

*Kearney, Nebraska*  
*October 8, 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 October 8, 2013 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, Bob Lammers and Jonathan Nikkila. Absent: None. Michael Morgan, City Manager; Michael Tye, City Attorney; Wendell Wessels, Director of Finance; Kirk Stocker, Director of Utilities; Rod Wiederspan, Director of Public Works; Dan Lynch, Chief of Police; Shawna Erbsen, Director of Administrative Services; Lance Lang, City Planner; and GIS Coordinator, Michele Hill were also present. Some of the citizens present in the audience included: Roger Overleese, Mark Willis, Craig Bennett, Rich Lush, Gisel Theis, Terry Eirich, Ken Tracy, Jerry Thompson, Kelly Rapp, Laureen Striker-Rapp, Jeff Smaha, Ron Nielsen, Steve Altmaier from KGFW Radio, 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 silence.

### **PLEDGE OF ALLEGIANCE**

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

### **ANNOUNCEMENT**

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

### **ORAL COMMUNICATIONS – PROCLAMATION FOR FIRE PREVENTION WEEK**

Mayor Clouse read and presented to the Fire Department a Proclamation declaring October 6-12, 2013 as Fire Prevention Week.

## **II. UNFINISHED BUSINESS**

There was no Unfinished Business.

### **III. PUBLIC HEARINGS**

#### **REZONING 1/2 MILE EAST OF COTTONMILL AVENUE AND 56TH STREET**

Mayor Clouse stated that applicant has withdrawn Public Hearing 1 on the Application submitted by Buffalo Surveying (Applicant) for D.R. and Marilyn Nelson and Jim and Pamela Wilkinson (Owner) to rezone from District Ag, Agricultural District to District RR-1, Rural Residential District (Rural Standards) property described as a tract of land being part of the Northeast Quarter of the Northwest Quarter of Section 29, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska excepting therefrom a tract of land conveyed to Buffalo County, Nebraska as described in Warranty Deed filed at Instrument No. 1999-7128 recorded September 1, 1999 in the Office of the Buffalo County Register of Deeds (1/2 mile east of Cottonmill Avenue and 56th Street). Therefore, no action was taken.

#### **FINAL PLAT FOR D.R. NELSON SUBDIVISION; 1/2 MILE EAST OF COTTONMILL AVENUE AND 56TH STREET**

Mayor Clouse stated that applicant has withdrawn Public Hearing 2 on the Application submitted by Buffalo Surveying (Applicant) for D.R. and Marilyn Nelson and Jim and Pamela Wilkinson (Owner) for the Final Plat and Subdivision Agreement for D. R. Nelson Subdivision, Buffalo County Nebraska, for property described as a tract of land being part of the Northeast Quarter of the Northwest Quarter of Section 29, Township 9 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska excepting therefrom a tract of land conveyed to Buffalo County, Nebraska as described in Warranty Deed filed at Instrument No. 1999-7128 recorded September 1, 1999 in the Office of the Buffalo County Register of Deeds (1/2 mile east of Cottonmill Avenue and 56th Street). Therefore, no action was taken.

#### **CONDITIONAL USE PERMIT TO MORTON BUILDINGS; 412 EAST 6TH STREET**

Mayor Clouse opened the public hearing on the Application submitted by Roger and Ann Overleese for Morton Buildings, Inc. (Applicant) and Sixth Street Development, LLC (Owner) for a Conditional Use Permit to store corn and soybean seed in one-half of the building and the other one-half of the building will be rented out for camper storage on property zoned District M-1, Limited Industrial District and described as Lot 4 of Block One, Sixth Street Second Addition, an addition to the City of Kearney, Buffalo County, Nebraska (412 East 6th Street) and to consider Ordinance No. 7843. Planning Commission recommended approval subject to compliance with the following conditions: (1) four street trees are required in the 10-foot wide landscape strip along the length of the frontage on 6th Street; (2) turf grass will also be planted by seed or sod in the landscape strip; (3) the approach from 6th Street must be paved to City specifications with Portland cement concrete to a point ten feet past the property line; (4) final design and computations for stormwater detention will be submitted at the time of Building Permit application.

The applicant is requesting approval of a Conditional Use Permit (CUP) for a proposed metal building that will be used for cold (unheated) storage of agricultural products such as seed and also possibly for storage of campers and RV's. The property is located at 412 East 6th Street and is zoned M-1, Limited Industrial District. The appropriate use type according to the Unified Land Development Ordinance (ULDO) is "Agricultural Industry" which requires a CUP in M-1 zones.

The applicant originally submitted a Site Plan, and a graphic showing what the building will look like. A Landscape Plan and Drainage Concept is also required and Planning Commission recommended approval subject to the Landscape Plan and Drainage Concept being submitted prior to City Council. Those documents have been received. Staff has reviewed the submittal and offers the following summary of the project.

- The lot contains 1.20 acres and the proposed building is 42 feet by 96 feet or 4,032 square feet. There is a lot of room remaining on the site for future development.
- Four street trees are required in the 10-foot wide landscape strip along the length of the frontage on 6th Street. The applicant proposes Red Sunset Maples, 2-inch caliper size.
- Turf grass will also be planted by seed or sod in the landscape strip.
- Irrigation is not required in industrial zoning districts, but the applicant is going to install an underground automatic sprinkler system to irrigate the grass and trees.
- Approximately half of the building space may be used for camper and RV storage depending on seasonal variations during the year and how much room is remaining after the seed is stored.
- The proposed building is a steel building with four overhead doors facing east. The building will be a gray color with darker accents.
- There will be no sanitary sewer or water service to the building.
- The approach from 6th Street must be paved to City specifications with Portland cement concrete to a point ten feet past the property line.
- The parking and maneuvering on site can be gravel or crushed concrete.
- Miller & Associates have prepared a drainage concept for the site. Water drains roughly to the southwest corner and will be detained at this location, and then outfall into an existing storm sewer inlet in 6th Street. Final design and computations for stormwater detention will be submitted at the time of Building Permit Application.
- There are no time limits or other conditions recommended for this CUP.
- Planning Commission suggested that City Council consider waiving the requirement of a Conditional Use Permit for this operation.

Craig Bennett from Miller & Associates presented this matter to the Council. The project we have here is located on 6th Street just east of Central Avenue. The current zone is M-1 and the reason for the CUP is the applicant is wanting to store seed for his agriculture business and by definition under the M-1 they are required for an agriculture business to come before City Council with a Conditional Use Permit.

