115 of Lot 2, Kearney Plaza Fifth Subdivision to the City of Kearney, Buffalo County, Nebraska (LaPlatte Road at Meadow Lane) be approved subject to compliance with the following conditions:

A 6-foot tall privacy fence will be erected along the north property line.

PASSED AND APPROVED THIS 9TH DAY OF OCTOBER, 2012.

ATTEST:  
MICHAELLE E. TREMBLY

STANLEY A. CLOUSE  
PRESIDENT OF THE COUNCIL

CITY CLERK

AND EX-OFFICIO MAYOR

**REZONING AT 211 EAST 8TH STREET**

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

Mayor Clouse opened the public hearing on the Application submitted by Richard Stacy (Applicant) for Ted Franssen (Owner) to rezone from District C-3, General Commercial District to District C-3/PD, General Commercial/Planned Development Overlay District property described as a tract of land located in the East Half of the Northwest Quarter of Section 12, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (211 East 8th Street) and consider Ordinance No. 7746. Planning Commission recommended approval subject to the circulation drive on the west side of the development be increased to twenty feet in width and an 8-inch water line, fire hydrant and meter pit being constructed.

The applicant is pursuing additional 4-plex apartment buildings at the Prairie View Apartment complex at 211 East 8th Street. Currently, there are five apartment buildings and three small maintenance buildings on this site. The open area to the south of the existing buildings is proposed for five new 4-plex buildings and one 900 square foot community building. The community building will be one story and will not have sanitary sewer or water connections. The proposed apartment buildings are two stories with four 3-bedroom apartments in each building. This project requires rezoning and approval of Development Plans.

The property is currently zoned C-3, General Commercial District and comprises 5.61 acres. Multi-family residential development is allowable by right in C-3 zones; however, the Unified Land Development Ordinance requires the developer to refer back to R-3 standards for site development. R-3 standards require 3,000 square feet of lot area per dwelling unit in conventional development scenarios, but allow increased density to 2,500 square feet of lot area per unit for Planned District scenarios. In this case, when calculating the overall density of the 5.61 acre site with existing and proposed units, the applicant is requesting a density of 2,520 square feet of lot area per unit. This density requires that the property be rezoned to include the Planned District Overlay. Therefore, the rezoning request is from C-3 to C-3/PD. The land use designation on the City Comprehensive Development Plan is "High Density Residential" and "Mixed Use 3" and does not need to be amended.

The Development Plan depicts the layout of the six new buildings across the site in relationship to the existing buildings. The development data was submitted for the project as one overall development site including existing and proposed buildings. There are a total of 155 parking spaces required and 155 provided including adequate handicap stalls. Maximum impervious coverage in this zone is 65 percent and the project layout is at 49 percent. Architectural building elevations are provided. A Landscape Plan is provided. Even though there are some existing trees along 8th Street, seven additional street trees are proposed. Proposed trees are also scattered throughout the new development area including the parking lot islands.

There are two fire safety concerns with this project that were discussed at Planning Commission.

- The circulation drive on the west side of the development at twelve feet in width needs to be increased to twenty feet in width to meet minimum access and circulation requirements for Fire Code. One of the maintenance buildings is located in the path of this drive as well. The driveway configuration will need to be modified to allow acceptable maneuvering for large vehicles around the existing building, or the building will need to be relocated or removed.

- A 6-inch diameter water main is proposed to be extended south from 8th Street. Since the proposed buildings are not sprinklered for fire protection, the 6-inch line must be upgraded to an 8-inch diameter line and a fire hydrant must be added to meet Fire Codes. A Developer Constructed Infrastructure Agreement has been prepared and the requirement for an 8-inch water line, fire hydrant and meter pit are spelled out in the agreement.

Richard Stacy from Miller & Associates presented this matter to the Council. The property is zoned C-3 which is a general commercial. It is designated in the Comprehensive Plan as dense residential. This site has been dormant for a number of years. The original site was developed in 1970 as Eagle Village. At that time, they were eager to have any development at all in south Kearney and only the north portion was developed. The owner, Mr. Franssen, would like to expand to the remainder of the area. This had to be changed to a planned district overlay to increase the density. There is infrastructure around the perimeter, but not immediately adjacent because of development on 6th Street, but it is available. This site is pretty much surrounded by commercial zoning. There is a residence to the north which is multi-family. The proposed development would be five 4-unit buildings.

The circulation would be extended from the existing complex. A 12-foot drive was originally proposed. Mr. Stacy stated he met with the Fire Administrator who approved this configuration for emergency vehicles to get in and out but had to be extended to twenty feet in width to meet the minimum requirement. There is an existing maintenance building which will be relocated to accommodate this. Because of the remote location of these apartments they are not close to a municipal fire hydrant as required by Code. As a part of the development, the owner is required to install an 8-inch water main and a hydrant at this location. He met with the Director of Utilities who approved this configuration. This reduces the possibility of a dead end hydrant for water pollution in that hydrant.

Mr. Franssen elected to develop his building in 4-plexes because he has found there are less problems with people in a 4-plex than in a large unit. The 20 units could have been in one building, but he believed that tenants of 4-plexes have less conflict with each other. These will be 2-story units much like a townhouse. There is a possibility they will be low-income. The existing Prairie View Apartments are low-income. This property is being developed at market rate which is the original intent, but if approved by HUD, could become low-income. The exterior will be much like the existing apartments so that it blends. There will be outside entrances to each apartment and they are trying to keep them as upscale as possible.

There was no one present in opposition to this hearing.

Moved by Lear to close the public hearing on the Application submitted by Richard Stacy (Applicant) for Ted Franssen (Owner) to rezone from District C-3, General Commercial District to District C-3/PD, General Commercial/Planned Development Overlay District property described as a tract of land located in the East Half of the Northwest Quarter of Section 12, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (211 East 8th Street) and introduced Ordinance No. 7746 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. 7746. 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, Buschkoetter, Lear. Nay: None. Kearney 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. 7746 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear. Nay: None. Kearney absent. Motion carried. Ordinance was read by number.

Moved by Buschkoetter seconded by Clouse that Ordinance No. 7746 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7746 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.

### **DEVELOPMENT OF 20 UNIT COMPLEX LOCATED AT 211 EAST 8TH STREET**

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

Mayor Clouse opened the public hearing on the Application submitted by Richard Stacy (Applicant) for Ted Franssen (Owner) for Planned District Development Plan Approval for an additional apartment complex development on property to be zoned District C-3/PD, General Commercial/Planned Development Overlay District for property described as a tract of land located in the East Half of the Northwest Quarter of Section 12, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (211 East 8th Street) and consider Resolution No. 2012-178. Planning Commission recommended approval subject to the circulation drive on the west side of the development be increased to twenty feet in width and an 8-inch water line, fire hydrant and meter pit being constructed.

There was no one present in opposition to this hearing.

Moved by Clouse seconded by Lammers to close the hearing and adopt **Resolution**

**No. 2012-178** approving the Application submitted by Richard Stacy (Applicant) for Ted Franssen (Owner) for Planned District Development Plan Approval for an additional apartment complex development on property to be zoned District C-3/PD, General Commercial/Planned Development Overlay District for property described as a tract of land located in the East Half of the Northwest Quarter of Section 12, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (211 East 8th Street) subject to the circulation drive on the west side of the development be increased to twenty feet in width and an 8-inch water line, fire hydrant and meter pit be constructed. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney absent. Motion carried.

### **RESOLUTION NO. 2012-178**

WHEREAS, Richard Stacy (Applicant) for Ted Franssen (Owner) have applied for Planned District Development Plan Approval for an additional apartment complex development on property being zoned District C-3/PD, General Commercial/Planned Development Overlay District and described as a tract of land located in the East Half of the Northwest Quarter of Section 12, Township 8 North, Range 16 West of the 6th P.M., and described as follows: Beginning at a point on the south line of 8th Street in the City of Kearney, which is 1216.6 feet south and 1665.3 feet east of the northwest corner of said Section 12, thence continuing on the south line of 8th Street for a distance of 517 feet, running thence due south a distance of 471.9 feet, thence westerly and parallel to the North line of said tract a distance of 517 feet, and running thence in a northerly direction a distance of 473.8 feet to the place of beginning, containing 5.61 acres, more or less, Buffalo County, Nebraska (211 East 8th Street).

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the application of Richard Stacy (Applicant) for Ted Franssen (Owner) for Planned District Development Plan Approval for an additional apartment complex development on property being zoned District C-3/PD, General Commercial/Planned Development Overlay District and described as a tract of land located in the East Half of the Northwest Quarter of Section 12, Township 8 North, Range 16 West of the 6th P.M., and described as follows: Beginning at a point on the south line of 8th Street in the City of Kearney, which is 1216.6 feet south and 1665.3 feet east of the northwest corner of said Section 12, thence continuing on the south line of 8th Street for a distance of 517 feet, running thence due south a distance of 471.9 feet, thence westerly and parallel to the North line of said tract a distance of 517 feet, and running thence in a northerly direction a distance of 473.8 feet to the place of beginning, containing 5.61 acres, more or less, Buffalo County, Nebraska (211 East 8th Street) be approved subject to compliance with the following conditions:

- The circulation drive on the west side of the development at twelve feet in width needs to be increased to twenty feet in width to meet minimum access and circulation requirements for Fire Code. One of the maintenance buildings is located in the path of this drive as well. The driveway configuration will need to be modified to allow acceptable maneuvering for large vehicles around the existing building, or the building will need to be relocated or removed.
- Since the proposed buildings are not sprinklered for fire protection, an 8-inch diameter water line, a fire hydrant and meter pit must be added to meet Fire Codes.

PASSED AND APPROVED THIS 9TH DAY OF OCTOBER, 2012.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**VACATE PORTION OF TIFFANY SQUARE ADDITION AND TIFFANY SQUARE SECOND ADDITION AND FINAL PLAT FOR KEARNEY PLAZA VILLAS**

Public Hearings 9 and 10 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Applications submitted by Engineering Solutions (Applicant) for Kearney Plaza Villas, L.P. (Owner) as follows: (1) vacate Lots 1 through 13 inclusive, Tiffany Square Addition and Lots 1 through 49 inclusive, Tiffany Square Second Addition, all in the City of Kearney, Buffalo County, Nebraska and consider Ordinance No. 7747; and (2) the Final Plat and Subdivision Agreement for Kearney Plaza Villas, an addition to the City of Kearney, Buffalo County, Nebraska for property described Lots 1 through 13 inclusive, Tiffany Square Addition, Lots 1 through 49 inclusive, Tiffany Square Second Addition, all in the City of Kearney, Buffalo County, Nebraska (south of West Lincoln Park, west of Plaza Boulevard, north of LaCrosse Drive) and consider Resolution No. 2012-179. Planning Commission recommended approval recognizing the setback deviations of 18 feet along the north and 19 feet along the west property lines.

