City Council Introduction: **Monday**, February 26, 2007
Public Hearing: **Monday**, March 5, 2007, at **1:30** p.m. Bill No. 07-32

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 06062,** requested by the Director of Planning, to amend Title 27 of the Lincoln Municipal Code to set a one-year time period within which applications will automatically expire when deferred at the applicant's request.

STAFF RECOMMENDATION: Approval.

ASSOCIATED REQUEST: Miscellaneous No. 06012 (07-33).

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 01/31/07
Administrative Action: 01/31/07

RECOMMENDATION: Approval, with amendment (7-1: Sunderman, Krieser, Taylor, Carroll, Cornelius, Strand and Carlson voting 'yes'; Esseks voting 'no'; Larson absent).

FINDINGS OF FACT:

1. This proposed text amendment to Title 27 was heard in conjunction with similar amendments to Title 26 and the County zoning and subdivision regulations.

2. The purpose of this proposed text amendment to the zoning ordinance is to set a one-year period within which applications that have been deferred at the applicants' request are presented to the Planning Commission or County Board for final action or they automatically expire.

3. The staff recommendation of approval is based upon the "Analysis" as set forth on p.2.

4. The minutes of the public hearing and action by the Planning Commission are found on p.5-9. There was no testimony in opposition.

5. The original staff recommendation included a provision to set a 12-week time period from the initial hearing date for the Planning Commission to act on an application, unless the applicant consents to a deferral (See, Analysis #2, 3, 4 and 5, p.3-4). This provision was not accepted by the majority of the Planning Commission (See Minutes, p.7-8). Therefore, this provision has been deleted from the proposal.

6. On January 31, 2007, the majority of the Planning Commission agreed with the staff recommendation and voted 7-1 to recommend approval, with amendment deleting the 12-week time limitation (Esseks dissenting, being in favor of the time limitation for Planning Commission to take action; Larson absent).

FACTSHEET PREPARED BY: Jean L. Walker **DATE**: February 16, 2007

REVIEWED BY:_____ **DATE**: February 16, 2007

REFERENCE NUMBER: FS\CC\2007\CZ.06062+ text

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for JANUARY 31, 2007 PLANNING COMMISSION MEETING

****As Revised and Recommended for Approval by Planning Commission****
January 31, 2007

PROJECT #: Change of Zone No.06062

PROPOSAL: 1. Set a one-year period within which applications that have been deferred at the applicants' request are presented to the Planning Commission or City Council for final action or they automatically expire.

~~2. Set a 12 week time period from the initial hearing date for the Planning Commission to act on applications unless the applicant consents to the deferral.~~
(Per Planning Commission: 01/31/07**)**

CONCLUSION: The proposals require timely action on both the Planning Commission and the applicant on an application.

RECOMMENDATION:	Approval

GENERAL INFORMATION:

LEGAL DESCRIPTION: Sections 27.27.080, 27.28.090, 27.31.100, 27.37.070, 27.51.100, 27.60.40, 27.63.020, 27.65.030 and 27.81.040 of the Zoning Ordinance

ASSOCIATED APPLICATIONS: Misc. #06012 City Land Subdivision Ord., County Change of Zone #06070, and Misc.#06016 County Subdivision Regulations

ANALYSIS:

1. Currently, at the request of applicants there are dozens of applications which were placed on the staff's "pending" list and not scheduled for Planning Commission or governing body hearings. These applications have remained on the list for years, despite the Planning Staff's efforts to encourage the applicant to move forward or withdraw. Currently, the only way to dispose of these cases is to set unilateral hearing dates, prepare staff reports, and advertise the hearings. The proposed amendments would allow the Planning Department to save time and money by replacing this cumbersome process with a time period within which, if the applicant does not direct that his/her case be scheduled for hearing, the case is automatically closed. The proposed amendment will require staff to notify the applicant of the pending expiration date, in writing, at least 30 days before that date. If approved, this amendment would provide an additional year for action on applications that are already on the Planning Department pending list.