The development plan indicates that there is an access or curb cut coming off of 6th Street using the 42'x 96' building located on the east side so it would be concrete with gravel drive between the concrete pad and drive approach and then be a 10-foot landscape buffer with four sunset red maple trees located in the front green space that would be irrigated.

There was no one present in opposition to this hearing.

Moved by Lammers to close the public hearing on the Application submitted by Roger and Ann Overleese for Morton Buildings, Inc. (Applicant) and Sixth Street Development, LLC (Owner) for a Conditional Use Permit to store corn and soybean seed in one-half of the building and the other one-half of the building will be rented out for camper storage on property zoned District M-1, Limited Industrial District and described as Lot 4 of Block One, Sixth Street Second Addition, an addition to the City of Kearney, Buffalo County, Nebraska (412 East 6th Street) and introduced Ordinance No. 7843 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 close the hearing and suspend the rules for Ordinance No. 7843. 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, Nikkila, Lammers, Buschkoetter. Nay: None. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7843 by number. Roll call of those in favor of the passage of said ordinance on the first reading resulted as follows: Aye: Clouse, Lear, Nikkila, Lammers, Buschkoetter. Nay: None. Motion carried. Ordinance was read by number.

Moved by Nikkila seconded by Lear that Ordinance No. 7843 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Nikkila, Lammers, Buschkoetter, Lear. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7843 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.

### **LAND USE MAP AMENDMENT FOR SOUTH OF 11TH STREET WEST OF 16TH AVENUE**

Public Hearings 4, 5, 6 and 7 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Miller & Associates (Applicant) and Kelly Rapp and Lauren Striker-Rapp (Owner) for an amendment to the Land Use Map of the City of Kearney Comprehensive Development Plan from Low Density Residential to Medium Density Residential property described as a tract of land located in part of the Northwest Quarter of the Northwest Quarter of Section 11 and part of the Southwest Quarter of the Southwest Quarter of Section 2, all in Township 8 North, Range 16 West of the 6th P.M, Buffalo County, Nebraska (south of 11th Street west of 16th Avenue) and consider Resolution No. 2013-194. Planning Commission recommended approval.

The applicant is requesting approval to develop the next phase of the Parkview neighborhood with twelve residential lots across the street west from the new Kenwood School. The two northerly lots, Lots 1 and 2 are to be rezoned for duplexes. The other ten lots will be developed with single-family homes.

The property is currently zoned AG by default. The applicant would like to rezone Lots 1 and 2 containing a total of 0.90 acres from AG to R-2 and Lots 3 through 12 from AG to R-1. The R-1 lots comprise 3.30 acres in total. The Future Land Use Map of the Comprehensive Development Plan categorizes this area as "Low Density Residential." The R-1 lots are in conformance with this land use designation; however, the two R-2 lots are not. The land use designation for Lots 1 and 2 needs to be amended to "Medium Density Residential."

The Preliminary Plat for this area was approved by Planning Commission in December 2009. The Final Plat for proposed Parkview Estates Sixth Addition contains 12 total lots on 3.93 acres. A high-pressure gas line easement is located between Lots 1 and 2 and these lots are substantially larger than the remaining lots. Duplex development is proposed for Lots 1 and 2, although single-family homes can be built in R-2 zoning as well. The overall density of two duplexes on these two lots is about the same as if four single-family homes were built in the same footprint. Staff supports duplex development on these two lots. A Public Works Plan was previously submitted and approved. No Subdivision Agreement is required.

This property abuts incorporated land and is already served with public infrastructure. In accordance with the annexation policy approved by City Council a few years ago, no "islands" of un-annexed land are to remain as such. Therefore, this property will be annexed into the City limits by Final Plat as "an addition to the City of Kearney."

Craig Bennett from Miller & Associates presented this matter to the Council. This particular subdivision has already been preliminary platted so they are just asking for the final plat of a portion of it. It is located south of 11th Street and west of 16th Avenue which is the near Kenwood School, east of Yanney Park. The property is currently zoned agricultural and they are asking for a portion of it along 11th Street to be rezoned from agricultural to R-2 and another portion south of it to be rezoned to R-1. There is a 20-foot wide pedestrian easement that will go across this parcel from 11th Street on the north to 8th Street on the south. This particular easement was created at the time the preliminary plat was done to line up with the sidewalk at Kenwood coming so children and pedestrians can circulate across this without having to go a whole block and a half or almost three blocks if you were in the middle to get across to go to the school. So they are basically proposing is the north two lots would be R-2 and they do have a gas line easement that bisects it so it does kind of make them a little unique in shape as well and then the remaining lots south until 8th Street would be R-1.

Council Member Lammers questioned if there were currently any houses on the west side of the school. Mr. Bennett stated there is not and it is currently being farmed. Council Member Lammers pointed out that there was a big difference between the development they denied a month ago that had a couple of extra-large lots that they wanted to put duplexes on which had single family housing that was already there.

Council Member Nikkila asked when they would be rezoning and platting the rest of the subdivision. Mr. Bennett stated it would be determined later. The market level if they look at enlargement area right now there is a few homes located on the east side of 15th Avenue and so just kind of depending on how quickly that fills up. The Rapps like to stay ahead of it so they can get the infrastructure in. One of the nice things about this is that all the utilities paving, water and sewer are already stubbed to these lots. When 16th Avenue was built they also stubbed utilities out to each lot so essentially after tonight they are primarily shovel ready.

There was no one present in opposition to this hearing.

Moved by Lear seconded by Buschkoetter to close the hearing and adopt **Resolution No. 2013-194** approving the Application submitted by Miller & Associates (Applicant) and Kelly Rapp and Laureen Striker-Rapp (Owner) for an amendment to the Land Use Map of the City of Kearney Comprehensive Development Plan from Low Density Residential to Medium Density Residential property described as a tract of land located in part of the Northwest Quarter of the Northwest Quarter of Section 11 and part of the Southwest Quarter of the Southwest Quarter of Section 2, all in Township 8 North, Range 16 West of the 6th P.M, Buffalo County, Nebraska (south of 11th Street west of 16th Avenue). Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear, Nikkila. Nay: None. Motion carried.