The applicant is pursuing a multi-family residential development exclusively for the elderly population abutting West Lincoln Way Park on the north side of LaCrosse Drive. This parcel was zoned for multi-family development years ago and split into many individual lots to accommodate townhomes or condominiums. The property never developed as such. The current proposal will require a vacation of the existing lots, a one lot subdivision, and approval of Development Plans since this property is located in a Planned Overlay District, zoned R-3/PD. The size of the parcel is approximately 2.38 acres and 24 living units and a community building are proposed.

In order to move forward with this project a number of lots that were approved in the past must be vacated so that the land can be replatted as "Kearney Plaza Villas" an addition to the City of Kearney. Lots 1 through 13, inclusive of Tiffany Square Addition as well as Lots 1 through 49, inclusive, of Tiffany Square Second Addition are to be vacated.

Both the Preliminary and Final Plat of Kearney Plaza Villas consist of a single lot. The Preliminary Plat of Kearney Plaza Villas was approved by Planning Commission on September 21, 2012. Multiple buildings will be located on this single lot under the parameters of the Planned Development Overlay District.

Although a Public Works Plan was not prepared, utility layout is shown on the site plan and a separate Grading and Drainage Plan has been submitted. Detention is located in the northeast corner of the property. All buildings will have a roof drain collection system except the community building. The drainage concept splits the site roughly in half with the north half draining to the detention cell at the northeast corner and the south half

draining to storm drain inlets in the driveway which will tie into the existing storm drain in La Crosse Drive.

Water and sanitary sewer are available in La Crosse Drive. A Subdivision Agreement has been prepared and is attached hereto. In the agreement the Owner agrees to construct the water and sanitary sewer to serve the development using the Developer Constructed Infrastructure process described in Chapter 9 of the City Code and to grant the City of Kearney water and sanitary sewer easements at no cost to the City. The agreement also establishes long term maintenance of the stormwater facilities and open space as the developer's responsibility.

The developer is proposing six 1-story 4-plex units. There will be six 1-bedroom apartments and eighteen 2-bedroom apartments. One of the buildings will have a combination of one and two bedroom units. The garages will be for one car. There will be no basements due to the high ground water table in this area. The separation between the middle buildings is only 12 feet, which is allowable by Code, but will appear tight on-site. The impervious coverage is 53 percent with the maximum allowable in this zone at 65 percent.

1.5 parking spaces are required for each 1-bedroom unit; 2 parking spaces are required for each 2-bedroom unit. Parking within the one car garages counts towards this requirement as does the driveway leading to the garage. Off-street parking requirements have been satisfied.

The one-story clubhouse will be approximately 980 square feet in size with one room and a storage room. The clubhouse will be served with water and sanitary sewer. Four off-street parking stalls plus one handicap stall are located in front of the clubhouse.

The proposed 4-plex buildings encroach into the 25-foot building setback on the north and west property lines. The measurement from building to lot line is 18 feet along the north line at its closest point and 19 feet along the west line. Deviations in required yards are allowed under the context of the Planned Development Overlay. The City requested buffering in these areas to offset the setback encroachment as discussed below.

A Landscape and Screening Plan has been submitted. The City would like a buffer on the west side of the development next to the West Lincoln Way ball field and also on the north side next to the existing playground. West Lincoln Way is one of the busiest City parks with a high level of noise and activity. Staff believes it is important to provide some buffering between the elderly residents and all of the park commotion. Therefore, a 6-foot tall privacy fence is proposed along the north property line. There is a significant grade change along the west property line with the development site several feet lower than the parkland. A row of Skyrocket Junipers is proposed on the Landscape Plan to provide buffering of the ball field. The street tree requirements have been met and several other trees are scattered throughout the site including screening of the detention cell.

It appears that individual trash containers for each unit will be the best way to provide refuse collection.

There will be a 4-foot wide public sidewalk along La Crosse Drive. The developer will take the sidewalk around the existing fire hydrant and extend it west to the park entrance.

The City had hoped for a shared drive arrangement between the parking lot for the park and the west drive of this development but it is not feasible given the layout of the property. There is adequate separation between the drives on La Crosse Drive.

Matthew Schlitsh, Engineering Solutions, presented this matter to the Council. There were originally 40+ lots which have all been vacated to make one big lot for the purpose of building six residential units and one community building. The six buildings will be 4-plexes for a total of 24 units. Six of them will be 1-bedroom units and 18 of them will be 2-bedroom units. To the north of the site is the park, to the east and south are a multi-family projects owned by the same developer. The site will have a circular loop to provide access to all the units and good pedestrian and vehicular circulation. There will be 20 feet from the front of the buildings to the drive which will allow one parking space in the driveway and one parking space in the garage. Each unit will provide two parking spaces. In the 1-bedroom apartments, they are required to have one in the hatch. They have allowed for additional parking on site. The community space will provide parking in front of it which will provide some off-street parking for potential visitors and special events. Community spaces in these elderly communities are used for things like Thanksgiving Day and gathering for events that are primarily attended by the residents. There are no cooking facilities, but food can be brought in and there is a warming type area. It also will have a dishwasher and a refrigerator and tables.

To the west of the site is the ball field and to the north are soccer fields and open space. There is a park with some playground facilities to the northwest. They requested and were granted a variance on the setback because of the irregular shape of the lot. On the easterly side of the lot, there are a lot of buried existing cable, electrical, etc. They met with the Park Advisory Board and discussed using dense vegetative screening instead of a fence on the westerly side where they back up to a ball field area. This provides a more aesthetic view from LaCrosse Road. On the northern side where they back up to the park area, there is an existing vinyl fence. It seemed to make sense to extend that along the north side to help block and separate that use and to have a number of plantings on their side to green up that area.

The service to the site is a public water main making a loop to provide good fire pressure and not have a dead end main in there. They will provide one fire hydrant. Sanitary sewer will connect from two locations. This will have an on-site detention cell in the northeast corner. All of the buildings will have a roof drain to collect in the downspouts and gutters except for the community center and will direct all that water to the detention cell. The community center because of its location will be allowed to drain out toward LaCrosse Drive. They have added a few storm inlets at the entrances/exits to the site. This will ensure all the storm water generated by their site is kept on their site or will be controlled and put in the public sewer system to control the runoff.

The sidewalk that is along LaCrosse Road that terminates at the east property line will be continued along the property line basically to where the City Park entrance is to the

ball fields. Originally, they were trying to tie their entrance in with the ball field entrance. Public works believed it would be best to have one entrance. Based on the irregular usage of the ball field and the more common usage of their site, it was agreed there would be a conflict. The compromise in the proposal was continuing the sidewalk to the City park entrance to provide good pedestrian access to that site. The buildings facades will all be according to Code and the landscaping has been approved.

Brett Jacobitz, President of the Plaza Neighborhood Association stated they have concerns about parking during high usage times, such as football games and practice. City Manager stated there is adequate parking in the park area and people will not be allowed to park along the edge of the property as they have done in the past.

Moved by Lammers to close the public hearing on the Application submitted by Engineering Solutions (Applicant) for Kearney Plaza Villas, L.P. (Owner) to vacate Lots 1 through 13 inclusive, Tiffany Square Addition and Lots 1 through 49 inclusive, Tiffany Square Second Addition, all in the City of Kearney, Buffalo County, Nebraska and introduced Ordinance No. 7747 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. 7747. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Lear, Lammers, Buschkoetter. Nay: None. Kearney 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. 7747 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Lear, Lammers, Buschkoetter. Nay: None. Kearney absent. Motion carried. Ordinance was read by number.

Moved by Lear seconded by Buschkoetter that Ordinance No. 7747 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear. Nay: None. Kearney absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7747 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

Moved by Buschkoetter seconded by Clouse to close the hearing and adopt **Resolution No. 2012-179** approving the Final Plat and Subdivision Agreement for Kearney Plaza Villas, an addition to the City of Kearney, Buffalo County, Nebraska for property described Lots 1 through 13 inclusive, Tiffany Square Addition, Lots 1 through 49 inclusive, Tiffany Square Second Addition, all in the City of Kearney, Buffalo County, Nebraska (south of West Lincoln Park, west of Plaza Boulevard, north of LaCrosse Drive). Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney absent. Motion carried.

**RESOLUTION NO. 2012-179**

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of Kearney Plaza Villas, an addition to the City of Kearney, Buffalo County, Nebraska for Lots 1 through 13, Tiffany Square Addition, an addition to the City of Kearney, Buffalo County, Nebraska (now vacated), and Lots 1 through 48, inclusive and Common Lot 49, Tiffany Square Second Addition, being a replat of Lot 14 of Tiffany Square Addition, an addition to the City of Kearney, Buffalo County, Nebraska (now vacated), all being part of the Southwest Quarter of the Northwest Quarter of Section 3, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, all more particularly described as follows: Referring to the Northeast Corner of the Southwest Quarter of the Northwest Quarter of Section 3 and assuming the North line of the Southwest Quarter of the Northwest Quarter of Section 3 as bearing S87°50'W and all bearings contained herein are relative thereto; thence on the North line of the Southwest Quarter of the Northwest Quarter of Section 3, S87°50'W a distance of 524.8 feet to the ACTUAL PLACE OF BEGINNING, said point being the Northeast Corner of Common Lot 49, in said Tiffany Square Second Addition; thence continuing on the North line of the Southwest Quarter of the Northwest Quarter of said Section 3 and on the North line of said Common Lot 49, Tiffany Square Second Addition, S87°50'W a distance of 400.0 feet to the Northwest Corner of said Common Lot 49, Tiffany Square Second Addition; thence leaving the North line of the Southwest Quarter of the Northwest Quarter of said Section 3, S00°04'W and on the West line of said Common Lot 49, Tiffany Square Second Addition a distance of 248.5 feet to the Southwest Corner of said Common Lot 49, Tiffany Square Second Addition; thence on the South line of said Common Lot 49, Tiffany Square Second Addition, S89°56'E a distance of 212.0 feet to the Southwest Corner of Lot 13, in said Tiffany Square Addition; thence on the South line of said Lot 13, Tiffany Square Addition, S89°56'E a distance of 168.4 feet to a point of curvature; thence continuing on the South line of said Lot 13, Tiffany Square Addition and on a 260.0 foot radius curve to the right forming a central angle of 06°41'59" an arc distance 30.40 feet to the Southeast Corner of said Lot 13, Tiffany Square Addition; thence leaving said curve, non-tangent, N02°10'W and on the east line of said Lot 13, Tiffany Square Addition and on the East line of said Common Lot 49, Tiffany Square Second Addition a distance of 266.23 feet to the place of beginning, containing 2.39 acres, more or less, Buffalo County, Nebraska duly made out, acknowledged and certified, and the same hereby is approved in accordance with the provisions and requirements of Section 19-916 of the Nebraska Revised Statutes, be accepted and ordered filed and recorded in the Office of the Register of Deeds of Buffalo County, Nebraska; said addition is hereby included within the corporate limits of said City and shall be and become a part of said City for all purposes whatsoever, and the inhabitants of such addition shall be entitled to all the rights and privileges and shall be subject to all laws, ordinances, rules and regulations of said City.