2. ~~The Planning Commission on several occasions has postponed their final action on applications. The City Attorney has advised them that their responsibility is to hold a public hearing and then act on the application. The issue of delaying action occurred on two different cases in the past two years, both involving "downzoning:" a request by a neighborhood association to rezone vacant land adjacent to the neighborhood, and a request by another neighborhood association to rezone the property within their association's boundaries.~~

~~In the first case, the property was held on pending by the Planning Commission for nearly a year as the Commission approved repeated requests from the neighborhood association for deferral (after the Planning Commission did act, the City Council voted to place the item on its indefinite pending list, where it sits today). In the second case, the Planning Commission delayed the association's request to consider imposing new procedural requirements for that request as well as future requests of the same nature. Before these applications were filed, it was not unusual for the Planning Commission to place applications on pending for indefinite periods, to await the completion of some planning study or another.~~

~~The deliberations on the second downzoning case led the City Attorney's office to give its opinion to the Planning Commission that due process required them to act in a timely manner and pass applications on to the governing body in a reasonable time, unless the applicant consented to further delay.~~

3. ~~The City Attorney determined, in the preparation of these amendments, that the proposed appeal provision could not be used in the case of a change of zone, because state statutes require that the Planning Commission "act " before the governing body can consider the item. The Planning Staff and the City Attorney still believe it is useful to adopt this amendment for all the other types of applications that the Planning Commission considers, and at least to give guidance as to how they should act on change of zone request. The provision that the Planning Commission shall act in 12 weeks will apply to change of zone applications but the applicant will not have authority to appeal the application forward to the City Council without a report and recommendation from the Planning Commission.~~

~~State Statutes states that any proposed amendment, supplement or modification to the zoning ordinance shall first be submitted to the planning commission for its recommendations and report. The planning commission shall hold at least one public hearing with relation thereto, before submitting its recommendations and report to the City Council.~~

~~The City Charter basically repeats the language in the State Statutes.~~

~~"The commission's powers and duties shall extend to advising the mayor, council, and planning director on all matters concerning the planning program and the performance of those acts related to the comprehensive plan, the capital improvements program, the zoning ordinance, and the land subdivision regulations that are described in subsequent sections of this article."~~

~~4. Presently in the event the Planning Commission fails to act withing 60 days from the date the City Council refers to them a use permit, planned unit development, special permit and community unit plan the applicant must appeal to City Council requesting final action and the City Council shall direct the Planning Commission to act on the application at the next regularly scheduled meeting and then the regulation presumes that the Planning Commission will heed that direction. The proposed amendments allows the applicant to forward the application to the governing body for action if the Commission has not acted in the required time frame.~~

~~5. The Zucker report encourages the streamlining of applications.~~

Prepared by:

Ray F. Hill, Planner

DATE: January 18, 2007

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CITY CHANGE OF ZONE NO. 06062,
COUNTY CHANGE OF ZONE NO. 06070,
CITY MISCELLANEOUS NO. 06012,
MISCELLANEOUS NO. 06014,
and
COUNTY MISCELLANEOUS NO. 06016

PUBLIC HEARING BEFORE PLANNING COMMISSION: January 31, 2007

Members present: Sunderman, Krieser, Esseks, Taylor, Carroll, Cornelius, Strand and Carlson; Larson absent.

Staff recommendation: Approval

Ex Parte Communications: None.

Staff presentation: **Ray Hill of Planning staff** presented the proposal as follows:

1. Change of Zone No. 06062, amending Title 27 of the Lincoln Municipal Code to set a 12 week time period from the initial hearing date for the Planning Commission to act on applications unless the applicant consents to the deferral; and to set a one-year period within which applications that have been deferred at the applicants' request are presented to the Planning Commission or City Council for final action or they automatically expire.

