

*Kearney, Nebraska  
February 12, 2013  
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 February 12, 2013, in the Council Chambers at City Hall. Present were: Stanley A. Clouse, President of the Council; Michaelle Trembly, City Clerk; Council Members Bruce Lear, Bob Lammers and Jonathan Nikkila. Absent: Randy Buschkoetter. 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, Director of Administrative Services; Dan Lynch, Chief of Police; Scott Hayden, Director of Park & Recreation; and Bruce Grupe, City Engineer were also present. Some of the citizens present in the audience included: Craig Bennett, Mary Kalb, Mindy Oman, Brett Jacobitz, John Gabel, Eric Hellreigel, Chris Hilliard, Steve Altmaier from KGFW Radio, Mary Jane Skala and Adam Konruff from Kearney Hub.

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

## **I. ROUTINE BUSINESS**

### **INVOCATION**

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

### **PLEDGE OF ALLEGIANCE**

The Council members led the audience in the Pledge of Allegiance.

### **ANNOUNCEMENT**

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

### **ORAL COMMUNICATIONS**

There was no Oral Communications.

## **II. UNFINISHED BUSINESS**

There was no Unfinished Business.

### **III. PUBLIC HEARINGS**

#### **DEVELOPMENT PLANS FOR MEAD LUMBER; SOUTH OF 56TH STREET BETWEEN 11TH AVENUE AND 17TH AVENUE**

Mayor Clouse opened the public hearing on the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Mead Building Centers of Kearney Real Estate, LLC (Owner) for Revised Planned District Development Plan Approval for a lumber yard on property zoned District C-2/PD, Community Commercial/Planned Development Overlay District for property described as Lot 1, Fountain Hills Sixth Addition to the City of Kearney, Buffalo County, Nebraska (south of 56th Street between 11th Avenue and 17th Avenue) and to consider Resolution No. 2013-11. Planning Commission recommended approval of the revised plan package waiving the 35 percent brick requirement on the lumber building and requiring the entrance gate to be setback to allow space for semi-trucks to be off of the public right-of-way and the exit gate can be located at the setback line.

The applicant is requesting approval of Revised Development Plans 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. The property is zoned C-2/PD.

There are two detached storage buildings proposed inside the fenced enclosure, one just north of the entrance off 15th Avenue labeled on the plans as "Roofing Storage Building" and another larger structure along the east boundary of the enclosure, south of the main building labeled on the plans as "Lumber Storage Building." Both structures were originally designed as a system of racking with an overhead roof to protect materials that are stored there from the elements.

The Owner would now like to increase the size of the lumber storage from 25 feet by 165 feet to 60 feet by 165 feet and provide two overhead doors on the north end.

The roofing building is now being rotated 90 degrees to run east-west on the site as opposed to its originally depicted north-south orientation. Staff decided that these proposed changes are significant enough to require Revised Development Plans for the Planning Commission and City Council to review.

The perimeter fence is proposed as an 8-foot tall wood fence at the 25-foot setback along 15th Avenue accented with 5-foot square split-face CMU pilasters every 100 feet to provide offsets in the horizontal plane of the fence. The pilasters are to be located entirely on the outside of the fence.

The customer parking lot has been revised to allow easier access and maneuvering for larger vehicles and vehicles with trailers. In fact, the parking lot is "oversized", meaning that the drive aisles and parking space are wider than usual. The parking count is about twice the minimum code requirement with 57 required and 113 provided. Construction of some 32 stalls of the parking shown north and west of the roofing storage building may be deferred to a later date which will result in a higher percentage of green space

in the parking lot with the initial phase. The main building, infrastructure, landscaping and other site features have not changed from the original submittal.

Staff has two specific concerns with the Revised Development Plans that have been submitted:

1) Code requires 35 percent of any street facing façade to be constructed of enhanced masonry materials. The lumber storage building faces west to 15th Avenue, although it is located within the fenced enclosure. Any part of the west facing façade around the overhead doors will require 35 percent enhanced masonry materials per this code requirement. Staff does not have the authority to waive development standards that are required by code. Planning Commission and City Council can approve deviations under the context of the Planned Development PD Overlay. The applicant is requesting a deviation from this requirement since the building is located some distance from 15th Avenue, behind the perimeter fence, behind the guard shack, and storage racks are also planned between the overhead doors that would cover up the building enhancements. The Planning Commission recommended approval of this deviation.

2) The proposed guard shack at the south access point from 15th Avenue remains in the same location it was originally depicted, 75 feet from the street. However, the applicant has changed the gate system from the original submittal in a manner that eliminates stacking space for semi-trucks off of the public right-of-way. The original design showed the enclosure fence extending back to the guard shack with the gates at the guard shack. With the guard shack located 75 feet from the right-of-way line, stacking for one tractor trailer rig is available with this scenario. The new proposal shows the gate parallel with the perimeter fence 25 feet from the right-of-way line thus eliminating the stacking. Staff is concerned that trucks arriving during off hours when the gates are closed will impede on the right-of way. Builders Warehouse was required to move the location of their proposed guard shack to 150 feet from the public street. Section 49-108 of the City Code requires all commercial buildings to provide adequate loading and off-loading space on the same property as the building. The public right-of-way is not to be used for truck maneuvering or parking for loading and unloading. Staff is opposed to the revised gate system and requested the applicant to provide the truck stacking as originally presented at the Planning Commission hearing. Discussion regarding the gate options ensued, with a compromise being suggested that is acceptable to the City and the Developer. A hybrid of the two gate scenarios is proposed so that the entry gate is setback 75 feet to allow the truck stacking, but the exit side of the gate is at the 25-foot setback line.

Craig Bennett from Miller & Associates presented this matter to the Council. He stated this area is south of 56th Street and was brought to Council in the fall of 2012. It is currently zoned C-2/PD and requires approval of the development plan. The parcel has 6.51 acres. The original development plan had their main warehouse building located south of 56th Street. They had another building that was going to house asphalt shingles, etc. which they decided to rotate and also to expand the width of the outdoor shelving in an east/west direction. The revised plan shows rotating that building from the west side of the property to the north side of the yard area and changing the width of the storage building to 60 feet wide with the original length.

The revised plan shows modifying the gate to a recessed gate to allow stacking for a semi-tractor trailer should the gate be closed so that it would not block the sidewalk or

the road and would not have to park on the road. This would allow two semi-trailers to be stacked, one in front of the guard shack and one at the gate should it be closed.

They made a change to the parking area in order to change the traffic flow. This way the contractors and the tractor trailers could navigate without having to go through the parking lot where retail customers would be parking. In this way, they can bypass customer parking and circle through the drive-thru and come back out. They have also added a little more green space with this revised plan. Originally, they were at 80 percent which is the maximum and they are just a little less than that now. The requirement is for 57 parking stalls and the plan shows they have 121. If they choose to make some changes in two of the parking areas, they would still have 89 stalls which exceed what is required.

There was no one present in opposition to this hearing.

Moved by Lammers seconded by Nikkila to close the hearing and adopt **Resolution No. 2013-11** approving the Application submitted by Craig Bennett from Miller & Associates (Applicant) for Mead Building Centers of Kearney Real Estate, LLC (Owner) for Revised Planned District Development Plan Approval for a lumber yard on property zoned District C-2/PD, Community Commercial/Planned Development Overlay District for property described as Lot 1, Fountain Hills Sixth Addition to the City of Kearney, Buffalo County, Nebraska (south of 56th Street between 11th Avenue and 17th Avenue) waiving the 35 percent brick requirement on the lumber building and requiring the entrance gate to be setback to allow space for semi-trucks to be off of the public right-of-way and the exit gate can be located at the setback line. Roll call resulted as follows: Aye: Clouse, Lear, Nikkila, Lammers. Nay: None. Buschkoetter absent. Motion carried.