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

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

PASSED AND APPROVED THIS 9TH DAY OF OCTOBER, 2012.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**DEVELOPMENT OF 24 UNIT RESIDENTIAL DEVELOPMENT LOCATED SOUTH OF WEST LINCOLN PARK, WEST OF PLAZA BOULEVARD, NORTH OF LACROSSE DRIVE**

Public Hearings 9 and 10 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Engineering Solutions (Applicant) for Kearney Plaza Villas, L.P. (Owner) for Planned District Development Plan Approval for a 24-unit residential development on property zoned District R-3/PD, Urban Residential Multi-Family (Medium Density)/Planned Development Overlay District for property described as Lots 1 through 13 inclusive, Tiffany Square Addition, Lots 1 through 49 inclusive, Tiffany Square Second Addition, all in the City of Kearney, Buffalo County, Nebraska (south of West Lincoln Park, west of Plaza Boulevard, north of LaCrosse Drive) and consider Resolution No. 2012-180. Planning Commission recommended approval recognizing the setback deviations of 18 feet along the north and 19 feet along the west property lines.

Moved by Clouse seconded by Lammers to close the hearing and adopt **Resolution No. 2012-180** approving the Application submitted by Engineering Solutions (Applicant) for Kearney Plaza Villas, L.P. (Owner) for Planned District Development Plan Approval for a 24-unit residential development on property zoned District R-3/PD, Urban Residential Multi-Family (Medium Density)/Planned Development Overlay District for property described as Lots 1 through 13 inclusive, Tiffany Square Addition, Lots 1 through 49 inclusive, Tiffany Square Second Addition, all in the City of Kearney, Buffalo County, Nebraska (south of West Lincoln Park, west of Plaza Boulevard, north of LaCrosse Drive) recognizing the setback deviations of 18 feet along the north and 19 feet along the west property lines. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney absent. Motion carried.

**RESOLUTION NO. 2012-180**

WHEREAS, Engineering Solutions (Applicant) for Kearney Plaza Villas, L.P. (Owner) have applied for Planned District Development Plan Approval for a 24-unit residential development on property zoned District R-3/PD, Urban Residential Multi-Family (Medium Density)/Planned Development Overlay District and described as Lots 1 through 13, Tiffany Square Addition, an addition to the City of Kearney, Buffalo County, Nebraska (now vacated), and Lots 1 through 48, inclusive and Common Lot 49, Tiffany Square Second Addition, being a replat of Lot 14 of Tiffany Square Addition, an addition to the City of Kearney, Buffalo County, Nebraska (now vacated), all being part of the Southwest Quarter of the Northwest Quarter of Section 3, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, all more particularly described as follows: Referring to the Northeast Corner of the Southwest Quarter of the Northwest Quarter of Section 3 and assuming the North line of the Southwest Quarter of

the Northwest Quarter of Section 3 as bearing  $S87^{\circ}50'W$  and all bearings contained herein are relative thereto; thence on the North line of the Southwest Quarter of the Northwest Quarter of Section 3,  $S87^{\circ}50'W$  a distance of 524.8 feet to the ACTUAL PLACE OF BEGINNING, said point being the Northeast Corner of Common Lot 49, in said Tiffany Square Second Addition; thence continuing on the North line of the Southwest Quarter of the Northwest Quarter of said Section 3 and on the North line of said Common Lot 49, Tiffany Square Second Addition,  $S87^{\circ}50'W$  a distance of 400.0 feet to the Northwest Corner of said Common Lot 49, Tiffany Square Second Addition; thence leaving the North line of the Southwest Quarter of the Northwest Quarter of said Section 3,  $S00^{\circ}04'W$  and on the West line of said Common Lot 49, Tiffany Square Second Addition a distance of 248.5 feet to the Southwest Corner of said Common Lot 49, Tiffany Square Second Addition; thence on the South line of said Common Lot 49, Tiffany Square Second Addition,  $S89^{\circ}56'E$  a distance of 212.0 feet to the Southwest Corner of Lot 13, in said Tiffany Square Addition; thence on the South line of said Lot 13, Tiffany Square Addition,  $S89^{\circ}56'E$  a distance of 168.4 feet to a point of curvature; thence continuing on the South line of said Lot 13, Tiffany Square Addition and on a 260.0 foot radius curve to the right forming a central angle of  $06^{\circ}41'59''$  an arc distance 30.40 feet to the Southeast Corner of said Lot 13, Tiffany Square Addition; thence leaving said curve, non-tangent,  $N02^{\circ}10'W$  and on the east line of said Lot 13, Tiffany Square Addition and on the East line of said Common Lot 49, Tiffany Square Second Addition a distance of 266.23 feet to the place of beginning, containing 2.39 acres, more or less, Buffalo County, Nebraska (south of West Lincoln Park, west of Plaza Boulevard, north of LaCrosse Drive).

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the application of Engineering Solutions (Applicant) for Kearney Plaza Villas, L.P. (Owner) for Planned District Development Plan Approval for a 24-unit residential development on property zoned R-3/PD, Urban Residential Multi-Family (Medium Density)/Planned Development Overlay District and described as Lots 1 through 13, Tiffany Square Addition, an addition to the City of Kearney, Buffalo County, Nebraska (now vacated), and Lots 1 through 48, inclusive and Common Lot 49, Tiffany Square Second Addition, being a replat of Lot 14 of Tiffany Square Addition, an addition to the City of Kearney, Buffalo County, Nebraska (now vacated), all being part of the Southwest Quarter of the Northwest Quarter of Section 3, Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, all more particularly described as follows: Referring to the Northeast Corner of the Southwest Quarter of the Northwest Quarter of Section 3 and assuming the North line of the Southwest Quarter of the Northwest Quarter of Section 3 as bearing  $S87^{\circ}50'W$  and all bearings contained herein are relative thereto; thence on the North line of the Southwest Quarter of the Northwest Quarter of Section 3,  $S87^{\circ}50'W$  a distance of 524.8 feet to the ACTUAL PLACE OF BEGINNING, said point being the Northeast Corner of Common Lot 49, in said Tiffany Square Second Addition; thence continuing on the North line of the Southwest Quarter of the Northwest Quarter of said Section 3 and on the North line of said Common Lot 49, Tiffany Square Second Addition,  $S87^{\circ}50'W$  a distance of 400.0 feet to the Northwest Corner of said Common Lot 49, Tiffany Square Second Addition; thence leaving the North line of the Southwest Quarter of the Northwest Quarter of said Section 3,  $S00^{\circ}04'W$  and on the West line of said Common Lot 49, Tiffany Square Second Addition a distance of 248.5 feet to the Southwest Corner of said Common Lot 49, Tiffany Square Second Addition; thence on the South line of said Common Lot 49, Tiffany Square Second Addition,  $S89^{\circ}56'E$  a distance of 212.0 feet to the Southwest

Corner of Lot 13, in said Tiffany Square Addition; thence on the South line of said Lot 13, Tiffany Square Addition, S89°56'E a distance of 168.4 feet to a point of curvature; thence continuing on the South line of said Lot 13, Tiffany Square Addition and on a 260.0 foot radius curve to the right forming a central angle of 06°41'59" an arc distance 30.40 feet to the Southeast Corner of said Lot 13, Tiffany Square Addition; thence leaving said curve, non-tangent, N02°10'W and on the east line of said Lot 13, Tiffany Square Addition and on the East line of said Common Lot 49, Tiffany Square Second Addition a distance of 266.23 feet to the place of beginning, containing 2.39 acres, more or less, Buffalo County, Nebraska (south of West Lincoln Park, west of Plaza Boulevard, north of LaCrosse Drive) be approved subject to compliance with the following conditions:

- It is noted that the proposed 4-plex buildings encroach into the 25-foot building setback. The measurement from the building to lot line is 18 feet along the north line at its closest point and 19 feet along the west line.
- A 6-foot tall privacy fence will be erected along the north property line.
- There will be a 4-foot wide public sidewalk along La Crosse Drive. The developer will take the sidewalk around the existing fire hydrant and extend it west to the park entrance.

PASSED AND APPROVED THIS 9TH DAY OF OCTOBER, 2012.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

### **REZONING AT THE NORTHEAST CORNER OF 33RD STREET AND 2ND AVENUE**

Mayor Clouse opened the public hearing on the Application submitted by Craig Bennett (Applicant) for MINE, L.L.C. (Owner) to rezone from District C-O, Office District to District UC, Mixed Use Urban Corridor District property described as Lot 1 of Block 1, Good Samaritan Third Subdivision, a subdivision to the City of Kearney, Buffalo County, Nebraska (northeast corner of 33rd Street and 2nd Avenue) and consider Ordinance No. 7748. Planning Commission recommended approval.

The applicant is requesting rezoning from District C-O, Office District to District UC, Urban Corridor District for the property that was formerly Denny's Photography on 2nd Avenue west of the hospital. The proposed business is a Bridal Shop which requires some type of commercial retail zoning. The current C-O zoning restricts the use of the property to office type uses and does not allow retail sales. Urban Corridor zoning seems to be the best choice for this location. Urban Corridor zoning extends north from the intersection of Highway 30 and 2nd Avenue comprising most of the properties on both sides of 2nd Avenue up to 36th Street (with the exception of the large amount of land controlled by Good Samaritan Hospital on the east side of the highway which is zoned C-O/PD). The proposed zoning is in conformance with the Future Land Use Map of the City Comprehensive Development Plan which shows this property designated as "Mixed Use 1."

Craig Bennett from Miller & Associates presented this matter to the Council. This site is bound on the south by 33rd Street, and is on the east side of 2nd Avenue which was formally known as Denny's Photography. The Comprehensive Plan shows this as a

Mixed Use-1 which develops this whole corridor along 2nd Avenue. It is currently zoned Office District, but other properties along 2nd Avenue are zoned Mixed Use Urban Corridor District and is the zoning that is being requested for this parcel. The proposed use of this building is for a bridal shop which is a retail service and the UC District is the required zoning for this area.

There was no one present in opposition to this hearing.

Moved by Lear to close the public hearing on the Application submitted by Craig Bennett (Applicant) for MINE, L.L.C. (Owner) to rezone from District C-O, Office District to District UC, Mixed Use Urban Corridor District property described as Lot 1 of Block 1, Good Samaritan Third Subdivision, a subdivision to the City of Kearney, Buffalo County, Nebraska (northeast corner of 33rd Street and 2nd Avenue) and introduced Ordinance No. 7748 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. 7748. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney 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. 7748 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney absent. Motion carried. Ordinance was read by number.

Moved by Buschkoetter seconded by Clouse that Ordinance No. 7748 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Buschkoetter. Nay: None. Kearney absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7748 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.

### **REZONING ALONG 50TH STREET BETWEEN 11TH AVENUE AND 17TH AVENUE**

Public Hearings 12, 13 and 14 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Craig Bennett (Applicant) for Grand West, L.L.C. (Owner) to rezone from District AG, Agricultural District to District R-1, Urban Residential Single-Family District (Low Density) property described as a tract of land located in part of the Southeast Quarter of the Northwest Quarter of Section 26, Township 9, Range 16 West of the 6th P.M., Buffalo County, Nebraska (along 50th Street between 11th Avenue and 17th Avenue) and consider Ordinance No. 7749. Planning Commission recommended approval.