#### **RESOLUTION NO. 2013-194**

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 located in part of the Northwest Quarter of the Northwest Quarter of Section 11, and part of the Southwest Quarter of the Southwest Quarter of Section 2, all in Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Beginning at the Northwest Corner of Park View Estates Fifth Addition to the City of Kearney, Buffalo County, Nebraska and assuming the West line of said Fifth Addition as bearing S00°40'27"W and all other bearings shown hereon relative thereto; thence S00°40'27"W on said West line a distance of 319.19 feet; thence N89°19'33"W E perpendicular to said West line a distance of 155.00 feet; thence N16°37'25"E a distance of 144.01 feet; thence N00°40'27"E parallel with said West line a distance of 172.30 feet to a point on the South Right-of-Way line of 11th Street as platted in said City; thence N82°09'52"E on said South Right-of-Way a distance of 56.87 feet; thence S89°20'16"E continuing on said South Right-of-Way a distance of 59.18 feet to the Point of Beginning, containing 0.90 acres, more or less, Buffalo County, Nebraska (south of 11th Street west of 16th Avenue) from Low Density Residential to Medium Density Residential, and

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

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

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the Comprehensive Land Use Plan be and is hereby

amended to change from Low Density Residential to Medium Density Residential the use classification for a tract of land located in part of the Northwest Quarter of the Northwest Quarter of Section 11, and part of the Southwest Quarter of the Southwest Quarter of Section 2, all in Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Beginning at the Northwest Corner of Park View Estates Fifth Addition to the City of Kearney, Buffalo County, Nebraska and assuming the West line of said Fifth Addition as bearing S00°40'27"W and all other bearings shown hereon relative thereto; thence S00°40'27"W on said West line a distance of 319.19 feet; thence N89°19'33"W E perpendicular to said West line a distance of 155.00 feet; thence N16°37'25"E a distance of 144.01 feet; thence N00°40'27"E parallel with said West line a distance of 172.30 feet to a point on the South Right-of-Way line of 11th Street as platted in said City; thence N82°09'52"E on said South Right-of-Way a distance of 56.87 feet; thence S89°20'16"E continuing on said South Right-of-Way a distance of 59.18 feet to the Point of Beginning, containing 0.90 acres, more or less, Buffalo County, Nebraska (south of 11th Street west of 16th Avenue).

PASSED AND APPROVED THIS 8TH DAY OF OCTOBER, 2013.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**REZONING SOUTH OF 11TH STREET WEST OF 16TH AVENUE**

Public Hearings 4, 5, 6 and 7 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Miller & Associates (Applicant) and Kelly Rapp and Laureen Striker-Rapp (Owner) to rezone from District AG, Agricultural District to District R-1, Urban Residential Single-Family District (Low Density) and District R-2, Urban Residential Mixed-Density District property described as a tract of land located in part of the Northwest Quarter of the Northwest Quarter of Section 11 and part of the Southwest Quarter of the Southwest Quarter of Section 2, all in Township 8 North, Range 16 West of the 6th P.M, Buffalo County, Nebraska (south of 11th Street west of 16th Avenue) and to consider Ordinance No. 7844. 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 Miller & Associates (Applicant) and Kelly Rapp and Laureen Striker-Rapp (Owner) to rezone from District AG, Agricultural District to District R-1, Urban Residential Single-Family District (Low Density) and District R-2, Urban Residential Mixed-Density District property described as a tract of land located in part of the Northwest Quarter of the Northwest Quarter of Section 11 and part of the Southwest Quarter of the Southwest Quarter of Section 2, all in Township 8 North, Range 16 West of the 6th P.M, Buffalo County, Nebraska (south of 11th Street west of 16th Avenue) and introduced Ordinance No. 7844 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. 7844. 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, Nikkila, Lammers. Nay: None. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7844 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, Nikkila, Lammers. Nay: None. Motion carried. Ordinance was read by number.

Moved by Clouse seconded by Lammers that Ordinance No. 7844 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lear, Nikkila, Lammers, Buschkoetter. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7844 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 PARK VIEW ESTATES SIXTH ADDITION**

Public Hearings 4, 5, 6 and 7 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Miller & Associates (Applicant) and Kelly Rapp and Laureen Striker-Rapp (Owner) for the Final Plat for Park View Estates Sixth Addition, an addition to the City of Kearney, Buffalo County Nebraska, for property described as a tract of land located in part of the Northwest Quarter of the Northwest Quarter of Section 11 and part of the Southwest Quarter of the Southwest Quarter of Section 2, all in Township 8 North, Range 16 West of the 6th P.M, Buffalo County, Nebraska (south of 11th Street west of 16th Avenue) and consider Resolution No. 2013-195. Planning Commission recommended approval.

There was no one present in opposition to this hearing.

Moved by Lammers seconded by Nikkila to close the hearing and adopt **Resolution No. 2013-195** approving the Application submitted by Miller & Associates (Applicant) and Kelly Rapp and Laureen Striker-Rapp (Owner) for the Final Plat for Park View Estates Sixth Addition, an addition to the City of Kearney, Buffalo County Nebraska, for property described as a tract of land located in part of the Northwest Quarter of the Northwest Quarter of Section 11 and part of the Southwest Quarter of the Southwest Quarter of Section 2, all in Township 8 North, Range 16 West of the 6th P.M, Buffalo County, Nebraska (south of 11th Street west of 16th Avenue). Roll call resulted as follows: Aye: Clouse, Nikkila, Lammers, Buschkoetter, Lear. Nay: None. Motion carried.

#### **RESOLUTION NO. 2013-195**

BE IT RESOLVED BY THE PRESIDENT AND COUNCIL OF THE CITY OF KEARNEY, NEBRASKA, that the plat of Park View Estates Sixth Addition, an addition to the City of Kearney, Buffalo County, Nebraska for a tract of land being part of the Northwest Quarter of the Northwest Quarter of Section 11, and part of the Southwest Quarter of the Southwest Quarter of Section 2, all in Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska being more particularly described as follows: Beginning at the Northwest Corner of Park View Estates Fifth Addition to the City of Kearney, Buffalo County, Nebraska and assuming the West line of said Fifth Addition as bearing S00°40'27"W and all other bearings shown hereon relative thereto; thence S00°40'27"W on said West line a distance of 1170.19 feet to the Southwest Corner of said Park View Estates Fifth Addition; thence N89°19'33"W on the South line of said Park View Estates Fifth Addition IF extended Westerly a distance of 155.00 feet; thence N00°40'27"E parallel with said West line a distance of 851.00 feet; thence N16°37'25"E a distance of 144.01 feet; thence N00°40'27"E parallel with said West line a distance of 172.30 feet to a point on the South Right-of-Way of 11th Street as platted in said City; thence N82°09'52"E on said South Right-of-Way a distance of 56.87 feet; thence S89°20'16"E continuing on said South Right-of-Way a distance of 59.18 feet to the Point of Beginning, containing 3.93 acres, more or less, Buffalo County, Nebraska, duly made out, acknowledged and certified, and the same hereby is approved in accordance with the provisions and requirements of Section 19-916 of the Nebraska Revised Statutes, be accepted and ordered filed and recorded in the Office of the Register of Deeds of Buffalo County, Nebraska; said addition is hereby included within the corporate limits of said City and shall be and become a part of said City for all purposes whatsoever, and the inhabitants of such addition shall be entitled to all the rights and privileges and shall be subject to all laws, ordinances, rules and regulations of said City.