### **RESOLUTION NO. 2013-11**

WHEREAS, Craig Bennett from Miller & Associates (Applicant) for Mead Building Centers of Kearney Real Estate, LLC (Owner) have applied for Revised Planned District Development Plan Approval for a lumber yard on property zoned District C-2/PD, Community Commercial/Planned Development Overlay District and described as Lot 1, Fountain Hills Sixth Addition to the City of Kearney, 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 from Miller & Associates (Applicant) for Mead Building Centers of Kearney Real Estate, LLC (Owner) for Planned District Development Plan Approval for a lumber yard on property zoned District C-2/PD, Community Commercial/Planned Development Overlay District and described as Lot 1, Fountain Hills Sixth Addition to the City of Kearney, Buffalo County, Nebraska (south of 56th Street between 11th Avenue and 17th Avenue) be approved subject to (1) waiving the thirty five percent (35%) enhanced masonry requirement on the west façade of the lumber storage building; and (2) requiring the entrance gate at the truck access off of 15th Avenue to be setback to the guard shack to allow space for semi-trucks to be off of the public right-of-way, while the exit gate can be located at the twenty five-foot (25') setback line along 15th Avenue.

PASSED AND APPROVED THIS 12TH DAY OF FEBRUARY, 2013.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**AMENDMENT TO REDEVELOPMENT PLAN TO REDEVELOPMENT AREA #2**

Mayor Clouse opened the public hearing on the proposed amendment to the Redevelopment Plan for Redevelopment Area #2 described as a tract of land located south from the intersection of South Railroad Street and the alley between Central Avenue and Avenue A to the southern right-of-way of 8th Street, thence west one half block, thence south along the eastern right-of-way of Central Avenue to a point 125 feet north of Landon Street, thence east to the corporate limits, thence south along the corporate limits to the southern bank of the North Channel of the Platte River, thence west along the corporate limits to a point approximately 405 feet east of Central Avenue, thence south along the property line to the northern right-of-way of Interstate 80, thence west and north along the right-of-way to 2nd Avenue, thence southwest along Interstate 80's northern right-of-way to the city limits, thence generally north along the corporate limits to the southern bank of the North Channel of the Platte River, thence east along said bank to eastern right-of-way of 2nd Avenue, thence east to western boundaries of the parcels adjacent to Central Avenue (approximately 200 feet), thence north along the property lines of the said parcels, thence east along the northern right-of-way of 4th Street to a point 240 feet west of Central Avenue, thence north along western boundaries of the parcels adjacent to Central Avenue, thence north along the eastern and the northern property line of Lot 7 of H-D-R 2nd Addition, thence north along the western edge of vacated 1st Avenue to the northern right-of-way of 12th Street, thence east one half block to the center line of the alley, thence north to 14th Street's northern right-of-way, thence east to western Central Avenue right-of-way, thence north along the right-of-way to the southern right-of-way of 16th Street, thence west one half block to the center line of the alley, thence north to South Railroad Street, thence east to the point of origin, all located in the City of Kearney, Buffalo County, Nebraska and consider Resolution No. 2013-12. Planning Commission recommended approval.

Assistant City Manager/Development Services Director Suzanne Brodine presented this matter to the Council. Section 18-2107 of the Nebraska Revised Statutes authorizes Community Redevelopment Authorities to utilize a variety of powers to carry out the provisions of the Community Development Law. In accordance with this law, the Kearney CRA has recommended to the Planning Commission and Council ten (10) blight and substandard studies and accompanying redevelopment plans for approval. All of which have been approved.

However, it has come to the attention of the CRA that the redevelopment plans, particularly in the areas first designated blighted and substandard, are inconsistent in their explicit direction of the authority of the CRA. Not all plans use the same language or clearly mention every power available to the CRA under Community Development Law.

In order to provide consistent authorization to carry out the provisions of the law, on October 10, 2012 the Kearney Community Redevelopment Authority made a

recommendation to Planning Commission and City Council to amend the redevelopment plan for Redevelopment Area #2, authorizing the use of any and all of the powers granted in Section 18-2107 of the Nebraska Revised Statutes in pursuit of the objectives for that area – as outlined in the redevelopment plan.

Council member Nikkila stated since they are only amending the redevelopment plan for Redevelopment Area #2, he asked if all of the other areas have the right language. Assistant City Manager stated that some of the other older areas do not have the same language, but the redevelopment plans also differ from each other as well. There may be other areas in those plans they will choose to update. This is the first one they have amended and legal staff is going through those other redevelopments.

There was no one present in opposition to this hearing.

Moved by Nikkila seconded by Lear to close the hearing and adopted **Resolution No. 2013-12** approving the proposed amendment to the Redevelopment Plan for Redevelopment Area #2 to explicitly permit the Kearney Community Redevelopment Authority to use any and all powers authorized under Section 18-2107 of the Nebraska Revised Statutes. Roll call resulted as follows: Aye: Clouse, Nikkila, Lammers, Lear. Nay: None. Buschkoetter absent. Motion carried.

#### **RESOLUTION NO. 2013-12**

WHEREAS, on November 8, 1994 the Kearney City Council adopted Resolution No. 94-239 approving the Redevelopment Plan for Redevelopment Area #2 for a tract of land located south from the intersection of South Railroad Street and the alley between Central Avenue and Avenue A to the southern right-of-way of 8th Street, thence west one half block, thence south along the eastern right-of-way of Central Avenue to a point 125 feet north of Landon Street, thence east to the corporate limits, thence south along the corporate limits to the southern bank of the North Channel of the Platte River, thence west along the corporate limits to a point approximately 405 feet east of Central Avenue, thence south along the property line to the northern right-of-way of Interstate 80, thence west and north along the right-of-way to 2nd Avenue, thence southwest along Interstate 80's northern right-of-way to the city limits, thence generally north along the corporate limits to the southern bank of the North Channel of the Platte River, thence east along said bank to eastern right-of-way of 2nd Avenue, thence east to western boundaries of the parcels adjacent to Central Avenue (approximately 200 feet), thence north along the property lines of the said parcels, thence east along the northern right-of-way of 4th Street to a point 240 feet west of Central Avenue, thence north along western boundaries of the parcels adjacent to Central Avenue, thence north along the eastern and the northern property line of Lot 7 of H-D-R 2nd Addition, thence north along the western edge of vacated 1st Avenue to the northern right-of-way of 12th Street, thence east one half block to the center line of the alley, thence north to 14th Street's northern right-of-way, thence east to western Central Avenue right-of-way, thence north along the right-of-way to the southern right-of-way of 16th Street, thence west one half block to the center line of the alley, thence north to South Railroad Street, thence east to the point of origin, all located in the City of Kearney, Buffalo County, Nebraska; and

WHEREAS, Section 18-2107 of the Nebraska Revised Statutes authorizes Community Redevelopment Authorities to utilize a variety of powers to carry out the provisions of the Community Development law; and

WHEREAS, it has come to the attention of the City of Kearney Community Redevelopment Authority that the redevelopment plans, particularly in the areas first designated blighted and substandard, are inconsistent in their explicit direction of the authority of the City of Kearney Community Redevelopment Authority; and

WHEREAS, in order to provide consistent authorization to carry out the provisions of the law, it is necessary to amend the Redevelopment Plan for Redevelopment Area #2 authorizing the use of any and all of the powers granted in Section 18-2107 of the Nebraska Revised Statutes, as amended; and

WHEREAS, on October 10, 2012 the City of Kearney Community Redevelopment Authority recommended approval and on January 18, 2013 the Planning Commission has made a recommendation to the City Council to amend the Redevelopment Plan for Redevelopment Area #2.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the Redevelopment Plan for Redevelopment Area #2 be and is hereby amended authorizing the use of any and all of the powers granted in Section 18-2107 of the Nebraska Revised Statutes, as amended in pursuit of the objectives for that area as outlined in the Redevelopment Plan.