The applicant is requesting rezoning, platting and annexation of approximately 32 acres of single-family residential lots and associated streets in the Fountain Hills development. This project basically extends additional housing from the first phase of Fountain Hills westerly along 50th Street to 17th Avenue. There are some 73 residential lots in this proposed project along with two outlots that will contain the proposed hike-bike trail from 17th Avenue to 11th Avenue. You will notice that 48th Street, a collector street running west from 2nd Avenue past Kmart, Target, etc., actually becomes 50th Street at its intersection with 11th Avenue and then curves north and then west to align with existing 50th Street and 17th Avenue.

The bulk of the 32 acres is already properly zoned as R-1, but a small 3.60 parcel was not previously rezoned and must now be rezoned from AG to R-1. This small parcel is located at the intersection of 48th/50th Street and 11th Avenue containing six full lots and part of two additional lots. Two outlots, designated Outlot A and B on the zoning exhibit, are located at the south end of the area to be rezoned.

The overall Preliminary Plat for Fountain Hills was approved by Planning Commission May 19, 2006. The proposed final platting of the land contained within Fountain Hills Fifth Addition is in substantial conformance with the approved Preliminary Plat. Some minor adjustments have been made to lot lines to make the lots slightly larger and the total number of lots has decreased. The residential lots average 75 feet in width. As mentioned earlier, the proposed plat contains 73 single-family residential lots and two outlots. The outlots are designated as Outlots A and B and are located along the south edge of the plat. These linear outlots contain utility easements and will also contain an extension of the hike/bike trail connecting from 17th Avenue to 11th Avenue. The City will pay 100 percent of the cost for design and construction of the trail. Although the City will periodically mow along the trail and remove snow, the developer or an association of owners will be responsible for long-term maintenance of the outlots.

A Revised Public Works Plan has been submitted for Fountain Hills Fifth Addition. It is similar to the original Public Works Plan except that sanitary sewer routing has been revised. A Subdivision Agreement has been prepared. The developer has requested all infrastructure work be financed by improvement districts. A major sanitary sewer trunk line will be constructed from 56th Street south in 11th Avenue to serve Fountain Hills Fifth and intervening future phases. Extension of the sewer system ties into the dry line that was placed in the Hoehner Subdivision to the west and provides access to sanitary sewer from the west side of 17th Avenue. The installation of the new sewers will allow the lift station on Outlot A of Fountain Hills Addition to be removed.

This property is contiguous to the City limits and will be served with City utilities and therefore will be annexed into the City of Kearney. Approval and filing of the Final Plat accomplishes this as Fountain Hills Fifth Addition will be "an addition to the City of Kearney."

Craig Bennett from Miller & Associates presented this matter to the Council. He stated that Fountain Hills Fifth Subdivision is almost 32 acres hinged on the west by 17th Avenue. East of the site is residential that has already been developed and southeast of it is Fountain Hills First Addition consisting of approximately 40 acres. The future land use map shows this area as low density residential which is what they are asking for on

the rezoning. A small sliver (approximately 3.6 acres) is currently zoned agricultural. The bulk of the land has previously been zoned R-1 although they have been farming it so it looks agricultural. In 2006, they presented a development plan for this almost 200-acre parcel. The development plan for the 31.99 acres was single family which they have not deviated from. They presented a preliminary plat at that time. They have changed the lot spacing on five lots in that area. Outside of that, the preliminary plat is the same as presented in 2006.

To make this subdivision work, there is an infrastructure component extending sanitary sewer from 56th Street, south to an existing lift station that will be removed and replaced with gravity sewers. Originally, they thought the development was going to be from the north to the south, but the need for single family housing in that area changed to starting at the upper end. That is the reason the sanitary sewer must be extended. There are 73 single family lots that will be available. This will complete the connectivity of the infrastructure from 50th Street which has just been improved and opened up at 17th Avenue and connects at 48th Street which basically connects 2nd Avenue to 17th Avenue. In the subdivision agreement, they will develop the infrastructure for paving, water and sewer for this entire subdivision at one time. He will be back to Council shortly with the creation of those districts.

City Manager noted on the south end of this site is the connection of the bike trail which is about a \$185,000-\$200,000 project. It is a little more expensive because of the hills in this area. The bike trail is connected further to the west and they have some new trails going through the areas to the south. Eventually, they will connect further to the east. This will allow the residents of this area to go all the way out to Yanney, Cottonmill and YMCA. This is an important link that the Park Advisory Board felt strongly about and the developer has granted the easements to get that done. That will be in the ½ cent sales tax plan amendment that will come before the Council in a few weeks.

There was no one present in opposition to this hearing.

Moved by Clouse to close the public hearing on the Application submitted by Craig Bennett (Applicant) for Grand West, L.L.C. (Owner) to rezone from District AG, Agricultural District to District R-1, Urban Residential Single-Family District (Low Density) property described as a tract of land located in part of the Southeast Quarter of the Northwest Quarter of Section 26, Township 9, Range 16 West of the 6th P.M., Buffalo County, Nebraska (along 50th Street between 11th Avenue and 17th Avenue) and introduced Ordinance No. 7749 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. 7749. 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, Buschkoetter, Lear. Nay: None. Kearney 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. 7749 by number. Roll call of those in favor of the passage of said ordinance on the

first reading resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear. Nay: None. Kearney absent. Motion carried. Ordinance was read by number.

Moved by Lammers seconded by Lear that Ordinance No. 7749 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7749 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 FOUNTAIN HILLS FIFTH ADDITION**

Public Hearings 12, 13 and 14 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Craig Bennett (Applicant) for Grand West, L.L.C. (Owner) for the Final Plat and Subdivision Agreement for Fountain Hills Fifth Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as a tract of land located in part of the Southeast Quarter of the Northwest Quarter of Section 26, Township 9, Range 16 West of the 6th P.M., Buffalo County, Nebraska (along 50th Street between 11th Avenue and 17th Avenue) and consider Resolution No. 2012-181. Planning Commission recommended approval.

There was no one present in opposition to this hearing.

Moved by Lear seconded by Buschkoetter to close the hearing and adopt **Resolution No. 2012-181** approving the Application submitted by Craig Bennett (Applicant) for Grand West, L.L.C. (Owner) for the Final Plat and Subdivision Agreement for Fountain Hills Fifth Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as a tract of land located in part of the Southeast Quarter of the Northwest Quarter of Section 26, Township 9, Range 16 West of the 6th P.M., Buffalo County, Nebraska (along 50th Street between 11th Avenue and 17th Avenue). Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney absent. Motion carried.

### **RESOLUTION NO. 2012-181**

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of Fountain Hills Fifth Addition, an addition to the City of Kearney, Buffalo County, Nebraska for a tract of land located in part of the South Half of the Northwest Quarter of Section 26, Township 9, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Beginning at the Southwest Corner of said Northwest Quarter and assuming the West line of said Northwest Quarter as bearing N00°28'02"W and all other bearings contained hereon are relative thereto; thence N00°28'02"W on said West line a distance of 1089.53 feet; thence N89°29'04"E leaving said West line a distance of 781.28 feet; thence S10°37'05"W a distance of 30.31 feet; thence S00°20'34"E a distance of 365.26 feet;

thence N89°29'04"E a distance of 150.00 feet; thence N00°20'34"W a distance of 29.06 feet; thence N89°39'26"E a distance of 401.46 feet; thence S00°20'34"E a distance of 191.06 feet; thence along a non-tangent curve to the right, having a radius of 533.00 feet, a central angle of 10°56'44", an arc length of 101.82 feet, and a chord bearing of S55°08'56"E a distance of 101.67 feet; thence N40°08'04"E radially to said curve a distance of 77.27 feet; thence N63°48'14"E a distance of 78.64 feet; thence S42°46'16"E a distance of 182.16 feet; thence S41°42'27"W a distance of 40.19 feet; thence S48°17'33"E a distance of 150.00 feet to the Westerly Right-of-Way of 11th Avenue as platted on Fountain Hills Third Addition to the City of Kearney, Buffalo County, Nebraska; thence S41°42'27"W on said Westerly Right-of-Way line a distance of 284.57 feet, to the beginning of a tangent curve to the left, having a radius of 283.00 feet, a central angle of 21°18'58", and an arc length of 105.29 feet to a point on the South line of said Northwest Quarter; thence S89°29'22"W on said South line a distance of 1490.86 feet to the Point of Beginning, containing 31.99 acres, more or less, Buffalo County, Nebraska duly made out, acknowledged and certified, and the same hereby is approved in accordance with the provisions and requirements of Section 19-916 of the Nebraska Revised Statutes, be accepted and ordered filed and recorded in the Office of the Register of Deeds of Buffalo County, Nebraska; said addition is hereby included within the corporate limits of said City and shall be and become a part of said City for all purposes whatsoever, and the inhabitants of such addition shall be entitled to all the rights and privileges and shall be subject to all laws, ordinances, rules and regulations of said City.

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

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

PASSED AND APPROVED THIS 9TH DAY OF OCTOBER, 2012.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

### **ANNEXATION OF FOUNTAIN HILLS FIFTH ADDITION**

Public Hearings 12, 13 and 14 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Craig Bennett (Applicant) for Grand West, L.L.C. (Owner) for the annexation of Fountain Hills Fifth Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as a tract of land located in part of the Southeast Quarter of the Northwest Quarter of Section 26, Township 9, Range 16 West of the 6th P.M., Buffalo County, Nebraska (along 50th Street between 11th Avenue and 17th Avenue) and consider Resolution No. 2012-182. Planning Commission recommended approval.

There was no one present in opposition to this hearing.

Moved by Buschkoetter seconded by Clouse to close the hearing and adopt **Resolution No. 2012-182** approving the Application submitted by Craig Bennett (Applicant) for Grand West, L.L.C. (Owner) for the annexation of Fountain Hills Fifth Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as a tract of land located in part of the Southeast Quarter of the Northwest Quarter of Section 26, Township 9, Range 16 West of the 6th P.M., Buffalo County, Nebraska (along 50th Street between 11th Avenue and 17th Avenue). Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Buschkoetter. Nay: None. Kearney absent. Motion carried.