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

PASSED AND APPROVED THIS 8TH DAY OF OCTOBER, 2013.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**ANNEXATION OF PARK VIEW ESTATES SIXTH ADDITION**

Public Hearings 4, 5, 6 and 7 were discussed together but voted on separately.

Mayor Clouse opened the public hearing on the Application submitted by Miller & Associates (Applicant) and Kelly Rapp and Laureen Striker-Rapp (Owner) for the annexation of Park View Estates Sixth Addition, an addition to the City of Kearney, Buffalo County Nebraska, for property described as a tract of land located in part of the Northwest Quarter of the Northwest Quarter of Section 11 and part of the Southwest Quarter of the Southwest Quarter of Section 2, all in Township 8 North, Range 16 West of the 6th P.M, Buffalo County, Nebraska (south of 11th Street west of 16th Avenue) and consider Resolution No. 2013-196. Planning Commission recommended approval.

There was no one present in opposition to this hearing.

Moved by Nikkila seconded by Lear to close the hearing and adopt **Resolution No. 2013-196** approving the Application submitted by Miller & Associates (Applicant) and Kelly Rapp and Laureen Striker-Rapp (Owner) for the annexation of Park View Estates Sixth Addition, an addition to the City of Kearney, Buffalo County Nebraska, for property described as a tract of land located in part of the Northwest Quarter of the Northwest Quarter of Section 11 and part of the Southwest Quarter of the Southwest Quarter of Section 2, all in Township 8 North, Range 16 West of the 6th P.M, Buffalo County, Nebraska (south of 11th Street west of 16th Avenue). Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear, Nikkila. Nay: None. Motion carried.

### **RESOLUTION NO. 2013-196**

WHEREAS, an Application has been submitted by Miller & Associates (Applicant) and Kelly Rapp and Laureen Striker-Rapp (Owner) for the inclusion of Park View Estates 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 Northwest Quarter of the Northwest Quarter of Section 11, and part of the Southwest Quarter of the Southwest Quarter of Section 2, all in Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska being more particularly described as follows: Beginning at the Northwest Corner of Park View Estates Fifth Addition to the City of Kearney, Buffalo County, Nebraska and assuming the West line of said Fifth Addition as bearing S00°40'27"W and all other bearings shown hereon relative thereto; thence S00°40'27"W on said West line a distance of 1170.19 feet to the Southwest Corner of said Park View Estates Fifth Addition; thence N89°19'33"W on the South line of said Park View Estates Fifth Addition IF extended Westerly a distance of 155.00 feet; thence N00°40'27"E parallel with said West line a distance of 851.00 feet; thence N16°37'25"E a distance of 144.01 feet; thence N00°40'27"E parallel with said West line a distance of 172.30 feet to a point on the South Right-of-Way of 11th Street as platted in said City; thence N82°09'52"E on said South Right-of-Way a distance of 56.87 feet; thence S89°20'16"E continuing on said South Right-of-Way a distance of 59.18 feet to the Point of Beginning, containing 3.93 acres, more or less, Buffalo County, Nebraska; and

WHEREAS, the Kearney City Planning Commission has received and held a public hearing on September 20, 2013 on the inclusion of Park View Estates 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 Park View Estates 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 8, 2013 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 Park View Estates 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 Park View Estates 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 8TH DAY OF OCTOBER, 2013.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

**CONDITIONAL USE PERMIT TO COMMENT WIRELESS; 1904 AVENUE B**

Mayor Clouse opened the public hearing on the Application submitted by American Tower Corporation (Owner) and Commnet Wireless (Applicant) for a Conditional Use Permit as provided in Paragraph H of Section 46-110 "Telecommunications Towers" of Chapter 46 "Supplemental Use Regulations" of the City Code to co-locate telecommunications equipment for wireless communications on property zoned District M-1, Limited Industrial District and described as part of Lot 4, Brown's Second Addition, an addition to the City of Kearney, Buffalo County, Nebraska (1904 Avenue B) and to consider Ordinance No. 7845.

The applicant is requesting approval of a Conditional Use Permit (CUP) to collocate telecommunications equipment on the existing tower at 1904 Avenue B. The Telecommunications Ordinance allows for an expedited timeline bypassing Planning Commission and going directly to City Council for new colocators to encourage collocation as opposed to construction of additional towers. The applicant has submitted all of the required documentation for this CUP. A structural analysis report prepared by a licensed structural engineer is included. The size of the tower itself will not be increased, nor will the footprint of the tower or the ground enclosure containing equipment buildings. There are no time limits or other conditions recommended for this CUP.

Emily Roseberry from SSC, Inc. presented this matter to the Council. She stated this tower is located at 19th Street and Avenue B and they are extending the existing fence out ten feet to make room for the Commnet equipment on the ground on the west side.

Council Member Buschkoetter asked does it change what is going on the tower itself by much. Ms. Roseberry stated no that they are only adding antennas. There has been a structural analysis submitted to the City that shows that it is structurally sound to support all the new equipment.

City Attorney Michael Tye stated when an applicant wants a Conditional Use Permit if they co-locate, as part of the application process, they are required by code to provide that structural analysis for whatever they are going to add to that tower.

Council Member Nikkila stated in reading on page 90, they talk about percentage on the structural component and it looked like it was almost at capacity, 98 percent. Ms. Roseberry stated it can still support their antennas. Council Member Nikkila stated he wanted to make sure he interpreted it right that if someone wanted to add to this tower. Ms. Roseberry stated then yes it might be beyond capacity.

There was no one present in opposition to this hearing.

Moved by Lear to close the public hearing on the Application submitted by American Tower Corporation (Owner) and Commnet Wireless (Applicant) for a Conditional Use Permit as provided in Paragraph H of Section 46-110 "Telecommunications Towers" of Chapter 46 "Supplemental Use Regulations" of the City Code to co-locate telecommunications equipment for wireless communications on property zoned District M-1, Limited Industrial District and described as part of Lot 4, Brown's Second Addition, an addition to the City of Kearney, Buffalo County, Nebraska (1904 Avenue B) and introduced Ordinance No. 7845 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. 7845. 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, Nikkila, Lammers. Nay: None. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7845 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, Nikkila, Lammers. Nay: None. Motion carried. Ordinance was read by number.