PASSED AND APPROVED THIS 12TH DAY OF FEBRUARY, 2013.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

### **LIQUOR LICENSE FOR APPLEBEE'S NEIGHBORHOOD GRILL & BAR**

Mayor Clouse opened the public hearing on the application for a Class IK-101513 catering liquor license submitted by RMH Franchise Corporation, dba Applebee's Neighborhood Grill & Bar located at 5605 2nd Avenue, consider the manager application for John Gabel, and consider Resolution No. 2013-13.

John Gabel presented this matter to the Council. He was an officer of Concord Neighborhood Corporation, the former owner of the Applebee's in Kearney. On December 27, 2012 RMH Franchise Corporation purchased all the Applebee's by the ownership of Larry Berg and transferred all the employees to the new corporation. This is basically a change in ownership. All the management employees are still there supporting them. All restaurant employees are still there with no layoffs. All of the policies and procedures are still in place and they are still abiding by all the liquor laws, following their own training, responsible serving of alcohol training and servers being certified. This is basically requesting changing the liquor license to the RMH Franchise Corporation's name versus the Concord Neighborhood.

There was no one present in opposition to this hearing.

Moved by Lear seconded by Clouse to close the hearing and adopt **Resolution No. 2013-13** recommending approval to the Nebraska Liquor Control Commission the application for a Class IK-101513 catering liquor license submitted by RMH Franchise

Corporation, dba Applebee's Neighborhood Grill & Bar located at 5605 2nd Avenue, and approve the manager application for John Gabel. Roll call resulted as follows: Aye: Clouse, Lammers, Lear, Nikkila. Nay: None. Buschkoetter absent. Motion carried.

### **RESOLUTION NO. 2013-13**

WHEREAS, RMH Franchise Corporation, dba Applebee's Neighborhood Grill & Bar has filed with the Nebraska Liquor Control Commission and the City Clerk of the City of Kearney, Nebraska, an application for a Class IK-101513 Catering Liquor License to do business at 5605 2nd 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, RMH Franchise Corporation, dba Applebee's Neighborhood Grill & Bar also filed with the Nebraska Liquor Control Commission and the City Clerk of the City of Kearney, Nebraska, an application for Manager of John Gabel; and

WHEREAS, a hearing was held relating to said application on February 12, 2013 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 IK-101513 Catering Liquor License to RMH Franchise Corporation, dba Applebee's Neighborhood Grill & Bar located at 5605 2nd Avenue, Kearney, Nebraska, and to approve the application for Manager of John Gabel.

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

PASSED AND APPROVED THIS 12TH DAY OF FEBRUARY, 2013.

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 14 of Consent Agenda Item IV be approved. Roll call resulted as follows: Aye: Clouse, Lear, Nikkila, Lammers. Nay: None. Buschkoetter absent. Motion carried.

1. Approve Minutes of Regular Meeting held January 22, 2013 and Special Meeting held January 29, 2013.

2. Approve the following Claims:

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

A-1 Cleaning Services \$769.00 smcs; ACS Govt Systems \$1,065.00 smcs; Alamar Uniforms \$267.90 smcs; Alberts,K \$35.00 smcs; Alfred Benesch \$16,734.82 co; All

Makes Supply \$1,501.42 smcs; Amer First Aid \$322.92 smcs; Amer Library Assn \$236.80 smcs; Amer Trade Mark \$388.12 smcs; Antelope \$60.00 smcs; Ardent Lighting Group \$115,800.64 co; Ask Supply \$479.32 smcs; Baird Holm \$390.00 smcs; Baker & Taylor Books \$4,096.50 smcs; Bamford \$1,773.01 smcs,co; Bauer,K \$35.00 smcs; Beehive Industries \$11,546.00 smcs; Blessing Construction \$1,297.62 smcs; Bluecross Blueshield \$178,943.16 smcs; Bosselman Energy \$129.16 smcs; Broadfoot's \$162.50 smcs; Builders \$229.80 smcs,co; Capital Business Systems \$304.90 smcs; Cash-Wa \$699.00 smcs; CDH Electric \$875.00 co; Center Point Large Print \$71.41 smcs; Central District Health \$3,277.00 smcs; Charter \$244.98 smcs; City of Ky \$299,643.52 smcs,ps; Conroy,B \$164.26 smcs; Consec Life Ins \$19.00 ps; Crossroads Ford \$234.40 smcs; CTK Service & Plumbing \$175.00 smcs; Culligan \$1,890.00 smcs; Cummins \$3,113.36 smcs; Drivers License Guide \$28.95 smcs; Dutton-Lainson \$556.96 smcs; Eakes \$2,723.11 smcs; Ecolab \$37.04 smcs; Edwards,L \$25.00 smcs; Eirich,T \$50.00 smcs; Elliott Equipment \$1,385.19 smcs; Emerson Network Power \$5,137.08 smcs; Express Sharpening \$36.00 smcs; Farmers Union Coop \$46.75 smcs; Fiddelke \$544.52 smcs; Fireguard \$20.29 smcs; Fore!Reservations \$1,500.00 smcs; Fort Bend Services \$5,653.44 smcs; Frontier \$8,873.15 smcs; Galls \$16.19 smcs; Garrett Tires \$1,599.95 smcs; Great Plains Safety \$700.00 smcs; Gregory Container \$6,830.00 smcs; Grupe,B \$226.64 smcs; Haack,S \$156.42 smcs; Hometown Leasing \$444.91 smcs,co; Humphrey's Carpet \$3,020.00 smcs; IACP \$120.00 smcs; ICMA RC \$7,619.06 ps; Industrial Fabrics \$3,032.00 smcs; IRS \$248,442.39 ps; iPromoteu \$266.91 smcs; Jack Lederman \$205.76 smcs; Jelinek,A \$402.70 smcs; Johnson Hardware \$1,205.00 co; Johnstone Supply \$825.68 smcs; Jones Automotive \$350.05 co; K&D Motor & Electric \$786.57 smcs; K&K Parts \$1,496.35 smcs; Ky Hub \$172.85 smcs; Ky Humane Society \$6,825.00 smcs; Ky United Way \$874.04 ps; Ky Visitors Bureau \$26,537.16 smcs; Konica Minolta \$2,194.52 smcs; Kulas,A \$55.80 smcs; Kwiatkowski,L \$82.80 smcs; Laursen,E \$20.00 smcs; Lee,C \$10.87 smcs; Lentfer,S \$31.00 smcs; LEVA \$55.00 smcs; Login/IACP Net \$1,100.00 smcs; Longmore,P \$59.00 smcs; Mac Tools \$136.67 smcs; Magic Cleaning \$1,090.00 smcs; Mail Express \$334.16 smcs; Matheson Tri-Gas \$86.34 smcs; Menards \$968.47 smcs,co; Menshik,D \$60.00 smcs; Metlife \$7,564.11 ps; Midlands Contracting \$79,644.61 co; Midwest Mailing \$570.00 smcs; Midwest Turf \$812.93 smcs; Miller & Associates \$16,426.92 co; Miller,R \$877.50 smcs; Motorola Solutions \$30,498.00 smcs; Municipal Supply \$1,535.46 smcs; Napa Auto Parts \$105.96 smcs; Nat'l Alliance \$200.00 smcs; NE Child Support \$5,550.56 ps; NE Dept of Revenue \$68,821.11 smcs,ps; NE Wastewater Operators \$160.00 smcs; Neopost \$6,000.00 smcs; New World Systems \$4,649.99 co; Northwest Electric \$1,304.73 smcs; Northwestern Energy \$14,006.16 smcs; Novus \$40.00 smcs; O'Keefe Elevator \$367.97 smcs; Omaha Performing Arts \$1,525.00 smcs; O'Reilly Automotive \$2,373.74 smcs; Outdoor Recreation \$6,440.00 co; Overhead Door \$6,630.00 smcs; Paramount \$60.49 smcs; Pat's Plumbing \$1,950.00 co; Patterson,B \$111.36 smcs; Payflex Systems \$1,882.00 smcs,ps; Pep Co \$56.34 smcs; Petersen,R \$450.00 smcs; Pitney Bowes \$60.00 smcs; Platte Valley Comm \$7,952.84 smcs,co; Play the West \$1,000.00 smcs; Presto-X \$127.63 smcs; Pulliam,R \$40.00 smcs; Random House \$116.25 smcs; Ready Mixed Concrete \$95.75 co; Recorded Books \$3,845.85 smcs; Recovery Systems \$3,196.84 smcs; Recreonics \$5,646.88 smcs; Reinke's Heating \$164.95 smcs; SA Foster \$5,341.02 smcs; Sapp Bros \$38,362.11 smcs; Schindler Elevator \$678.24 smcs; Seawell,B \$14.24 smcs; Sherwin Williams \$8.78 smcs; Sign Center \$182.54 smcs; Snow,T \$50.00 smcs; State of NE/AS Central \$3,821.71 smcs,co; Sun Life Financial \$62,641.14 smcs; Super Shine Auto Care \$9.25 smcs; Taillon,R \$626.00 smcs; Tri-