### **RESOLUTION NO. 2012-182**

WHEREAS, an Application has been submitted by Craig Bennett (Applicant) for Grand West L.L.C. (Owner) for the inclusion of Fountain Hills Fifth Addition, an addition within the corporate boundaries of the City of Kearney said property described as a tract of land located in part of the South Half of the Northwest Quarter of Section 26, Township 9, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Beginning at the Southwest Corner of said Northwest Quarter and assuming the West line of said Northwest Quarter as bearing N00°28'02"W and all other bearings contained hereon are relative thereto; thence N00°28'02"W on said West line a distance of 1089.53 feet; thence N89°29'04"E leaving said West line a distance of 781.28 feet; thence S10°37'05"W a distance of 30.31 feet; thence S00°20'34"E a distance of 365.26 feet; thence N89°29'04"E a distance of 150.00 feet; thence N00°20'34"W a distance of 29.06 feet; thence N89°39'26"E a distance of 401.46 feet; thence S00°20'34"E a distance of 191.06 feet; thence along a non-tangent curve to the right, having a radius of 533.00 feet, a central angle of 10°56'44", an arc length of 101.82 feet, and a chord bearing of S55°08'56"E a distance of 101.67 feet; thence N40°08'04"E radially to said curve a distance of 77.27 feet; thence N63°48'14"E a distance of 78.64 feet; thence S42°46'16"E a distance of 182.16 feet; thence S41°42'27"W a distance of 40.19 feet; thence S48°17'33"E a distance of 150.00 feet to the Westerly Right-of-Way of 11th Avenue as platted on Fountain Hills Third Addition to the City of Kearney, Buffalo County, Nebraska; thence S41°42'27"W on said Westerly Right-of-Way line a distance of 284.57 feet, to the beginning of a tangent curve to the left, having a radius of 283.00 feet, a central angle of 21°18'58", and an arc length of 105.29 feet to a point on the South line of said Northwest Quarter; thence S89°29'22"W on said South line a distance of 1490.86 feet to the Point of Beginning, containing 31.99 acres, more or less, Buffalo County, Nebraska; and

WHEREAS, the Kearney City Planning Commission has received and held a public hearing on September 21, 2012 on the inclusion of Fountain Hills Fifth Addition within the corporate limits and recommended the Kearney City Council approve said application; and

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

WHEREAS, a public hearing was held by the Kearney City Council relating to said application on October 9, 2012 who deemed the said addition to be included within the corporate limits to be advantageous to and in the best interests of the City.

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

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

PASSED AND APPROVED THIS 9TH DAY OF OCTOBER, 2012.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**LAND USE MAP AMENDMENT SOUTH OF 56TH STREET BETWEEN 11TH AVENUE AND 17TH AVENUE**

Public Hearings 15 through 19 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Craig Bennett (Applicant) for Grand West, L.L.C. (Owner) for an amendment to the Land Use Map of the City of Kearney Comprehensive Development Plan from Medium Density Residential and Mixed Use 1 to Mixed Use 2 for property described as a tract of land being part of the North Half of the Northwest Quarter of Section 26, Township 9, Range 16 West of the 6th P.M., Buffalo County, Nebraska (south of 56th Street between 11th Avenue and 17th Avenue) and consider Resolution No. 2012-183. Planning Commission recommended approval.

The applicant is requesting approval to rezone, subdivide and develop a commercial lot for a lumber yard business on 56th Street. The property is located between 11th Avenue and 15th Avenue on the south side of 56th Street. There is an adjoining outlot to the east of the proposed lumber yard that will provide stormwater detention.

The property is currently zoned AG, Agricultural District. The proposed rezoning is C-2/PD for the lot that will contain the lumber yard and C-2 for the outlot. The total area to be rezoned contains 10.81 acres and extends approximately 550 feet south of 56th Street. Planned Development Overlay is required for the lumber yard because the size of the lot at 6.51 acres exceeds the threshold limit of four acres automatically requiring the PD. The outlot contains 3.54 acres and will not be subject to the Planned Overlay District. The adjacent property to the east side of 11th Avenue is platted as Fountain Hills Second and is already zoned C-2. Otherwise, the land surrounding the subject property is zoned AG. The current land use designation depicted on the Future Land Use Map of the City Comprehensive Development Plan is "Medium Density Residential" and "Mixed Use 1." The proposed rezoning to C-2 and C-2/PD requires a corresponding amendment of the Land Use Map to "Mixed Use 2."

The overall Preliminary Plat for Fountain Hills was approved by Planning Commission May 19, 2006. The proposed final platting of the land contained within Fountain Hills

Sixth Addition is in substantial conformance with the approved Preliminary Plat. The lot line between the outlot and the developable lot has been shifted slightly.

A Revised Public Works Plan has been submitted for Fountain Hills Sixth Addition. A Subdivision Agreement has been prepared. The developer has requested all infrastructure work be financed by Developer Constructed Infrastructure Agreement. A major sanitary sewer trunk line will be constructed by improvement district from 56th Street south in 11th Avenue to serve Fountain Hills future phases and the subject property will connect to this line. The developer will pay connection fees for water and sanitary sewer in 56th Street.

Stormwater detention will be accommodated on the outlot. Final design and drainage computations are due as part of the building permit application. The outlot will also serve as a buffer area that will be planted with trees screening the east side of the development. An 8-foot wide hike bike trail will traverse the outlot in a north south orientation. The final location will be determined by the City Park and Recreation Department. The City will pay 100 percent of the cost for design and construction of the trail. The City will periodically mow the trail corridor but long-term maintenance of the majority of the outlot shall be the responsibility of the developer or a conglomeration of property owners that benefit from the stormwater capabilities of the outlot. The trail will ultimately be extended further north when the property on the north side of 56th Street develops.

This property is contiguous to the City limits and will be served with City utilities and therefore will be annexed into the City of Kearney. Approval and filing of the Final Plat accomplishes this as Fountain Hills Sixth Addition will be "an addition to the City of Kearney."

The proposed building is approximately 40,000 square feet in size, 30 feet in height. There is a large enclosed outdoor storage yard typical of lumber yards and the east half of the building is a drive-thru facility. There is a detached storage building inside the enclosure just north of the entrance off 15th Avenue. There will be no access from 56th Street. Access to the site is from 15th Avenue where a security gate and guard shack monitor vehicles entering and leaving the site. The security gate and guard shack are located to provide stacking for at least one tractor trailer rig off of the public right-of-way of 15th Avenue. There are 57 parking spaces required and 93 provided. It is likely that not all of the extra parking will be constructed initially. The impervious coverage is 79.3%, just within the maximum allowable 80%. This ratio will become more favorable if areas shown on the site plan as parking are actually left in green space.

The perimeter fence is proposed as a 10-foot tall wood fence on the two street facing sides (north and west) and a 16-foot tall metal siding fence on the east and south sides, all accented with split-face CMU pilasters every 100 feet to provide offsets in the horizontal plane of the fence. This is consistent with development requirements for the Menards store as staff believed that the Code requirement for offsets on long building facades should also be applicable to a long fence of great height to provide greater articulation.

Architectural elevations of the building are provided. The east and south sides of the building are proposed as metal siding with the pilasters at 100 feet on center. These pilasters satisfy the offset requirement in the Code. The west façade incorporates split-face CMU with the metal siding and the north facing elevation features stucco finishing with stone accents.

A Landscape Plan has been provided. The 5 percent landscaping requirement in the interior parking lot has been met. Street trees are provided along both streets. A row of trees provides screening of the wall on the south side of the site and a row of trees is proposed along the east side. There is a steep slope on both the south and east sides of the site due to the amount of fill required to raise and level the site. A relatively flat area at least 10 feet wide needs to be reserved at the top of these slopes for the tree plantings.

The outlot encompasses the natural drainage way and stormwater will be detained before it under-crosses 56th Street. Final design and drainage computations are due as part of the building permit application. As previously mentioned, an 8-foot wide hike bike trail will also be located within the outlot.

A 4-foot wide public sidewalk is shown on the Site Plan for the length of the 15th Avenue frontage.

Craig Bennett from Miller & Associates presented this matter to the Council. This development will be known as Fountain Hills Sixth and has two lots in it. The general location contains 10.8 acres and is hinged on the north by 56th Street, on the west by 15th Avenue and on the east by 11th Avenue which is already platted, but not developed. The future land use map shows this to be medium density residential. As platting has happened across 56th Street, the consistency of that has changed to more commercial. The existing zoning map shows Fountain Hills Second as commercial and Spruce Hollow on the north side is also commercial. Both of those are zoned C-2. This parcel is to be rezoned as C-2 and since it exceeds four acres must have the PD designation. The lot to the east is under four acres and is essentially the detention cell so the zoning would only be C-2. This is the same development plan from 2006.

11th Avenue is currently platted and this is platting a portion of 15th Avenue to the fiber optic line which is what has separated this particular phase of the platting. This is for platting both Lot 1 (6.51 acres) and the outlot (3.54 acres) for the detention cell. From the sanitary sewer master plan, the 15-inch sewer line that he referenced in the previous item would also go through this outlot and serve Fountain Hills Fifth. This Lot 1 would be served off that sanitary sewer line and storm sewer that goes across there at some location. There is a 16-inch water main located on 56th Street that will extend along 15th Avenue. Currently, there will be a temporary cul-de-sac located at the end of 15th Avenue until future phases are platted and connectivity is extended to 54th Street.

The development plan requires showing the development for the lumberyard. 15th Avenue would be paved and would have a north access point into the property off of 56th Street. They would have a parking area and a proposed future parking area. The required parking is 57 stalls and they have provided 93 in this plan. The building is situated in a way to allow circulation to the open warehouse to come in from the north,

drive through the building and loop back out on the north side of the building. There would also be some inner connectivity to the area where the outside storage and warehousing is located. A metal fence with brick columns will encompass the area with a 5-foot offset to meet the 100 lineal feet required by Code. There will also be a fenced recessed in gate and guard shack to allow semi-trailer tractor traffic to enter off 15th Avenue and to stack on this site and not block the sidewalk.

The building will have a fairly small retail area and office because their process is geared more toward commercial contracting. The exterior will be stone, wainscoting, stucco and metal which meet the 35 percent masonry requirement for street facing facades. The street facing facades would be 56th Street and 15th Avenue. However, even though the rear yard is not really a street facing façade, it will have an outlot which is a detention cell and would be visible from 11th Avenue. So they have provided a screening of coniferous trees which will be planted all the way along this site to help break that up in the landscaping plan. Even though that is not a requirement, the City and the owner discussed they would like to see this along the site. There will also be trees along the south side, north side and west side to meet the requirements for landscaping.

City Manager stated that they have been working with the same developer on a different project and working toward completing that park in this area as they have reached an agreement with the developer. This item will also be listed in the sales tax plan. There will be information going out to this neighborhood advising them about this park to serve their area and a meeting will be scheduled in the spring. The Superintendent of Parks will be meeting with the neighborhood to get their input on amenities. This is also important because right now the subdivision agreement requires the developer to be looking at areas for the development of a linear neighborhood park within the development. They will be back in touch with the developer when they see if there are funds available because the developer has agreed to give the trail access through that area. The goal of the linear park is that you can access it by biking there or use it while in the neighborhood, but will not have any vehicle parking. The master plan has been beneficial because it has allowed them to see the connectivity of the streets from day one. There is also a large (\$300,000) sewer project that is going in there to help the development of this residential area. All lots in Fountain Hills First Addition are now filled and that is why they are coming back to request more additions.

There was no one present in opposition to this hearing.

Moved by Clouse seconded by Lammers to close the hearing and adopt **Resolution No. 2012-183** approving the Application submitted by Craig Bennett (Applicant) for Grand West, L.L.C. (Owner) for an amendment to the Land Use Map of the City of Kearney Comprehensive Development Plan from Medium Density Residential and Mixed Use 1 to Mixed Use 2 for property described as a tract of land being part of the North Half of the Northwest Quarter of Section 26, Township 9, Range 16 West of the 6th P.M., Buffalo County, Nebraska (south of 56th Street between 11th Avenue and 17th Avenue). Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear. Nay: None. Kearney absent. Motion carried.