Moved by Buschkoetter seconded by Clouse that Ordinance No. 7845 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lear, Nikkila, Lammers, Buschkoetter. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the ordinance, Ordinance No. 7845 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 COMMENT WIRELESS; 905 AVENUE M**

Mayor Clouse opened the public hearing on the Application submitted by Global Tower Partners (Owner) and Commnet Wireless (Applicant) for a Conditional Use Permit as provided in Paragraph H of Section 46-110 "Telecommunications Towers" of Chapter 46 "Supplemental Use Regulations" of the City Code to co-locate telecommunications equipment for wireless communications on property zoned District AG, Agricultural District and described as Lots 3, 4, 5 and 6 located in the South Half of Section 7, Township 8, Range 15, Center Township, Buffalo County, Nebraska, together with all accretions thereunto and belonging, subject to a strip of land 17 feet wide on the west side of Lot 3 deeded to the City of Kearney in Section 7, Township 8 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska, lying north of the North Bank of the North Channel of the Platte River (905 Avenue M) and to consider Ordinance No. 7846.

Same as the previous agenda item but at another location. The applicant is requesting approval of a Conditional Use Permit (CUP) to co-locate telecommunications equipment on the existing tower at 905 Avenue M. The Telecommunications Ordinance allows for an expedited timeline bypassing Planning Commission and going directly to City Council for new colicators to encourage colocation as opposed to construction of additional towers. The applicant has submitted all of the required documentation for this CUP. A structural analysis report prepared by a licensed structural engineer is included. The size of the tower itself will not be increased, nor will the footprint of the tower or the ground enclosure containing equipment buildings. There are no time limits or other conditions recommended for this CUP.

Emily Roseberry from SSC, Inc. presented this matter to the Council. She stated this is the same thing as the other tower except it was at a different location. They are not changing anything in the ground they are adding equipment on the south side and antennas all within the perimeter of the existing ground.

There was no one present in opposition to this hearing.

Moved by Clouse to close the public hearing on the Application submitted by Global Tower Partners (Owner) and Commnet Wireless (Applicant) for a Conditional Use Permit as provided in Paragraph H of Section 46-110 "Telecommunications Towers" of Chapter 46 "Supplemental Use Regulations" of the City Code to co-locate telecommunications equipment for wireless communications on property zoned District AG, Agricultural District and described as Lots 3, 4, 5 and 6 located in the South Half of Section 7, Township 8, Range 15, Center Township, Buffalo County, Nebraska, together with all accretions thereunto and belonging, subject to a strip of land 17 feet wide on the west side of Lot 3 deeded to the City of Kearney in Section 7, Township 8 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska, lying north of the North Bank of the North Channel of the Platte River (905 Avenue M) and introduced Ordinance No. 7846 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. 7846. 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, Buschkoetter, Lear. Nay: None. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk read Ordinance No. 7846 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, Buschkoetter, Lear. Nay: None. Motion carried. Ordinance was read by number.

Moved by Lammers seconded by Nikkila that Ordinance No. 7846 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear, Nikkila. Nay: None. Motion carried.

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

Ordinance No. 7846 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.

**BOARD OF EQUALIZATION FOR WATER CONNECTION DISTRICT NO. 2011-1  
AND SANITARY SEWER CONNECTION DISTRICT NO. 2011-1**

Mayor Clouse opened the public hearing for the Council to meet as the Board of Equalization to determine a connection fee in the amount of special benefits accruing to the property in Water Connection District No. 2011-1 and Sanitary Sewer Connection District No. 2011-1 and consider Resolution No. 2013-197.

On September 10 the Council met as the Board of Equalization to determine the costs for Water Connection District 2011-1 and Sanitary Sewer Connection District No. 2011-1 for water and sanitary sewer mains to be constructed in in 50th Street from the east line of 17th Avenue west 627.11± feet.

The connection fee for these connection districts are not levied as liens or assessments against the benefited property whereby annual payments that accumulate interest are due. Rather, the connection fee is approved by the City Council sitting as the Board of Equalization then filed at the Buffalo County Register of Deeds Office so that future owners are aware that connection fees will be collected when the property connects to City water and/or sewer.

The following connection fees have been calculated according to City policy:

- Water Connection District No. 2011-1 – \$56.84 per foot of frontage
- Sanitary Sewer Connection District No. 2011-1 – \$65.67 per foot of frontage

The property owners pay the connection fee multiplied by the property frontage when they connect to the water and sanitary sewer main. The policy calls for the cost of an 8-inch diameter pipe to be charged to the abutting or benefited properties. The City pays for larger diameter pipe in excess of 8 inches, fire hydrants, valves, and pipefittings, etc.

It has been discovered that the Kearney Hub did not publish the notice in the paper for the Council to meet as the Board of Equalization. Therefore, the City Council will need to convene and sit as the Board of Equalization.

There was no one present in opposition to this hearing.

Moved by Nikkila seconded by Lear to close the hearing and adopt **Resolution No. 2013-197** determining a connection fee in the amount of special benefits accruing to the property in Water Connection District No. 2011-1 and Sanitary Sewer Connection District No. 2011-1. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Nikkila, Lammers. Nay: None. Motion carried.

**RESOLUTION NO. 2013-197**

WHEREAS, on the 27th day of December, 2011, the City Council of the City of Kearney, Nebraska, passed and approved Ordinance No. 7695 creating Water

Connection District No. 2011-1, the said water main has been constructed in accordance with said Water Connection District No. 2011-1 and the costs thereof have been reported to the City Council; and

WHEREAS, on the 27th day of December, 2011, the City Council of the City of Kearney, Nebraska, passed and approved Ordinance No. 7696 creating Sanitary Sewer Connection District No. 2011-1, the said sewer main has been constructed in accordance with said Sanitary Sewer Connection District No. 2011-1 and the costs thereof have been reported to the City Council; and

WHEREAS, the City Council, sitting as a Board of Equalization, has determined the benefits to abutting property in the Districts to be shown on the Schedule, marked Exhibit "A", attached hereto and made a part hereof; and

WHEREAS, Section 16-6,103 of the Nebraska Revised Statutes provides that the special benefits determined by the Board of Equalization shall not be levied as special assessments against the property within the Districts, but shall be certified to the Register of Deeds of the County.

NOW, THEREFORE, BE IT RESOLVED by the President and Council of the City of Kearney, Nebraska, that the benefits to abutting property in Water Connection District No. 2011-1 and Sanitary Sewer Connection District No. 2011-1 are as found and determined by the Council, sitting as a Board of Equalization, as shown and set forth on Exhibit "A".

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized and directed to file a certified copy of this Resolution in the Office of the Buffalo County Register of Deeds.