Cities Group \$527.34 smcs; Tri-County Glass \$131.68 smcs; Tye & Rademacher \$11,131.97 smcs; Uline \$88.80 smcs; Union Bank & Trust \$117,699.29 ps; United Campus Ministry \$295.00 smcs; UNK \$3,000.00 smcs; Upstart \$279.10 smcs; US Govt Printing \$117.00 smcs; Verizon \$1,041.52 smcs; Vernon Library Supplies \$634.20 smcs; Village Uniform \$1,105.89 smcs; Vogel,E \$5.21 smcs; Warrington,D \$52.64 smcs; Westman,R \$10.14 smcs; Wiederspan,R \$92.00 smcs; Willams,M \$47.46 smcs; Zimmerman Printers \$333.27 smcs; Payroll Ending 1-26-2013 -- \$356,636.58. 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. 2013-14** approving the Technical and Professional Services Contract between the City of Kearney and Miller & Associates for community revitalization planning for Community Development Block Grant No. 12-CR-004.

### **RESOLUTION NO. 2013-14**

WHEREAS, the City of Kearney has applied for a Community Development Block Grant (CDBG) for community revitalization planning for CDBG No. 12-CR-004; and

WHEREAS, the City of Kearney requested proposals from firms in Central Nebraska for a Project Planner to assist in planning the activities conducted with grant funding and ensuring that proposed activities are in compliance with DED and Federal regulations 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 planning 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 Planner to assist in planning the activities conducted with grant funding and ensuring that proposed activities are in compliance with DED and Federal regulations with regard to Grant No. 12-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 12TH DAY OF FEBRUARY, 2013.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**4.** Adopt **Resolution No. 2013-15** approving the Professional Services Consultant Agreement between the City of Kearney and Miller & Associates for comprehensive revitalization strategy plan in connection with Community Development Block Grant No. 12-CR-004.

### **RESOLUTION NO. 2013-15**

WHEREAS, the City of Kearney has applied for a Community Development Block Grant (CDBG) for community revitalization planning for CDBG No. 12-CR-004; and

WHEREAS, the City of Kearney requested proposals from firms in Central Nebraska for a Project Administrator to ensure that the activities conducted with grant funding are in compliance with DED and Federal regulations; and

WHEREAS, City staff received three proposals 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 Professional Services Consultant Agreement between the City of Kearney and Miller & Associates as Project Administrator to ensure that the activities conducted with grant funding are in compliance with DED and Federal regulations with regard to Grant No. 12-CR-004, as set forth in the Agreement. The said Agreement, marked Exhibit "A", is attached hereto and made a part hereof by reference.

PASSED AND APPROVED THIS 12TH DAY OF FEBRUARY, 2013.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

5. Approve the application submitted by Ronald Huss to extend Conditional Use Permit No. 1978-01 to locate a manufactured home for security purposes located at 1202 West 19th Street for a period of one year.

6. Approve the application submitted by Ronald Huss to extend Conditional Use Permit No. 2006-03 to stockpile snow and manure at 1202 West 19th Street for a period of one year.

7. Reappointment of Randy Buschkoetter to serve on the Kearney Visitors Bureau, the reappointment of Stanley Clouse and Bruce Lear to serve on the Buffalo County Economic Development Council, and the reappointment of Randy Buschkoetter, Bob Lammers and Ron Hendrickson to serve on the Joint Airport Zoning Board.

8. Adopt **Resolution No. 2013-16** approving the Annexation Agreement between the City of Kearney and Michael and Gloria Greene for Lot 1, Smith Addition, a subdivision located in the Southeast Quarter of the Northeast Quarter of Section 27, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (5110 17th Avenue).

### **RESOLUTION NO. 2013-16**

BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the Agreement for Annexation between the City of Kearney and Michael and Gloria Greene for a tract of land being Lot 1, Smith Addition, a subdivision located in the Southeast Quarter of the Northeast Quarter of Section 27, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska said property located at 5110 17th Avenue be and is hereby accepted.

BE IT FURTHER RESOLVED that the Mayor be and is hereby authorized and directed to execute the Agreement on behalf of the City of Kearney for the annexation of the respective property.

PASSED AND APPROVED THIS 12TH DAY OF FEBRUARY, 2013.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

9. Adopt **Resolution No. 2013-17** approving the Annexation Agreement between the City of Kearney and Lucille E. Stone, Trustee of the Lucille E. Stone Revocable Trust U/A/D March 29, 2001 for a tract of land in the Northeast Quarter of Section 27, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (5120 17th Avenue).

**RESOLUTION NO. 2013-17**

BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the Agreement for Annexation between the City of Kearney and Lucille E. Stone, Trustee of the Lucille E. Stone Revocable Trust U/A/D March 29, 2001 for a tract of land located in the Northeast Quarter of Section 27, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: a point which is 987 feet north of the East Quarter corner of said Section 27 which is the point of beginning, thence west 596 feet parallel with the south line of said Northeast Quarter, thence north 208 feet, thence east 596 feet, thence south 208 feet along said east line to the place of beginning, all in Buffalo County, Nebraska (5120 17th Avenue) be and is hereby accepted.

BE IT FURTHER RESOLVED that the Mayor be and is hereby authorized and directed to execute the Agreement on behalf of the City of Kearney for the annexation of the respective property.