**RESOLUTION NO. 2012-183**

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 North Half of the Northwest Quarter of Section 26, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Referring to the Northwest Corner of said Section and assuming the North line of said Northwest Quarter as bearing N89°38'37"E and all other bearings contained hereon relative thereto; thence N89°38'37"E on said North line a distance of 753.56 feet; thence S00°21'23"E perpendicular to said North line a distance of 50.00 feet to the South Right-of-Way line of 56th Street and Actual Point of Beginning; thence N89°38'37"E parallel with said North line on said South Right-of-Way line a distance of 813.85 feet to the intersection of the West Right-of-Way line of 11th Avenue, as Platted in Fountain Hills Second Addition, City of Kearney, Buffalo County, Nebraska; thence S00°16'40"E on said West Right-of-Way a distance of 151.67 feet to the beginning of a tangent curve to the left, having a central angle of 07°55'42", a radius of 333.00 feet, and an arc length of 46.08 feet; thence S08°12'22"E tangent to said curve and on said West Right-of-Way a distance of 387.19 feet to the centerline of a 16.5 foot wide American Telephone and Telegraph Company of Nebraska Easement, recorded in Miscellaneous Book 'P', Page 162, Buffalo County Register of Deeds Office; thence N88°20'14"W on said centerline a distance of 870.32 feet; thence N00°20'34"W a distance of 550.50 feet to the Point of Beginning, containing 10.81 Acres, more or less, Buffalo County, Nebraska from Medium Density Residential and Mixed Use 1 to Mixed Use 2; 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 Medium Density Residential and Mixed Use 1 to Mixed Use 2 the use classification for a tract of land being part of the North Half of the Northwest Quarter of Section 26, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Referring to the Northwest Corner of said Section and assuming the North line of said Northwest Quarter as bearing N89°38'37"E and all other bearings contained hereon relative thereto; thence N89°38'37"E on said North line a distance of 753.56 feet; thence S00°21'23"E perpendicular to said North line a distance of 50.00 feet to the South Right-of-Way line of 56th Street and Actual Point of Beginning; thence N89°38'37"E parallel with said North line on said South Right-of-Way line a distance of 813.85 feet to the intersection of the West Right-of-Way line of 11th Avenue, as Platted in Fountain Hills Second Addition, City of Kearney, Buffalo County, Nebraska; thence S00°16'40"E on said West Right-of-Way a distance of 151.67 feet to the beginning of a tangent curve to the left, having a central angle of 07°55'42", a radius of 333.00 feet, and an arc length of 46.08 feet; thence S08°12'22"E tangent to said curve and on said West Right-of-Way a distance of 387.19 feet to the centerline of a 16.5 foot wide American Telephone and Telegraph Company of Nebraska Easement, recorded in Miscellaneous Book 'P', Page 162, Buffalo County Register of Deeds Office; thence N88°20'14"W on said centerline a

distance of 870.32 feet; thence N00°20'34"W a distance of 550.50 feet to the Point of Beginning, containing 10.81 Acres, more or less, Buffalo County, Nebraska.

PASSED AND APPROVED THIS 9TH DAY OF OCTOBER, 2012.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**REZONING SOUTH OF 56TH STREET BETWEEN 11TH AVENUE AND 17TH AVENUE**

Public Hearings 15 through 19 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Craig Bennett (Applicant) for Grand West, L.L.C. (Owner) to rezone from District AG, Agricultural District to District C-2, Community Commercial District and to District C-2/PD, Community Commercial/Planned Development Overlay District property described as a tract of land being part of the North Half of the Northwest Quarter of Section 26, Township 9, Range 16 West of the 6th P.M., Buffalo County, Nebraska (south of 56th Street between 11th Avenue and 17th Avenue) and consider Ordinance No. 7750. Planning Commission recommended approval.

There was no one present in opposition to this hearing.

Moved by Lammers to close the public hearing on the Application submitted by Craig Bennett (Applicant) for Grand West, L.L.C. (Owner) to rezone from District AG, Agricultural District to District C-2, Community Commercial District and to District C-2/PD, Community Commercial/Planned Development Overlay District property described as a tract of land being part of the North Half of the Northwest Quarter of Section 26, Township 9, Range 16 West of the 6th P.M., Buffalo County, Nebraska (south of 56th Street between 11th Avenue and 17th Avenue) and introduced Ordinance No. 7750 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. 7750. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney 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. 7750 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney absent. Motion carried. Ordinance was read by number.

Moved by Lear seconded by Buschkoetter that Ordinance No. 7750 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7750 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 FOUNTAIN HILLS SIXTH ADDITION**

Public Hearings 15 through 19 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Craig Bennett (Applicant) for Grand West, L.L.C. (Owner) for the Final Plat and Subdivision Agreement for Fountain Hills Sixth Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as a tract of land being part of the North Half of the Northwest Quarter of Section 26, Township 9, Range 16 West of the 6th P.M., Buffalo County, Nebraska (south of 56th Street between 11th Avenue and 17th Avenue) and consider Resolution No. 2012-184. Planning Commission recommended approval.

There was no one present in opposition to this hearing.

Moved by Buschkoetter seconded by Clouse to close the hearing and adopt **Resolution No. 2012-184** approving the Application submitted by Craig Bennett (Applicant) for Grand West, L.L.C. (Owner) for the Final Plat and Subdivision Agreement for Fountain Hills Sixth Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as a tract of land being part of the North Half of the Northwest Quarter of Section 26, Township 9, Range 16 West of the 6th P.M., Buffalo County, Nebraska (south of 56th Street between 11th Avenue and 17th Avenue). Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Buschkoetter. Nay: None. Kearney absent. Motion carried.

### **RESOLUTION NO. 2012-184**

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of Fountain Hills Sixth Addition, an addition to the City of Kearney, Buffalo County, Nebraska for a tract of land being part of the North Half of the Northwest Quarter of Section 26, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Referring to the Northwest Corner of said Section and assuming the North line of said Northwest Quarter as bearing N89°38'37"E and all other bearings contained hereon relative thereto; thence N89°38'37"E on said North line a distance of 753.56 feet; thence S00°21'23"E perpendicular to said North line a distance of 50.00 feet to the South Right-of-Way line of 56th Street and Actual Point of Beginning; thence N89°38'37"E parallel with said North line on said South Right-of-Way line a distance of 813.85 feet to the intersection of the West Right-of-Way line of 11th Avenue, as Platted in Fountain Hills Second Addition, City of Kearney, Buffalo County, Nebraska; thence S00°16'40"E on said West Right-of-Way a distance of 151.67 feet to the beginning of a tangent curve to the left, having a central angle of 07°55'42", a radius of 333.00 feet, and an arc length of 46.08 feet; thence S08°12'22"E tangent to said curve and on said West Right-of-Way a distance of 387.19 feet to the centerline of a 16.5 foot wide American Telephone and

Telegraph Company of Nebraska Easement, recorded in Miscellaneous Book 'P', Page 162, Buffalo County Register of Deeds Office; thence N88°20'14"W on said centerline a distance of 870.32 feet; thence N00°20'34"W a distance of 550.50 feet to the Point of Beginning, containing 10.81 Acres, more or less, Buffalo County, Nebraska duly made out, acknowledged and certified, and the same hereby is approved in accordance with the provisions and requirements of Section 19-916 of the Nebraska Revised Statutes, be accepted and ordered filed and recorded in the Office of the Register of Deeds of Buffalo County, Nebraska; said addition is hereby included within the corporate limits of said City and shall be and become a part of said City for all purposes whatsoever, and the inhabitants of such addition shall be entitled to all the rights and privileges and shall be subject to all laws, ordinances, rules and regulations of said City.

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

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

PASSED AND APPROVED THIS 9TH DAY OF OCTOBER, 2012.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

### **ANNEXATION OF FOUNTAIN HILLS SIXTH ADDITION**

Public Hearings 15 through 19 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Craig Bennett (Applicant) for Grand West, L.L.C. (Owner) for the annexation of Fountain Hills Sixth Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as a tract of land being part of the North Half of the Northwest Quarter of Section 26, Township 9, Range 16 West of the 6th P.M., Buffalo County, Nebraska (south of 56th Street between 11th Avenue and 17th Avenue) and consider Resolution No. 2012-185.

There was no one present in opposition to this hearing.

Moved by Clouse seconded by Lammers to close the hearing and adopt **Resolution No. 2012-185** approving the Application submitted by Craig Bennett (Applicant) for Grand West, L.L.C. (Owner) for the annexation of Fountain Hills Sixth Addition, an addition to the City of Kearney, Buffalo County, Nebraska for property described as a tract of land being part of the North Half of the Northwest Quarter of Section 26, Township 9, Range 16 West of the 6th P.M., Buffalo County, Nebraska (south of 56th Street between 11th Avenue and 17th Avenue). Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear. Nay: None. Kearney absent. Motion carried.

**RESOLUTION NO. 2012-185**

WHEREAS, an Application has been submitted by Craig Bennett (Applicant) for Grand West, L.L.C. (Owner) for the inclusion of Fountain Hills Sixth Addition, an addition within the corporate boundaries of the City of Kearney said property described as a tract of land being part of the North Half of the Northwest Quarter of Section 26, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Referring to the Northwest Corner of said Section and assuming the North line of said Northwest Quarter as bearing N89°38'37"E and all other bearings contained hereon relative thereto; thence N89°38'37"E on said North line a distance of 753.56 feet; thence S00°21'23"E perpendicular to said North line a distance of 50.00 feet to the South Right-of-Way line of 56th Street and Actual Point of Beginning; thence N89°38'37"E parallel with said North line on said South Right-of-Way line a distance of 813.85 feet to the intersection of the West Right-of-Way line of 11th Avenue, as Platted in Fountain Hills Second Addition, City of Kearney, Buffalo County, Nebraska; thence S00°16'40"E on said West Right-of-Way a distance of 151.67 feet to the beginning of a tangent curve to the left, having a central angle of 07°55'42", a radius of 333.00 feet, and an arc length of 46.08 feet; thence S08°12'22"E tangent to said curve and on said West Right-of-Way a distance of 387.19 feet to the centerline of a 16.5 foot wide American Telephone and Telegraph Company of Nebraska Easement, recorded in Miscellaneous Book 'P', Page 162, Buffalo County Register of Deeds Office; thence N88°20'14"W on said centerline a distance of 870.32 feet; thence N00°20'34"W a distance of 550.50 feet to the Point of Beginning, containing 10.81 Acres, more or less, Buffalo County, Nebraska; and

WHEREAS, the Kearney City Planning Commission has received and held a public hearing on September 21, 2012 on the inclusion of Fountain Hills Sixth Addition within the corporate limits and recommended the Kearney City Council approve said application; and

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

WHEREAS, a public hearing was held by the Kearney City Council relating to said application on October 9, 2012 who deemed the said addition to be included within the corporate limits to be advantageous to and in the best interests of the City.