BE IT FURTHER RESOLVED that a connection fee equal to the amount of the benefit accruing to the property as set by the benefit schedule (Exhibit "A") shall be paid to the City at the time the respective properties are connected to the water main constructed in Water Connection District No. 2011-1 and that no property thus benefited by said main improvements shall be connected to the respective water main until said connection fee is paid.

BE IT FURTHER RESOLVED that a connection fee equal to the amount of the benefit accruing to the property as set by the benefit schedule (Exhibit "A") shall be paid to the City at the time the respective properties are connected to the sewer main constructed in Sanitary Sewer Connection District No. 2011-1 and that no property thus benefited by said main improvements shall be connected to the sewer main until said connection fee is paid.

BE IT FURTHER RESOLVED that upon payment by abutting owners of the connection fee, the City shall notify the Buffalo County Register of Deeds that the individual connection fees have been paid and satisfied.

BE IT FURTHER RESOLVED that Resolution No. 2013-166 passed and approved on the 10th day of September, 2013 be and is hereby repealed.

PASSED AND APPROVED THIS 8TH DAY OF OCTOBER, 2013.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

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

Moved by Lear seconded by Buschkoetter that Subsections 1 through 5 of Consent

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

1. Approve Minutes of Regular Meeting held September 24, 2013.
2. Approve the following Claims:

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

Ace Hardware \$855.86 smcs; Ace Irrigation \$1,080.00 co; Alamar Uniforms \$1,507.55 ps; Alfred Benesch \$6,390.76 co; American Fence \$1,110.00 smcs; Anderson Brothers \$2,783.00 smcs; Anderson,B \$464.00 smcs; Ash,D \$190.00 smcs; Ask Supply \$960.24 smcs; Aurora Coop \$54.40 smcs; Bauer,R \$18.00 smcs; Blessing \$444,645.17 co; Bluecross Blueshield \$56,536.80 smcs; Bosselman \$8,428.64 smcs; Broadfoot's \$587.50 smcs; Brungardt Engineering \$76,272.23 co; Buffalo Co. Sheriff \$146,212.25 smcs; Buffalo Outdoor Power \$381.40 smcs; Bullhorn Graphics \$1,501.25 ps; Carquest \$4,738.54 smcs; Center Point Large Print \$243.30 smcs; Central States Wire \$2,889.50 smcs; Charleworth & Associates \$1,550.00 smcs; Charter \$65.00 smcs; Chesterman \$150.80 smcs; City of Ky \$180.85 co; City of Ky \$350,027.61 smcs,ps; Civic Plus \$6,191.40 smcs; Clipper Publishing \$70.00 smcs; Compass \$2,500.00 smcs; Cool Tech \$131.85 smcs; Copycat Printing \$790.94 smcs; D&M Security \$64.50 smcs; Demco \$578.33 smcs; Depository Trust Company \$48,086.25 ds; Dmilaco \$38.00 smcs; DPC Industries \$6,306.10 smcs; Drake,F \$2.65 smcs; Dutton-Lainson \$26.73 smcs; Eakes \$238.38 smcs; Egan,S \$26.08 smcs; Eirich,T \$50.00 smcs; Elliott Equipment \$774.27 smcs; EMC Insurance \$23,040.70 smcs; Emergency Apparatus \$2,392.03 smcs; Fairbanks Int'l \$1,175.73 smcs; Farmers Union Coop \$465.00 smcs; Fiddelke \$1,851.53 smcs; FireGuard \$53.49 smcs; Footjoy \$95.14 smcs; Gale \$1,179.13 smcs; Galls \$38.35 smcs; Golf Buddy \$257.43 smcs; Grey House Publishing \$918.80 smcs; Halbert,C \$163.88 smcs; Harrison,R \$31.00 smcs; Hometown Leasing \$423.12 smcs; ICMA Retirement Trust \$3,912.45 ps; Infinisource \$2,373.60 smcs; Internal Revenue Service \$125,124.09 ps; ISG Infrasy \$90.00 smcs; Jack Lederman \$14.28 smcs; Jensen,A \$16.58 smcs; Johnsen Corrosion \$2,154.00 smcs; Johnson Controls \$536.25 smcs; Johnson Service \$2,362.50 smcs; Ky Community Found. \$12,000.00 smcs; Ky Visitors Bureau \$45,624.35 smcs; Ky Volunteer Fire \$3,000.00 smcs; Konica Minolta \$251.18 smcs; Krull Insurance \$1,950.00 smcs; League of NE Municipalities \$38,657.00 smcs; Lockmobile \$6.75 smcs; Luke,D \$22.18 smcs; Magic Cleaning \$1,700.00 smcs; Mail Express \$6,348.87 smcs; Matheson Tri-Gas \$21.10 smcs; Metlife \$7,824.15 ps; Mid-State Engineering \$1,528.00 smcs; Milco Environmental \$4,480.06 smcs; Miller & Associates \$21,210.24 smcs,co; Morgan,M \$1,441.28 smcs; Murphy Tractor \$1,182.96 smcs; NACO Planning & Zoning \$100.00 smcs; NE Child Support Pmt. Ctr. \$2,284.66 ps; NE Dept. of Revenue \$35,783.88 ps; NE Dept. of Revenue \$57,072.28 smcs,co; NE Library Commission \$3,078.70 smcs; NE Public Health \$1,007.00 smcs; NE Safety & Fire \$299.00 smcs; NE Secretary of State \$30.00 smcs; NE State Treasurer \$1,288.73 smcs; New Directions \$10,702.51 smcs; Newell,B \$27.62 smcs; Northwestern Energy \$922.65 smcs; OCLC \$580.82 smcs; O'Connor \$190.00 smcs; O'Keefe Elevator \$735.94 smcs; One Call Concepts \$442.80 smcs; Outdoor