PASSED AND APPROVED THIS 12TH DAY OF FEBRUARY, 2013.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

10. Adopt **Resolution No. 2013-18** approving the Annexation Agreement between the City of Kearney and Vetter Holding, Inc. for Lot 1 of Block 2, Northridge Retirement Subdivision, a subdivision being part of the East Half of the Northeast Quarter of Section 27, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska.

**RESOLUTION NO. 2013-18**

BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the Agreement for Annexation between the City of Kearney and Vetter Holding, Inc., a Nebraska Corporation for a tract of land being Lot 1 of Block 2, Northridge Retirement Subdivision, a subdivision being part of the East Half of the Northeast

Quarter of Section 27, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska be and is hereby accepted.

BE IT FURTHER RESOLVED that the Mayor be and is hereby authorized and directed to execute the Agreement on behalf of the City of Kearney for the annexation of the respective property.

PASSED AND APPROVED THIS 12TH DAY OF FEBRUARY, 2013.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**11.** Adopt **Resolution No. 2013-19** establishing processes and procedures regarding applications for grant funding, grant project management, and grant record retention.

**RESOLUTION NO. 2013-19**

WHEREAS, the City of Kearney wishes to establish processes and procedures regarding application for grant funding, grant project management, and grant record retention; and

WHEREAS, grantor agencies have requested documented grant oversight processes from the grantee, the City.

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

1. Department Heads must request authorization to apply for grant funding from the City Manager for any grant project that totals more than \$1,000. Any application for a grant project totaling more than \$10,000, including award and match, requires authorization from City Council.

a. Request for authorization to apply must include a description of any matching funds or any restrictions or mandates on the City of Kearney

b. Documents required for grant application must be verified by the Department Head in writing before submittal by any designated staff person.

c. A copy of the application and all supporting documentation must be filed with the Assistant City Manager along with the verification of accuracy by the Department Head.

2. Unless otherwise delegated by the City Manager, it is the responsibility of the department head or his/her designee to coordinate and communicate reports, schedules, closeout and other required documentation with the grantor as described in the grant guidelines.

a. It is the sole responsibility of the Department Head to ensure that required documents are appropriately authorized and filed internally, with the City Clerk or Assistant City Manager.

b. All grant funds must be used in accordance with the guidelines established by the grant program and the request to apply as approved by the City Manager or City Council. The Assistant City Manager should be notified in advance of any significant amendments or deviations; the Assistant City Manager will determine if additional approval from the City Manager or City Council is required to meet the intent of this policy and the grant guidelines.

3. The Department Head shall designate a staff person to maintain records for all department grants including invoices and receipts, progress reports, schedules, and any additional documentation in accordance with grant guidelines.

a. Financial documentation may be held solely by the Finance Department if account number or notation designates such expenditures or revenues as pertaining to the grant.

b. Grant records shall be maintained, either digitally or in hard copy, for a minimum of three years after closeout.

4. The City Manager may designate the Assistant City Manager to assume any or all responsibilities associated with any grant.

5. If grant specifications of the grantor conflict with the City policy, grant specifications have priority.

PASSED AND APPROVED THIS 12TH DAY OF FEBRUARY, 2013.

ATTEST:  
 MICHAELLE E. TREMBLY  
 CITY CLERK

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

**12.** Adopt **Resolution No. 2013-20** approving Change Order No. 1 showing a decrease in the amount of \$1,430.00, Application and Certificate of Payment No. 1-Final in the amount of \$105,273.75 and accept the Certificate of Substantial Completion submitted by Dan Roeder Concrete, Inc. and approved by Miller & Associates for the 2012 Part 1 Improvements – Bid B consisting of Paving Improvement District No. 2012-951 for 13th Street Place from 17th Avenue to its terminus in a cul-de-sac; and Paving Improvement District No. 2012-952 for 12th Street Place from 17th Avenue to its terminus in a cul-de-sac.

**RESOLUTION NO. 2013-20**

WHEREAS, Dan Roeder Concrete of Kearney, Nebraska has performed services in connection with the 2012 Part 1 Improvements – Bid B consisting of Paving Improvement District No. 2012-951 for 13th Street Place from 17th Avenue to its terminus in a cul-de-sac; and Paving Improvement District No. 2012-952 for 12th Street Place from 17th Avenue to its terminus in a cul-de-sac, and the City's engineer, Miller & Associates, have filed with the City Clerk Change Order No. 1 showing a decrease in the amount of \$1,430.00, as shown on Exhibit "A" attached hereto and made a part hereof by reference; and

WHEREAS, Dan Roeder Concrete and Miller & Associates have filed with the City Clerk Application and Certificate for Payment No. 1-Final in the amount of \$105,273.75, as shown on Exhibit "B" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	\$106,703.75
Change Order No. 2 (2-12-2013)	- 1,430.00
Contract Sum To Date	105,273.75
Gross Amount Due	105,273.75
Retainage	.00
Amount Due to Date	105,273.75
Less Previous Certificates for Payment	<u>.00</u>

Current Payment Due \$105,273.75

WHEREAS, the Engineer and Contractor have now certified to the City Clerk that work is completed as of October 20, 2012, as shown by Exhibit "C" attached hereto and made a part hereof by reference.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, and hereby find and determine that Change Order No. 1, as shown on Exhibit "A", Application and Certificate for Payment No. 1-Final, as shown on Exhibit "B", and the Certificate of Substantial Completion as shown on Exhibit "C" be and are hereby accepted and approved.

PASSED AND APPROVED THIS 12TH DAY OF FEBRUARY, 2013.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**13. Adopt Resolution No. 2013-21** approving Change Order No. 2 showing a decrease in the amount of \$10,353.70, Application and Certificate of Payment No. 3-Final in the amount of \$186,283.80 and accept the Certificate of Substantial Completion submitted by Dan Roeder Concrete, Inc. and approved by Miller & Associates for the 2011 Part 7 Improvements; 5th Avenue from North Railroad Street to 25th Street.

### RESOLUTION NO. 2013-21

WHEREAS, Dan Roeder Concrete of Kearney, Nebraska has performed services in connection with the 2011 Part 7 Improvements; 5th Avenue from North Railroad Street to 25th Street, and the City's engineer, Miller & Associates, have filed with the City Clerk Change Order No. 2 showing a decrease in the amount of \$10,353.70, as shown on Exhibit "A" attached hereto and made a part hereof by reference; and

WHEREAS, Dan Roeder Concrete and Miller & Associates have filed with the City Clerk Application and Certificate for Payment No. 3-Final in the amount of \$472,220.10, as shown on Exhibit "B" attached hereto and made a part hereof by reference and as follows:

Original Contract Sum	\$854,474.00
Change Order No. 1 (6-26-2012)	+ 7,196.00
Change Order No. 2 (2-12-2013)	<u>- 10,353.70</u>
Contract Sum To Date	851,316.30
Gross Amount Due	851,316.30
Retainage	.00
Amount Due to Date	851,316.30
Less Previous Certificates for Payment	<u>665,032.50</u>
Current Payment Due	\$186,283.80

WHEREAS, the Engineer and Contractor have now certified to the City Clerk that work is completed as of June 29, 2012, as shown by Exhibit "C" attached hereto and made a part hereof by reference.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, and hereby find and determine that Change Order No. 2, as shown

on Exhibit "A", Application and Certificate for Payment No. 3-Final, as shown on Exhibit "B", and the Certificate of Substantial Completion as shown on Exhibit "C" be and are hereby accepted and approved.