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

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

PASSED AND APPROVED THIS 9TH DAY OF OCTOBER, 2012.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**DEVELOPMENT OF LUMBER YARD SOUTH OF 56TH STREET BETWEEN 11TH AVENUE AND 17TH AVENUE**

Public Hearings 15 through 19 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Craig Bennett (Applicant) for Grand West, L.L.C. (Owner) for Planned District Development Plan Approval for a lumber yard development on property to be zoned District C-2/PD, Community Commercial/Planned Development Overlay District for property described as a tract of land being part of the North Half of the Northwest Quarter of Section 26, Township 9, Range 16 West of the 6th P.M., Buffalo County, Nebraska (south of 56th Street between 11th Avenue and 17th Avenue) and consider Resolution No. 2012-186. Planning Commission recommended approval.

There was no one present in opposition to this hearing.

Moved by Lammers seconded by Lear to close the hearing and adopt **Resolution No. 2012-186** approving the Application submitted by Craig Bennett (Applicant) for Grand West, L.L.C. (Owner) for Planned District Development Plan Approval for a lumber yard development on property to be zoned District C-2/PD, Community Commercial/Planned Development Overlay District for property described as a tract of land being part of the North Half of the Northwest Quarter of Section 26, Township 9, Range 16 West of the 6th P.M., Buffalo County, Nebraska (south of 56th Street between 11th Avenue and 17th Avenue). Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney absent. Motion carried.

**RESOLUTION NO. 2012-186**

WHEREAS, Craig Bennett (Applicant) for Grand West, L.L.C. (Owner) have applied for Planned District Development Plan Approval for a lumber yard development on property being zoned District C-2/PD, Community Commercial/Planned Development Overlay District and described as a tract of land being part of the North Half of the Northwest Quarter of Section 26, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Referring to the Northwest Corner of said Section and assuming the North line of said Northwest Quarter as bearing N89°38'37"E and all other bearings contained hereon relative thereto; thence N89°38'37"E on said North line a distance of 753.56 feet; thence S00°21'23"E perpendicular to said North line a distance of 50.00 feet to the South Right-of-Way line of 56th Street and Actual Point of Beginning; thence N89°38'37"E parallel with said North line on said South Right-of-Way line a distance of 813.85 feet to the intersection of the West Right-of-Way line of 11th Avenue, as Platted in Fountain Hills Second Addition, City of Kearney, Buffalo County, Nebraska; thence S00°16'40"E on said West Right-of-Way a distance of 151.67 feet to the beginning of a tangent curve to the left, having a central angle of 07°55'42", a radius of 333.00 feet, and an arc length of 46.08 feet; thence S08°12'22"E tangent to said curve and on said West Right-of-Way a distance of 387.19 feet to the centerline of a 16.5 foot wide American Telephone and Telegraph Company of Nebraska Easement, recorded in Miscellaneous Book 'P', Page 162, Buffalo County Register of Deeds Office; thence N88°20'14"W on said centerline a distance of 870.32 feet; thence N00°20'34"W a distance of 550.50 feet to the Point of

Beginning, containing 10.81 Acres, more or less, Buffalo County, Nebraska (south of 56th Street between 11th Avenue and 17th Avenue).

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the application of Craig Bennett (Applicant) for Grand West, L.L.C. (Owner) for Planned District Development Plan Approval for a lumber yard development on property being zoned C-2/PD, Community Commercial/Planned Development Overlay District and described as a tract of land being part of the North Half of the Northwest Quarter of Section 26, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Referring to the Northwest Corner of said Section and assuming the North line of said Northwest Quarter as bearing N89°38'37"E and all other bearings contained hereon relative thereto; thence N89°38'37"E on said North line a distance of 753.56 feet; thence S00°21'23"E perpendicular to said North line a distance of 50.00 feet to the South Right-of-Way line of 56th Street and Actual Point of Beginning; thence N89°38'37"E parallel with said North line on said South Right-of-Way line a distance of 813.85 feet to the intersection of the West Right-of-Way line of 11th Avenue, as Platted in Fountain Hills Second Addition, City of Kearney, Buffalo County, Nebraska; thence S00°16'40"E on said West Right-of-Way a distance of 151.67 feet to the beginning of a tangent curve to the left, having a central angle of 07°55'42", a radius of 333.00 feet, and an arc length of 46.08 feet; thence S08°12'22"E tangent to said curve and on said West Right-of-Way a distance of 387.19 feet to the centerline of a 16.5 foot wide American Telephone and Telegraph Company of Nebraska Easement, recorded in Miscellaneous Book 'P', Page 162, Buffalo County Register of Deeds Office; thence N88°20'14"W on said centerline a distance of 870.32 feet; thence N00°20'34"W a distance of 550.50 feet to the Point of Beginning, containing 10.81 Acres, more or less, Buffalo County, Nebraska (south of 56th Street between 11th Avenue and 17th Avenue) be approved subject to compliance with the terms and conditions of the Subdivision Agreement.

PASSED AND APPROVED THIS 9TH DAY OF OCTOBER, 2012.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

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

Moved by Clouse seconded by Lammers that Subsections 1 through 11 of Consent Agenda Item IV be approved. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney absent. Motion carried.

1. Approve Minutes of Regular Meeting held September 25, 2012.
2. Approve the following Claims:
 

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

A-1 Refrigeration \$170.20 smcs; Ace Irrigation \$180.00 smcs; Aflac \$3,005.54 ps; Alfred Benesch \$1,160.61 co; Anderson Ford Lincoln \$27,986.00 co; Ask Supply \$537.64 smcs; Audio Go \$159.91 smcs; Baker & Taylor \$6,584.06 smcs; Bamford \$1,712.61 smcs; Beins,G \$575.00 smcs; Blessing \$360,124.07 co; Bluecross Blueshield \$183,860.96 smcs; BMI \$288.00 smcs; Bosselman \$607.04 smcs; Brigham Lofts \$42,812.00 smcs; Broadfoot's \$560.00 smcs; Bruha,S \$150.00 smcs; Buffalo Co Reg Deeds \$36.00 smcs; Buffalo Co Sheriff \$135,381.50 smcs; Buffalo Co Treasurer \$15.00 co; Builders Warehouse \$179.53 smcs,co; Capital Business Systems \$181.82 smcs; Cash-Wa \$778.65 smcs; Chandler Well Service \$1,569.44 smcs; CHS Agri Service Center \$4,932.81 smcs; City Glass \$481.70 smcs; City of Ky \$322,291.21 smcs,co,ps; Clipper Publishing \$60.00 smcs; CNA Surety \$40.00 smcs; Comcate \$6,165.00 smcs; Copycat Printing \$1,546.76 smcs; Credit Management Serv \$129.57 ps; Cullen,M \$105.00 smcs; Cummins Central Power \$215.31 smcs; D&M Security \$64.50 smcs; Deeter Foundry \$840.00 smcs; Dmilaco \$342.28 smcs; Dominion Construction \$1,350.00 co; Dostals Construction \$6,560.10 co; Dowhy Towing \$225.00 smcs; DPC Industries \$6,230.76 smcs; Dutton-Lainson \$217.25 smcs; Eakes \$4,089.03 smcs,co; Ebsco \$3,155.00 smcs; Economic Dev Council \$135,000.00 smcs; Ed Roehr Safety \$1,647.70 smcs; Eirich,D \$62.16 smcs; Eirich,T \$50.00 smcs; EMC Ins \$162.61 smcs; Farmers Union \$44.51 smcs; Fiddelke Heating \$575.62 smcs; Fireguard \$53.32 smcs; Footjoy \$365.45 smcs; Frontier \$52.50 smcs; Gale \$545.14 smcs; GD Concrete Construction \$119,787.00 co; GLOCK Professional \$210.00 smcs; Good Samaritan Hospital \$4,000.00 smcs; Gough,P \$131.25 smcs; Grey House Publishing \$657.05 smcs; Grimes,S \$55.20 smcs; Haack,S \$204.75 smcs; Harshbarger,K \$171.00 smcs; HD Supply \$2,323.77 co; Hebb,D \$12.50 smcs; Highsmith \$3,361.39 co; Hill,M \$71.00 smcs; Hometown Leasing \$444.91 smcs,co; Hotsy Equipment \$4,295.00 co; ICMA RC \$3,809.17 ps; Infinisource \$2,404.56 smcs; IRS \$117,972.68 ps; Jack Lederman \$542.80 smcs; James,D \$255.00 smcs; Johnsen Corrosion \$2,112.00 smcs; Jones Automotive \$1,154.44 co; Ky Clinic \$1,303.00 ps; Ky Hub \$1,933.73 smcs; Ky Humane Society \$6,825.00 smcs; Ky United Way \$627.74 ps; Ky Visitors Bureau \$46,024.80 smcs; Kirkham Michael \$8,783.62 co; K-Log \$1,323.47 co; Koettters,J \$18.47 smcs; Konica Minolta \$215.81 smcs; Krull Ins \$1,950.00 smcs; League of NE Municipalities \$36,287.00 smcs; Magic Cleaning \$1,440.00 smcs; Masek Golf Car \$618.00 smcs; Matheson Tri-Gas \$19.50 smcs; Menards \$140.99 smcs; Metlife \$7,462.07 ps; Mid American Signal \$385.75 smcs; Midlands Contracting \$69,706.03 co; Miller & Associates \$35,697.83 smcs,co; Moonlight Embroidery \$808.50 smcs; Municipal Supply \$2,088.69 smcs; Museum of NE Art \$5,000.00 smcs; NCS Equipment \$79.75 smcs; NE Child Support \$2,470.66 ps; NE Dept of Revenue \$37,315.31 smcs,ps; NE DOL/Boiler Inspection \$36.00 smcs; NE Firefighters Foundation \$50,000.00 co; New Directions \$10,269.21 smcs; New World Systems \$4,290.11 co; NMVCA \$100.00 smcs; Norm's Plumbing \$622.21 smcs; Northwestern Energy \$2,775.12 smcs; NTOA \$150.00 smcs; OCLC \$539.31 smcs; Officenet \$54.00 smcs; O'Keefe Elevator \$367.97 smcs; Padgett,S \$144.00 smcs; Paramount \$201.57 smcs; Patterson,B \$10.00 smcs; Paulsen \$148,038.09 co; Payflex Systems \$522.75 smcs,ps; Peerless Machine \$3,442.00 smcs; Pep Co \$53.66 smcs; Platte Valley Comm \$11,300.00 smcs; Presto-X \$410.75 smcs; Pulliam,R \$40.00 smcs; Ready Mixed Concrete \$1,047.50 smcs; Recorded Books \$412.11 smcs; Sahling Kenworth \$5.66 smcs; Salter,J \$141.00 smcs; Sapp Bros \$34,299.60 smcs; Schmidt,A \$55.20 smcs; Sherwin-Williams \$2,124.15 smcs; Snap-On Tools \$605.99 smcs; Snow,T \$50.00 smcs; Stade,L \$20.00 smcs; St of NE/AS Central \$3,906.33 smcs,co; Steinbrink Landscaping \$160.00 smcs; Sun Life Financial

\$53,190.80 smcs; Thome,B \$141.00 smcs; Thompson Publishing \$323.99 smcs; Thompson,K \$166.98 smcs; Tielke's Sandwiches \$76.09 smcs; Titleist \$339.34 smcs; Trashcans Unlimited \$6,985.83 co; Tri-County Glass \$543.29 smcs; Tumbleweed Press \$598.00 smcs; Turfwerks \$1,104.22 smcs; Tye & Rademacher \$10,721.72 smcs; Union Bank & Trust \$58,677.63 ps; UPRR \$250.00 er; UNK & Board of Regents \$331.22 ps; Verizon Wireless \$1,040.36 smcs; Village Uniform \$502.60 smcs; Walsh,C \$202.02 smcs; Walters Electric \$60.00 smcs; WatchGuard Video \$775.00 co; Wegner,T \$100.50 ps; Wells Fargo Equipment \$44,444.42 ds; West Payment Center \$131.50 smcs; Whelen Engineering \$269.25 smcs; WPCI \$107.00 ps; Payroll Ending 9-22-2012 -- \$370,757.66. 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. 2012-187** approving the Technical and Professional Services Contract between the City of Kearney and Miller & Associates as Project Administrator for Community Development Block Grant #11CR004.