Recreation \$1,956.00 co; Paramount Linen \$92.97 smcs; Payflex Systems \$544.00 ps; Peerless Machine \$14,835.63 smcs; Platte Valley Comm. \$6,797.21 smcs; Presto-X \$85.84 smcs; Random House \$170.00 smcs; Recorded Books \$2,178.47 smcs; Rehbein,T \$22.44 smcs; Research Technology \$159.95 smcs; Rick's Sod Farm \$3,650.00 co; Riverside Manufacturing \$2,103.57 ps; Rodriguez,J \$10.00 smcs; Royal,K \$1,415.40 smcs; Sage,J \$48.00 smcs; Salem Press \$395.00 smcs; Saltzgaber,S \$46.39 smcs; Schall,J \$100.00 smcs; School District #7 \$3,150.30 smcs; Shemat,K \$190.00 smcs; Sirsi Dynix \$21,297.67 smcs; Snap-On Tools \$311.70 smcs; Solid Rock \$138.20 smcs; State of NE/AS Central \$3,822.93 smcs; Steinbrink Landscaping \$235.00 smcs; Tacha,J \$50.00 smcs; Theis,J \$60.00 smcs; Thompson,D \$190.00 smcs; Titleist \$383.37 smcs; TM Sporting Goods \$368.10 smcs; Turfwerks \$25.40 smcs; Tye & Rademacher \$11,067.28 smcs; Underground Construction \$450.00 co; Union Bank & Trust \$57,542.92 smcs; Unique Management \$295.35 smcs; United Way \$604.04 ps; Vasquez,C \$40.00 smcs; Verizon \$1,080.29 smcs; Village Cleaners \$680.57 smcs; Waddel,S \$7.00 smcs; Warren-T Plumbing \$102.00 smcs; Watchguard Video \$26.00 co; Wiedel,G \$464.00 smcs; Payroll Ending 9-21-2013 -- \$365,270.88. 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. 2013-198** canceling special assessments levied against Lot 1, Gary Addition, a subdivision being part of the Southwest Quarter of the Northwest Quarter of Section 19, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska and to remove the said record and assessment schedule from the active files of the City of Kearney.

### **RESOLUTION NO. 2013-198**

WHEREAS, special assessments have been levied against various properties owned by the City of Kearney; and

WHEREAS, the special assessment liens should be extinguished and no longer constitute liens upon the subject real estate.

NOW, THEREFORE, BE IT RESOLVED by the President and City Council of the City of Kearney, Nebraska, that the City Clerk and the Director of Finance of the City of Kearney be and are hereby authorized and directed to denote on the records of the City that the special assessment levied against Lot 1, Gary Addition, a subdivision being part of the Southwest Quarter of the Northwest Quarter of Section 19, Township 9 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska (\$95,079.01) is cancelled, and to remove the said record and assessment schedule from the active files of the City.

PASSED AND APPROVED THIS 8TH DAY OF OCTOBER, 2013.

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 Night Life Concepts, Inc., dba Cunningham's Journal in connection with their Class CK-59311 catering liquor license to dispense beer, wine and distilled spirits in the Ag Pavilion

located at the Buffalo County Fairgrounds, 3807 Avenue N, on December 5, 2013 from 3:00 p.m. until 12:00 a.m. for a dance.

5. Adopt **Resolution No. 2013-199** accepting the Certificate of Substantial Completion submitted by Sorensen Group, Inc. and approved by Miller & Associates for the 2012 Part 7 Improvements; East I-80 Welcome Sign.

### **RESOLUTION NO. 2013-199**

WHEREAS, Sorensen Group Inc. of Kearney, Nebraska has performed services in connection with 2012 Part 7 Improvements; East I-80 Welcome Sign, and Miller & Associates and Sorensen Group Inc. have now certified that the work is completed as of July 1, 2013, as shown by Exhibit "A" 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, hereby accepts the Certificate of Substantial Completion as shown on Exhibit "A".

PASSED AND APPROVED THIS 8TH DAY OF OCTOBER, 2013.

ATTEST:  
MICHAELLE E. TREMBLY  
CITY CLERK

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

### **V. CONSENT AGENDA ORDINANCES**

None.

### **VI. REGULAR AGENDA**

#### **VACATE PORTION OF GLENWOOD DRIVE**

Mayor Clouse opened for discussion the Application submitted by Jeffrey Smaha and Gary Willhoit to vacate 165.7 feet of Glenwood Drive as it abuts Lots 25 and 26, Block 1, Glenwood Estates (#12 and #13 Birchwood Place) and to consider Ordinance No. 7847. Staff recommended denial. Planning Commission recommended denial, but on a split vote with five in favor of denial, one in favor of the street vacation, and one abstaining.

The applicant is requesting vacation of 165.7 feet of Glenwood Drive abutting Lots 25 and 26, Block 1, Glenwood Estates. This section of 60-foot wide right-of-way was platted on paper when the subdivision was approved but has never been constructed. It is located on the east boundary of the subdivision about four lots south of the north boundary. The applicant would like to construct a third car garage on his property but is unable to meet Code requirements for setbacks without gaining the additional vacated right-of-way.

Four out of seven utility companies have reviewed and approved the vacation of the street right-of-way. No new easements need to be established if the street vacation is approved.

The City staff does not support vacating this street because it is the sole street connection on the east side of Glenwood Estates. In the future, when development occurs to the east of Glenwood Estates, this street will connect across to 74th Street which is the street on the north side of the Cowpoke Mercantile building connecting to 2nd Avenue. The owners of the property to the east have approached the City several times in the past with plans to subdivide their property for residential housing but the City has not supported these requests because the property cannot be served by City water and sanitary sewer. The City does not want large lot rural residential development on private wells and septic systems at this location because it will become a barrier to future extension of municipal services. So, in the meantime, we wait until municipal services can be extended from the Remington Heights Subdivision by Avenue N in a northwesterly direction along the abandoned railroad right-of-way to the Glenwood Corners area, then south to the property in question. It is not a question of whether development will occur east of Glenwood Estates, but rather when will it occur? When the time comes, the street section that is requested for vacation will be an important connection for traffic traveling westward.

At the Planning Commission meeting discussion was held regarding the future of this area. Some of the Planning Commission members questioned how long it will be before the street would actually develop and perhaps there is an alternative solution to provide future circulation. The properties to the north and south, if Glenwood Drive were extended, were suggested but they are under different ownership than the property to the east. It is not feasible to make future connection north or south, but the east connection is already platted. The landowner to the east was present for the hearing and he spoke in opposition of vacating the street. He is depending on this street connection for his future development.

Discussion was also held regarding the Board of Adjustment. The applicant explained that the street does not necessarily need to be vacated in order to construct the third garage bay addition. The addition would, however, encroach into the 25-foot street side yard setback. Planning Commission believed that perhaps the Board of Adjustment could grant a variance for the setback encroachment. City Planner reminded them that a "hardship" as defined by state law, must be demonstrated in order to grant a variance. Some of the Commission members stated that perhaps the City opposition to vacating the street could be seen as a hardship and a variance could be granted.

Jeff Smaha, property owner, presented this matter to Council. He started about two years ago trying to add a third car garage onto his house but there was a road platted there for 40 years and he has been mowing it for 32. He went to the Planning Commission on September 20th and they voted to leave the road alone for various reasons which he does not agree with. What he would like to have and what the Planning Commission recommended was to get a variance so he can build the garage. He currently does not qualify for the setbacks because you have to be 25 feet away from the street and if that was not platted as a street, the setback would be okay.