PASSED AND APPROVED THIS 12TH DAY OF FEBRUARY, 2013.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

14. Approve the Plans and Specifications for the 2013 Part 5 Improvements; Interior Renovations at the City of Kearney/Buffalo County Law Enforcement Center and set the bid date for March 5, 2013 at 2:00 p.m.

## **V. CONSENT AGENDA ORDINANCES**

### **ORDINANCE NO. 7784 GRANTING NON-EXCLUSIVE FRANCHISE TO USA COMMUNICATIONS**

The City received a request from USA Communications to enter into telecommunication Franchise with the City. This Franchise Agreement is similar to agreements that the City has entered into with other telecommunications companies within the City. USA Communications will provide a certificate of insurance as required by the agreement and as otherwise agreed to comply by City Code including the payment of current franchise fees. Use of City right-of-way is subject to the City's right to modify roadways and otherwise make repairs or improvements to City structure.

Council Member Lammers introduced Ordinance No. 7784, being Subsection 1 of Agenda Item V granting a non-exclusive franchise to USA Communications, LLC, a Nebraska Limited Liability Company to construct, install, operate, maintain or otherwise locate telecommunication facilities in public ways within the City of Kearney, and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Nikkila 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, Nikkila, Lammers, Lear. Nay: None. Buschkoetter 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. 7784 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Nikkila, Lammers, Lear. Nay: None. Buschkoetter absent. Motion carried. Ordinance was read by number.

Moved by Nikkila seconded by Lear that Ordinance No. 7784 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Lear, Nikkila. Nay: None. Buschkoetter absent. Motion carried.

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

Ordinance No. 7784 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**

### **ANNUAL FINANCIAL REPORT**

Mayor Clouse opened for discussion the City of Kearney Annual Financial Report prepared by the accounting firm of McDermott & Miller.

Mary Kalb from McDermott & Miller presented this matter to the Council. The first part of the report is called the MD&A and has highlights and brings all the report together. She reported on a few of those which she believed were most interesting for Kearney. The report on financial highlights was written by Finance Director Wendell Wessels. He stated in that report that at the end of this year, the assets of the City of Kearney exceeded their liabilities by \$183 million. McDermott & Miller has presented this report in this form for ten years. Over that 10-year period, the City's net assets have increased an average of 9.5 percent every year. The first year, those net assets would have been \$94 million. Over time, those assets have doubled which she thought was exceptional.

Ms. Kalb stated the report of Governmental Revenues by Source show the property tax revenues for this year were \$2.6 million. Other taxes at the end of this year were \$13.4 million which is the sales tax. Both of these revenues have grown to some degree over that 10-year period and have impacted the community. The sales taxes are 32 percent of the governmental revenues and the property taxes are 8 percent. Pie charts were also provided in the report to represent operating income such as water, sewer and sanitation. Water and sewer are by far the most profitable operating income. This is the last year that the golf course had some debt payments so that is remarkable and good. The revenues and expenses were down from last year which could be caused by various reasons. One of the most significant reasons was that the City did not receive any stimulus money. The year before the City received about \$2.7 million which would have ran through revenues and expenses. Consequently, federal funds went from \$4.2 million to \$2.2 million for the year. These federal funds can vary from year to year.

Ms. Kalb stated from that standpoint, she always looks at the net assets, the property and sales tax revenues and expenses which she thought were all good numbers. Revenue will always be greater over the long run and that is why the net assets continue to grow. Part of their report is issuing an unqualified opinion on the audit. She stated that it is always well done, a clean audit and the staff at the City does a wonderful job with Wendell Wessels in charge.

Moved by Clouse seconded by Lammers to accept the City of Kearney Annual Financial Report presented by McDermott & Miller. Roll call resulted as follows: Aye: Clouse, Lear, Nikkila, Lammers. Nay: None. Buschkoetter absent. Motion carried.

### **REVIEW ONE AND SIX YEAR STREET IMPROVEMENT PLAN**

Mayor Clouse opened for review the One & Six Year Street Improvement Plan and set

the public hearing for February 26, 2013 to adopt the One & Six Year Street Improvement Plan.

City Engineer Bruce Grupe presented this matter to the Council. The following are the proposed projects for the One and Six Year Plan.

### Summary of One Year Plan

Location	Est. State Cost	Est. City Cost	Est. Total Cost
Cherry Avenue Interstate Interchange & Cherry Avenue To 11th Street	\$17,800,000	\$1,500,000	\$19,300,000
1st Street from Cherry Ave., West 2700'	\$1,000,000	0	\$1,000,000
2nd Avenue from 25th Street to 32nd Street	\$840,000	\$840,000	\$1,400,000
12th Street Place West, from 17th Avenue West 175' to end of Cul-de-sac		\$52,000	\$52,000
Country Club Lane from 520' North of 35th Street to 165' North of 37th Street		\$110,000	\$110,000
37th Street from Country Club Lane West 1050' to 70' East of 28th Avenue		\$315,000	\$315,000
25th Avenue Place from 37th Street North 130' to End of Cul-de-sac		\$39,000	\$39,000
L Ave from 67th St to 69th St and from 69th Street N to end of Cul-de-sac. 774' total paving		\$232,200	\$232,200
67th Street from 117.8' East of L Avenue 345' West		\$103,500	\$103,500
69th Street from 118.4' East of L Avenue 351' West		\$105,300	\$105,300
L Avenue from 65th Street Place to 66th Street, 300'		\$90,000	\$90,000
66th Street from 165' West of N Avenue to L Avenue, 124'		\$37,500	\$37,500
R Avenue from 156' South of Eastbrooke Drive to 57th Street, 858' South		\$257,500	\$257,500
57th Street from Q Avenue to R Avenue, 518'		\$155,400	\$155,400
57th Street Place from 57th Street SE 177' to end of Cul-de-sac		\$53,100	\$53,100
58th Street from R Avenue East 152'		\$45,600	\$45,600
59th Street from R Avenue East 152'		\$45,600	\$45,600
S Avenue from 56th Street South 717'		\$215,100	\$215,100
54th Street from S Avenue West 165'		\$49,500	\$49,500
54th Street Place from S Avenue East 358' to end of Cul-de-sac		\$107,400	\$107,400
Parklane Drive from 56th Street North 310'		\$93,000	\$93,000
57th Street from Parklane Drive East 320'		\$96,000	\$96,000
Talmadge from 2nd to 150' West of 3rd		\$320,000	\$320,000
16th Street form Central Avenue to 1st Avenue		\$200,000	\$200,000
56th Street from 2nd Avenue, West to 6th Avenue		\$716,000	\$716,000
Talmadge from 6th Avenue West 535'		\$223,000	\$223,000
6th Avenue from Talmadge North 385'		\$145,000	\$145,000
15th Avenue from 56th Street South 550'		\$165,000	\$165,000
54th Street from 2nd Avenue to 3rd Avenue, 300'		\$158,000	\$158,000
52nd Street from 3rd Avenue West 724'		\$161,000	\$161,000
3rd Avenue from 52nd Street to 54th Street, 624'		\$276,000	\$276,000
4th Avenue from 56th Street South 350'		\$105,000	\$105,000
50th Street from 11th Avenue to 17th Avenue, 1750'		\$525,000	\$525,000