### **RESOLUTION NO. 2012-187**

WHEREAS, the City of Kearney has applied for a Community Development Block Grant (CDBG) for community revitalization sidewalk improvements; and

WHEREAS, the City of Kearney requested proposals from firms in Central Nebraska for a Project Administrator for management and supervision services under a Community Development Block Grant program; and

WHEREAS, City staff received one proposal and recommends pursuing a contract with Miller & Associates of Kearney to provide management and supervision services.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the President be and is hereby authorized and directed to execute, on behalf of the City of Kearney, the Technical and Professional Services Contract between the City of Kearney and Miller & Associates as Project Administrator for management and supervision services under a Community Development Block Grant program for community revitalization sidewalk improvements (11-CR-004), as set forth in the Contract. The said Contract, marked Exhibit "A", is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 9TH DAY OF OCTOBER, 2012.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**4.** 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 Exhibit Building located at the Buffalo County Fairgrounds, 3807 Avenue N, on October 20, 2012 (alternate location is Exposition Building) from 6:00 p.m. until 1:00 a.m. for a dance.

**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 Exhibit Building located at the Buffalo County

Fairgrounds, 3807 Avenue N, on November 10, 2012 (alternate location is Exposition Building) from 6:00 p.m. until 1:00 a.m. for a dance.

6. Approve the Downtown Improvement Board recommendation on approving the request submitted by C.L.A.S.S. Act and the Kearney Public Schools Foundation to temporarily block off eight parking stalls in the northwest corner of the MONA parking lot along 25th Street from 5:00 p.m. until 9:30 p.m. on November 27, 28, 29, December 4, 5, 6, 10, 11, 12, and 13, 2012 for the *Polar Express* fundraiser.
7. Adopt **Resolution No. 2012-188** continuing the Agreement between the City of Kearney and the law firm of Tye & Rademacher for legal services as City Attorney.

### RESOLUTION NO. 2012-188

WHEREAS, the City of Kearney entered into an Agreement for Legal Services and the Law Firm of Tye & Rademacher on September 13, 2005 to provide legal services to the City of Kearney; and

WHEREAS, said Agreement was continued for an additional three years on September 26, 2006, and again on August 25, 2009; and

WHEREAS, in accordance with the terms of the Agreement, City staff is recommending continuing the Agreement with the Law Firm of Tye & Rademacher with the following adjustments to the original agreement:

1. The Agreement will continue for a period of three (3) years and shall self-renew annually thereafter, subject to the right of either party to terminate the Agreement by giving the other party ninety days prior written notice.

2. Effective October 1, 2012, the annual sum will increase to One Hundred Thirty-two Thousand Five Hundred Twenty and 44/100 Dollars (\$132,520.44), and will increase three percent (3%) on October 1, 2010 and three percent (3%) on October 1, 2011.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the Agreement for Legal Services dated October 9, 2012 between the City of Kearney, Nebraska and the Law Firm of Tye & Rademacher for services as outlined in said Agreement.

PASSED AND APPROVED THIS 9TH DAY OF OCTOBER, 2012.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

8. Adopt **Resolution No. 2012-189** approve the Interlocal Agreement for Cooperative Public Safety Services by and among the Counties of Adams, Buffalo, Clay, Dawson, Franklin, Frontier, Gosper, Hall, Hamilton, Harlan, Kearney, Lincoln, Nuckolls, Phelps and Webster and the Cities and Villages within said Counties to form, operate and maintain a Planning, Exercise and Training Program.

### RESOLUTION NO. 2012-189

BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the Interlocal Agreement for Cooperative Public Safety Service by and among the

Counties of Adams, Buffalo, Clay, Dawson, Franklin, Frontier, Gosper, Hall, Hamilton, Harlan, Kearney, Lincoln, Nuckolls, Phelps and Webster and the Cities and Villages within said Counties to form, operate and maintain a Planning, Exercise and Training Program be and is hereby accepted and that the City Manager be and is hereby authorized and directed to execute the said Agreement on behalf of the City of Kearney. The original Interlocal Agreement for Cooperative Public Safety Service by and among the Counties of Adams, Buffalo, Clay, Dawson, Franklin, Frontier, Gosper, Hall, Hamilton, Harlan, Kearney, Lincoln, Nuckolls, Phelps and Webster and the Cities and Villages within said Counties, marked as Exhibit "A" is attached hereto and made a part hereof.

PASSED AND APPROVED THIS 9TH DAY OF OCTOBER, 2012.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

9. Accept the bids received for the Cemetery Irrigation Controller and award the bid to Turfwerks in the amount of \$36,350.51.

10. Approve the application for a Special Designated License submitted by Night Life Concepts, Inc., dba Cunningham's Journal in connection with their Class CK-59311 catering liquor license to dispense beer, wine and distilled spirits inside The World Theatre, 2318 Central Avenue, on November 2, 2012 from 4:00 p.m. until 11:00 p.m. for a comedy show.

11. Approve the application for a Special Designated License submitted by Night Life Concepts, Inc., dba Cunningham's Journal in connection with their Class CK-59311 catering liquor license to dispense beer, wine and distilled spirits inside The World Theatre, 2318 Central Avenue, on November 6, 2012 from 4:00 p.m. until 11:00 p.m. for a private party.

## **V. CONSENT AGENDA ORDINANCES**

### **ORDINANCE NO. 7751 CREATING PAVING DISTRICT NO. 2012-953**

When Starostka View Addition was platted in April of 2012, the owners signed a Subdivision Agreement agreeing to enter into a Development Construction Infrastructure Agreement to construct water and sanitary sewer infrastructure. With the signing of the Subdivision Agreement, the owner is requesting the City create a paving district for Avenue L from 65th Street Place to the existing pavement of 66th Street Place. Danny Starostka submitted a letter requesting the creation of a paving district.

Section 57-102 of the Kearney City Code requires the developer to deposit fifty percent of the total estimated costs of the district. The remaining unpaid costs of the improvements shall be assessed against the property in said district on a basis of special benefit to the property, if any, as provided by law.

Council Member Lammers introduced Ordinance No. 7751, being Subsection 1 of Agenda Item V creating Paving Improvement District No. 2012-953 for Avenue L from

65th Street Place north northeasterly to 66th Street Place, and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Lear seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear. Nay: None. Kearney 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. 7751 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear. Nay: None. Kearney absent. Motion carried. Ordinance was read by number.

Moved by Lear seconded by Buschkoetter that Ordinance No. 7751 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7751 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

**ORDINANCE NO. 7752 REPEALING ORDINANCE NO. 7741 AND ADOPT THE AMENDED ANNUAL SALARY ORDINANCE**

After careful evaluation, Administration and the Park and Recreation Department have recommended two changes to the Park and Recreation portion of the 2013 pay plan to better reflect the actual needs of the department.

- The additional Recreation Coordinator position, pay grade 24, may not be necessary at that level. Instead, the Recreation Department believes reclassifying that position to a transitional position of Recreation Leader, pay grade 21 would be sufficient.

- With the appointment of Scott Hayden to Park and Recreation Director, we recommend his former position of Park and Recreation Superintendent be set back to the original pay grade of 31. The pay grade associated with that position was increased to pay grade 32 with the 2012 Park and Recreation reclassification.

- The vehicle allowance, currently designated to the Recreation Superintendent would be changed to the Director of Park and Recreation with an increase from \$150 to \$200 per month.

Council Member Lammers introduced Ordinance No. 7752, being Subsection 2 of Agenda Item V repealing Ordinance No. 7741 and classify the officers and employees of the City; fix the ranges of compensation of such officers and employees; establish the hours and work period for overtime eligibility; provide for payments of clothing and/or uniform allowances; provide for payment of vehicle allowance; and provide for payment of cell phone allowance, and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered

for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Lear seconded the motion to suspend the rules. President of the Council asked for discussion or if anyone in the audience was interested in the ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear. Nay: None. Kearney 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. 7752 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear. Nay: None. Kearney absent. Motion carried. Ordinance was read by number.

Moved by Lear seconded by Buschkoetter that Ordinance No. 7752 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Lammers. Nay: None. Kearney absent. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7752 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**

### **OPEN ACCOUNT CLAIMS: NPPD - \$232.32**

Moved by Buschkoetter seconded by Lammers that the Open Account Claim in the amount of \$232.32 payable to Nebraska Public Power District be allowed. Roll call resulted as follows: Aye: Buschkoetter, Lear, Lammers. Nay: None. Clouse abstained and Kearney absent. Motion carried.

## **VII. REPORTS**

### **UPDATE ON HOUSING**

City Manager Michael Morgan stated 73 single family lots were approved by Council at this meeting. The developer will be moving toward completing infrastructure in that area next year. The connection from 48th Street to 50th Street has been a long time request and will be a good project to have completed. The approval of the 60 units which represents 80-85 bedrooms in three different apartment complexes at this meeting is in addition to approval of 102 unit complexes just a few weeks ago. Prior to those meetings, the Council approved Loper Suites for approximately 36 units for which permits have been issued and are under construction. Work is being completed on the 10-12 units downtown. There are approximately 250 bedrooms in those units to be completed in the near future. They have also seen an increase in the number of single family permits and will have a report on those numbers soon to share with the Council. Some of the infrastructures that have been put in over the past few years are starting to pay some big dividends to enable completing some of these major improvements such as the trails and park.

**UPDATE ON AIRPORT**

City Manager Michael Morgan stated they have been watching the numbers at the airport. They do have a Brasilia flight that has been coming in one day and going out the next. The enplanement numbers are almost 9,050 for the year to date. They anticipate getting 11,500 or 12,000 which would be the all-time high for enplanements.

**VIII. ADJOURN**

Moved by Lammers seconded by Lear that Council adjourn at 8:18 p.m. Roll call resulted as follows: Aye: Clouse, Lear, Lammers, Buschkoetter. Nay: None. Kearney absent. Motion carried.

**ATTEST:**

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

\_\_\_\_\_  
**MICHAELLE E. TREMBLY  
CITY CLERK**