Council Member Lear stated that because he is on a corner lot he has a larger setback. Mr. Smaha stated that was correct, 25 feet instead of 12.

Council Member Lear asked City Attorney about moving this to the Board of Adjustment; would they deny the vacation of the road and send it to Board of Adjustments for the recommendation to allow a 12-foot setback. City Attorney Michael Tye stated what is before the Council tonight is the request to vacate the road and not a variance issue which is something that goes to Board of Adjustment.

Mr. Smaha stated he understood that he would end up back before the Council if they approve it. Council Member Buschkoetter stated if the Board of Adjustment approves it they do not need to come back to the Council.

Council Member Lear asked when was the next Board of Adjustment meeting. City Clerk stated they meet the fourth Monday of every month. Council Member Lear asked if they have enough members and City Clerk stated they are down one member but there is enough to conduct a meeting. Council Member Nikkila asked if they could still meet the deadline for this month. City Clerk stated the deadline for this month is done. Mr. Ron Nielsen stated his understanding is the deadline is the 11th to get in on this month.

Council Member Lear stated he did not believe they could vacate the road given what could happen for development up there but he also did not think what Mr. Smaha was asking for is unreasonable. The biggest problem it would present would be line of site issues. The reason for a 25-foot setback versus a 12-foot, would that be because people at that intersection the line of sight could be impeded visually.

City Planner Lance Lang explained the reason for the 25-foot setback. The Code requires 25-foot setback on a street side because we do not know for sure when a new house is built if they are going to have their garage on which street and there needs to be enough setback to accommodate the cars and everything.

Council Member Lear asked if it would create a visual impairment problem with the intersection. City Manager stated it would not. Council Member Lear stated he believes the request to vacate the street should be denied and to send the issue to the Board of Adjustment with a recommendation that if they find hardship to approve a variance. City Manager stated Council can tell staff to recommend it but City Council does not have authority to grant a variance.

City Attorney stated one of the factors that is a little different because you know how you are going to access this garage which is a little unique and that would certainly be a matter for the Board of Adjustment.

Mr. Smaha stated you can see from the drawings how he would access the garage and they are 80 feet from the center of the street so it is not a visibility issue at all.

City Manager stated certainly City staff understands the issue and has no problem recommending it to the Board of Adjustment.

Moved by Clouse seconded by Lammers to deny Ordinance No. 7847 to vacate 165.7 feet of Glenwood Drive as it abuts Lots 25 and 26, Block 1, Glenwood Estates (#12 and #13 Birchwood Place). Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear, Nikkila. Nay: None. Motion carried.

**APPLEBEE’S LIQUOR LICENSE MANAGER APPLICATION**

Mayor Clouse opened for discussion the manager application for Margaret Stine submitted by RMH Franchise Corporation, dba Applebee’s Neighborhood Grill & Bar in connection with their Class IK-101513 liquor license located at 5605 2nd Avenue.

Maggie Stine presented this matter to the Council. She is submitting her application on behalf of 11 Applebee’s in six Nebraska cities. She has been the state manager for six of the last seven years. The prior franchisee was purchased in December and she was the liquor manager for the prior franchisee. Then in the paperwork on the new business applications, the CFO was submitted as the liquor manager. So they are just moving it back to her.

Moved by Lammers seconded by Nikkila to recommend approval to the Liquor Commission the manager application for Margaret Stine submitted by RMH Franchise Corporation, dba Applebee’s Neighborhood Grill & Bar in connection with their Class IK-101513 liquor license located at 5605 2nd Avenue. Roll call resulted as follows: Aye: Clouse, Lear, Nikkila, Lammers, Buschkoetter. Nay: None. Motion carried.

**OPEN ACCOUNT CLAIM: NPPD - \$4,876.70**

Moved by Nikkila seconded by Lear that the Open Account Claim in the amount of \$4,876.70 payable to Nebraska Public Power District be allowed. Roll call resulted as follows: Aye: Nikkila, Lammers, Buschkoetter, Lear. Nay: None. Clouse abstained. Motion carried.

**VII. REPORTS**

**PICTOMETRY PRESENTATION**

GIS Coordinator Michele Hill made a presentation on the new program, Pictometry.

**UPDATE OF SPECIAL SALES TAX PROJECTS**

City Manager Michael Morgan updated the Council on the Special Sales Tax Projects.

***Special Sales Tax Projects  
2013-14***

	<b><u>Total</u></b>	<b><u>City</u></b>
▪ Aircraft Rescue and Firefighting Station	\$1,874,328	\$ 187,433
▪ Airport Aircraft Storage Hangar		\$ 1,500,000
▪ Downtown Revitalization (CDBG - \$350,000)	\$ 730,000	\$ 215,000
▪ North Railroad Parking Lot (CRA - \$100,000)	\$ 150,000	\$ 50,000

▪ Avenue M – 100 feet South of 11th Street		\$ 200,000
▪ Talmadge Street – 2nd to 4th		\$ 200,000
▪ 17th Avenue East Bike Trail		\$ 122,000
▪ Skateboard Park	\$ 300,000	\$ 165,000
▪ Emerson School area – sidewalks	\$ 326,000	\$ 163,000
▪ 16th Street – Central to 1st		\$ 200,000
▪ Fort Kearny Bridge		\$ 10,000
▪ Central Avenue – 26th to 31st	\$1,420,000	\$ 942,700
▪ Avenue N – 25th to 28th		\$ 1,155,000
▪ 29th Street – 6th to 8th		\$ 437,850
<b>2014-15</b>		
▪ 31st and Avenue A – Intersection improvements		\$ 403,200
▪ 8th Street – 2nd to 3rd Avenue Bridge		\$ 606,375
▪ 25th Street and 9th Avenue Roundabout	\$3,500,000	\$ 350,000
▪ Central Avenue – 12th to 16th		\$ 2,625,000
▪ Project Honor		\$1,600,000

**CENTRAL NEBRASKA VETERANS HOME**

City Manager and Council members discussed their concerns and frustrations pertaining to the Central Nebraska Veterans Home and the negativity. Kearney was selected as the site for the new home, the negativity needs to stop, and everybody needs to move forward in the preparations of making this an easy process for the veterans.

**VIII. ADJOURN**

Moved by Lear seconded by Buschkoetter that Council adjourn at 8:01 p.m. Roll call resulted as follows: Aye: Clouse, Lammers, Buschkoetter, Lear, Nikkila. Nay: None. Motion carried.

**ATTEST:**

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

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