Loveland Drive from Parkwood Lane to 50th Street, 550'		\$165,000	\$165,000
14th Avenue Place from 120' North of 50th Street South 500' to end of Cul-de-sac		\$150,000	\$150,000
15th Avenue Place from 51st Street Place South 820' to end of Cul-de-sac		\$246,000	246,000
16th Avenue Place from 51st Street Place South 820' to end of Cul-de-sac		\$246,000	\$246,000
51st Street Place from 15th Avenue Place to 16th Avenue Place		\$90,000	\$90,000
Ontario Road from Huron Drive to Emerald Drive, 690'		\$207,000	\$207,000
Winnipeg Road from 550' North of Huron Drive to Emerald Drive, 368'		\$110,400	\$110,400
Tahoe Drive from 281' Southwest of Emerald Drive to Emerald Drive, 281'		\$84,300	\$84,300
Emerald Drive from Tahoe Drive to 125' East of Ontario Road, 1045'		\$313,500	\$313,500

### Summary of Six Year Plan

Location	Est. State Cost	Est. City Cost	Est. Total Cost
Central Avenue from 26th Street to 31st Street		\$1,420,000	\$1,420,000
Cherry Ave. Phase II - 11th Street to 56th Street	\$22,200,000	\$322,084	\$22,522,084
Cherry Ave. Phase III - 56th Street to Glenwood Corners	\$11,760,000	\$240,000	\$12,000,000
Avenue M from 11th Street South 500'		\$572,000	\$572,000
Central Avenue from 12th Street to 16th Street - Storm		\$2,500,000	\$2,500,000
29th Street from 6th to 8th		\$417,000	\$417,000
Avenue N from 25th Street to 28th Street		\$1,100,000	\$1,100,000
Central Avenue from 16th Street to 18th Street - Storm		\$1,394,000	\$1,394,000
18th Street from Central Avenue to 1st Avenue - Storm		\$550,000	\$550,000
8th Street from 2nd Avenue to 3rd Avenue		\$550,000	\$550,000
1st Avenue from 18th Street to South Railroad Street - Storm		\$1,200,000	\$1,200,000
30th Avenue from 39th Street North 2640'		\$2,200,000	\$2,200,000
25th Street and 9th Ave.		\$350,000	\$350,000
39th Street from 30th Avenue West 5700'		\$1,700,000	\$1,700,000
Country Club Lane from 165' North of 37th Street to 39th Street - 410'		\$123,000	\$123,000
5th Avenue from 13th Street to 16th Street		\$250,000	\$250,000

Mayor Clouse estimated that 80 percent of the \$9 million investment is new construction and Mr. Grupe stated he thought it was closer to 85 percent.

Council member Lear stated he believed the little piece of Talmadge Street off 2nd Avenue could be a trouble spot because it is where a lot of service is provided so access needs to be kept open. Mr. Grupe stated they will partner with the businesses in that area and have already talked with one of them. He envisioned something similar to what they did on 39th Street where they paved half of it at a time to keep traffic flowing. They will definitely set up some partnering meetings. City Manager Michael Morgan stated they are going to try to coordinate with some windows of time that the largest property owner in that area has requested. Mr. Grupe stated this project should not take too long because they do not have a lot of storm sewers, sanitary or water to be

put in.

City Manager made a clarification on Avenue M. There was an inter-local agreement with Buffalo County with the Cherry Avenue project which stipulated that they would pave three projects. One of those included Avenue M. They have discussed the possibility of maybe working with the county to use those dollars and put them toward Talmadge Street due to all the development there. After hearing some citizens' concerns at the Buffalo County hearing, there was a lot of history to the annexation many years ago in this area, especially with the Archway and citizen perception of what should occur. For five years, citizens have been waiting while knowing that is going to occur because of that agreement. This is a very busy road which the City maintains even though it is not in the City limits. The City shares and trades back and forth with the county on different roads. He thought at this point, they should proceed and tell the county to proceed to complete that project. The county is very cooperative and willing to do that. The City can pursue some other options and alternatives with the county for further extension.

One of the biggest unknowns is right-of-way acquisition costs for Talmadge Street going all the way to Kea West. There are some issues to be resolved concerning that and they are not sure what that means at this time. The project is ready to go and the county is ready to bid the project. City Manager stated that the 4-lane in the City limits will move back and they will have to recover some of that money somewhere else. He believed that it makes sense at this point to do so. It was one of those things that seemed like a good idea and at the end did not turn out so well. They evaluated it after some good citizen and county input. They participated in the county meeting for their One and Six Year Plan which was helpful because there are a lot of roads that the City shares and need to know about when they are going to be done.

Mayor Clouse stated that Central Avenue and Avenue N are still solid for the following year, once they get some of these others done.

City Manager believed that with the One Year Plan they need to get some of these projects away from their core because there is too much going on right now. This is probably the longest list they have seen. He was not sure that someone can get enough concrete this year to get these projects done. They had problems last year getting enough concrete.

Council member Nikkila asked if citizens want to comment on certain roads they believe need to be improved other than calling on the Council members, what the ways to do that are. City Manager stated to keep in mind they get these comments throughout the year. They do not just collect them for the public hearing. The priority is based on funds, locations and other projects. There was no shortage of comments they received at the listening sessions. He stated that any citizen can contact Public Works Director Rod Wiederspan, City Engineer Bruce Grupe, the City Manager's office or any Council member. Another source would be "Access Kearney" on our City website. The One and Six Plan is on the City website for anyone to access.

Moved by Lammers seconded by Nikkila to set the public hearing for February 26, 2013 to adopt the One & Six Year Street Improvement Plan. Roll call resulted as follows: Aye:

Clouse, Lear, Nikkila, Lammers. Nay: None. Buschkoetter absent. Motion carried.

**OPEN ACCOUNT CLAIM: NPPD - \$72,724.67**

Moved by Nikkila seconded by Lear that the Open Account Claim in the amount of \$72,724.67 payable to Nebraska Public Power District be allowed. Roll call resulted as follows: Aye: Nikkila, Lammers, Lear. Nay: None. Clouse abstained and Buschkoetter absent. Motion carried.

**VII. REPORTS**

**FOUNTAIN HILLS PARK**

Assistant City Manager/Development Services Director Suzanne Brodine gave a brief overview of where proposed Fountain Hills Park started and how they got where they are today. A 2006 photo was provided to the Council by the developer. This was prior to any development in the area and was primarily a pre-existing wetland. In 2006-2007, the developer proposed to City Council that they would create a park on what is noted as Outlot A which is really a storm water detention in the area. It is a large section to the east of 11th Avenue between 11th Avenue and the existing houses there. They proposed creating a new substantial lake/wetlands to meet their storm water requirements, a playground area, trails, field and recreation area, shelters and public connections to the park and the trails that run through that park. An example of the proposal as it was presented to the Council. The proposal showed a substantial lake, wetland areas along where the drainage is today, fairly large field area with a playground in the corner, in addition to some substantial paved trails within the park.

They also delineated access routes (not trails) in open areas where the public could access the park from cul-de-sacs in the area. In 2007, the City Council did sign two separate agreements with the developer. One agreement is the subdivision agreement in which they meet all the requirements that every developer must meet including storm water detention. The other agreement was the developer's proposed idea of creating a park there. The City agreed if the park was created, they would accept ownership of it and would continue to maintain that park. It was a requirement that if the park was built with that lake, it had to meet City standards and the trails must be constructed to City standards.

Some challenges arose as development in this area occurred. In May 2010, Development Services notified the developer that they were not seeing the progress as required in the subdivision agreement. They were required in that agreement to build a trail through the park and no progress had been accomplished on that project. They met with the developer and talked about the cost for that project and different ways to reduce that cost. It was decided to narrow the scope of the trail, take out some of the winding trails and removed the trail section that went across the dam which reduced the expenditure for the developer.

In 2012, Development Services came across this issue again because there were deadlines set for the lake construction and other things that needed to happen in the park. Since none of those had been completed, Development Services notified the

developer again and put a moratorium on building permits. No homes could be built until they saw progress on this project. They immediately began meeting with the developer where they talked about the plan and timeline. The developer outlaid quite a bit of their own revenues to do a lot of engineering studies and a wetland delineation study to talk about what it would actually cost. There had been some new laws about how wetlands are permitted and the requirements by the State of Nebraska in the past few years. These changes included how they could do an outfall structure if there was a lake created and if they had to have a certain structure to go with the dam according to state requirements. The developer went through a considerable amount of work and determined there was really no way they could afford to build that lake with the new requirements in place.

At that time, Development Services worked with the developer to do a revised agreement. It was discussed the park area could just be left as a wetlands. The storm water detention with the trail existing through it was all they legally had to do in order to finish their subdivision. They were under no requirement to build a lake. In working on it, the City wanted to improve the area as much as possible so they worked with the developer. In the new plan, the developer would do substantial grading and seeding that would have to be done in order to create those wetlands. They would also have to go through the Corp of Engineers process to get those wetlands approved in the manner they were designed to be done and install public sidewalks. In exchange for all those items being done the City would irrigate those grass areas, establish some signage, benches, playground equipment and things to make it more park like. The revised agreement is simpler; the lake is gone and instead there are the wetlands that meet the storm water requirements and state requirements.

Assistant City Manager stated the bottom line is that while there was a lot of talk about a lake and the developer proposed that initially, it was never required by the City of Kearney to build the lake. The City initially said they would not take the property unless the lake was built to their standards. That is not to say they could not have built the lake on that property if they chose to, but the City would not have taken it unless it met some very strict standards for lining and engineering items. Those requirements made the lake prohibitive to build. The requirements for drainage, the wetlands and the trails have all been met by the developer. The City did collaborate with the developer to make sure that this property really was an asset to the neighborhood and the community as a whole and more than just a large detention facility.

City Manager stated there seems to be some misunderstanding about what was and was not required by the City in this development. Conversations between developers and citizens and people who purchased lots are not really in the City's purview. It is a private matter between them. He stated the City neither required the lake, nor approved the lake. The developer attempted to do it in good faith, but ran into some significant costs. He believed that people forget that this is a drainage structure with a dam. This is a little more significant than people realize. The City had two choices a year ago when they brought the plan back to City Council. There was Option A which was the mandatory requirements for storm water drainage with no lake and allowed the developer to maintain the detention cell which the City had concerns about. Option B was to move forward and put together the best agreement to improve the property as much as possible. The City added unbudgeted money at that time of \$150,000 plus to

try to do some of these improvements to assist the developer.

The good news is that Development Services sent out notices to citizens last year and told them this was occurring and they were invited to the meeting. There was also a City Manager's blog about it with no mention of a lake. Director of Park & Recreation Scott Hayden and other City staff attended that meeting and unfortunately there was a lot of frustration that had built up with some of the citizens in the neighborhood. At that meeting, they learned a lot about what those citizens want. It is important that the City gets back with the neighborhood because many are making decisions about building or not building. The neighborhood had some specific concerns such as sidewalks on 11th Avenue and the open space easements which were on their plat before the owners purchased the property. The City can work with property owners to relinquish those easements because they are not required. They were more of an amenity for neighborhood kids to get through to the park. If the owner does not choose to have that access easement with storm water drainage underneath them, (although they were clearly labeled on their plat when they purchased the property) the City will work with them to relinquish. Assistant City Manager stated that the easement is a 10-foot wide easement and is divided evenly across all the properties. There are utility easements under those so the easements are layered.

Council member Lear wanted more information about the difference between a utility easement and an open access easement. City Attorney Michael Tye stated what they have is a utility easement to place the utilities there and to provide repair and maintenance of those utilities. This could include digging up the soil or tearing up a fence if one had been placed over it or chopping a tree down blocking the area. A green space easement is just another layer on top of the utility easement which would allow public access for anyone to walk down and gain access to the park.

Council member Lear asked if pedestrian traffic could be blocked from moving across a property owner's yard. City Attorney stated that the theory behind the open easement is that people who live up in the neighborhood could directly access the park and would not have to walk clear around. They could go through those access easements and gain direct access to the park property. These easements were dedicated as part of the plat which would have come from the developer and not from the City. This was the developer's choice and the City would not have required those easements. City Manager stated the City would have no problem if owners put up fences because it is kind of workable just as they have done with the trails.

In summary, City Manager stated they are going to have two meetings. Within the next two weeks, he wanted staff to put together some rough estimates on some of the things the neighborhood seemed to want based on priorities which made some good discussion points. They will meet separately with the property owners who are directly affected with the easements along that site. He believed that is the most critical issue. There are a lot of fence issues that could be resolved. In some cases, their yards could actually be enlarged. He believed they would be able to help out those property owners. There is more information that needs to be discussed than was presented here. The developer has some comments they would like to make and it would have been nice for them to have the opportunity to speak to that rather than what was spoken to last night at that meeting.

Fountain Hills is a 200-acre subdivision, there will be a fountain in it according to the developer, but has never shown up on any plan at this location. This area is a very small part of a very large development. The developer was a little frustrated about some comments made about the fountain in the development. This is an issue for him to deal with at a later time.

City Manager stated that at the end of the day, the City allocated money that was not budgeted to try to do the very best job. The Park & Recreation Advisory Board was very interested in this. There are not many opportunities to do neighborhood parks and this will be very nice when completed. There are other citizens who have questions about prior discussions and they need to contact whomever they had those conversations with.

Council member Lear stated he attended the meeting and believed that it was a good meeting from the standpoint that it gave a chance to raise those issues and have a discussion about them. He did not attend the meeting expecting to have some of those issues that came up. The Director of Park & Recreation and his team did a great job although being caught a little off guard in terms of the questions that were asked. He believed that it was important now to walk through as they have a chance to put this proposal together and to sit back down with the neighborhood and say here is what the plan looks like. He was sure that any one resident might have strong feelings about what should or should not happen to the easements on their property, keeping in mind those easements pre-existed when they purchased the property. He encouraged staff to put them in place or remove them as they deem appropriate for the best interests of the neighborhood in general. This may not be the plan that certain residents envisioned; however, that vision came about for them. The City is working very hard to get a nice park that the whole community can be proud of. He thought the City taking responsibility for this park will alleviate a huge burden for anyone who lives there. This may not be the plan an owner had when their house was built there, but will be a good plan and will serve them well for a very long period of time.

Council member Nikkila agreed that the staff dealt with a very difficult situation very well at that meeting. A point of discussion at the meeting was that 11th Avenue and 48th Street are going to be very busy streets so wanted to know if there will be on street parking in the area. City Manager stated this is purely a neighborhood park. The Park & Recreation Advisory Board, in reviewing this plan, did not want a parking lot because this is a small linear park site.

City Manager stated the next 73-lot subdivision that was approved has these same easements throughout in order to get to the bike trails, etc. They need to make sure all those citizens are aware of the easements in those areas as well.

Mayor Clouse left the meeting at 7:39 p.m. for a prior commitment.

## **VIII. ADJOURN**

Moved by Lammers seconded by Nikkila that Council adjourn at 7:49 p.m. Roll call resulted as follows: Aye: Lammers, Lear, Nikkila. Nay: None. Clouse and Buschkoetter

absent. Motion carried.

**ATTEST:**

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**MICHAELLE E. TREMBLY  
CITY CLERK**

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