2 County Change of Zone No. 06070, amending the Lancaster County Zoning Regulations to 1) set a 12 week time period from the initial hearing date for the Planning Commission to act on applications unless the applicant consents to the deferral; 2) set a one-year period within which applications that have been deferred at the applicants' request are presented to the Planning Commission or County Board for final action or they automatically expire; 3) to change public hearing notice dates when signs are posted and notices appear in the newspaper to be consistent with the City's notification requirements; 4) to clarify procedures for special permits and community unit plans; to 5) clarify that no buildings or uses may be permitted in a yard via an administrative amendment by the Planning Director; and to relocate the provisions for pre-existing special permits.

3. Miscellaneous No. 06012, amending Title 26 of the Lincoln Municipal Code relating to the Land Subdivision Ordinance to 1) set a 12 week time period from the initial hearing date for the Planning Commission to act on applications unless the applicant consents to the deferral; 2) to set a one-year period within which applications that have been deferred at the applicants' request are presented to the Planning Commission or City

Council for final action or they automatically expire; and 3) to delete the reference to the filing deadline before a preliminary plat may be scheduled on the Planning Commission agenda.

4. Miscellaneous No. 06014, amending "Rule 2. Filing of Applications" of the Lincoln City-Lancaster County Planning Commission Rules and procedures, to change the filing deadline from 12:00 noon four Thursdays before Planning Commission public hearing to 4:00 p.m four weeks before Planning Commission public hearing.

5. County Miscellaneous No. 06016, amending the Lancaster County Land Subdivision Regulations to 1) set a 12 week time period from the initial hearing date for the Planning Commission to act on applications unless the applicant consents to the deferral; 2) to set a one-year period within which applications that have been deferred at the applicants' request are presented to the Planning Commission or County Board for final action or they automatically expire; 3) to delete the filing deadline before a preliminary plat may be scheduled on the Planning Commission agenda; 4) to delete the provision that a preliminary plat shall be effective for only 10 years and authorize the Planning Director to determine if a new preliminary plat may be required after 5 years rather than the County Board; 5) to reword procedures regarding filing the Planning Commission's findings within 7 days with the County Clerk; and to change public hearing notice dates when signs are posted and notices appear in the newspaper to be consistent with the City's notification requirements.

Hill recalled that at the briefing on these proposed amendments, it was staff's understanding that the members would entertain a proposal adopting a 12-week time period within which the Planning Commission should act and make its recommendation to the City Council or County Board, unless the applicant consents to such a delay. It was also agreed that the Planning Commission members would entertain a proposal adopting an expiration date for applications which do not get scheduled for some reason or another. The proposal also requires that the Planning Director would notify all applicants that have pending items within 30 days of expiration so that they have some knowledge that if they do not act their application would expire.

Carroll noted that the staff report in support of the 12-week limitation for Planning Commission action refers to the downzoning request which precipitated this proposed legislation. He pointed out that the state statute requires action by the Planning Commission on zoning petitions. Therefore, this proposal would have no affect on zoning applications. Hill agreed that the time limitation does not apply to zoning changes, but he believes this proposal does give everyone a guideline for action on all other applications. As a general rule, the Planning Commission should be able to come to a conclusion within a reasonable period of time. When this was discussed, Hill thought the Commission as a group thought the 12 weeks after the first public hearing would be sufficient time for the Planning Commission to act. This is what the staff was guided to present, but the decision is still with the Planning Commission. The proposal provides that the applicant has a right to appeal to the City Council or County Board if the Planning Commission does not act within 12 weeks after the first public hearing.

Cornelius wanted to know just how often this actually occurs – how often does the Planning Commission defer action beyond 12 weeks without the consent of the applicant? Is this a real problem? Hill suggested that there have been two recent situations, and over the 30+ years that he has been in the Department, there have been other occasions where applications have been deferred for various reasons. He believes 12 weeks is a long time.
Cornelius recalled that the worst case scenarios were discussed during the briefing, and what the Commission arrived at was that the Planning Commission is being directed by this ordinance to find for denial of an application that needs to be deferred for that length of time. Hill explained that the way the proposal is written, the Planning Commission has 12 weeks to make a decision, and after that period of time the applicant has a right to appeal. If the applicant has no problem with the deferral, the appeal does not come into play. If the applicant believes there needs to be a decision, this gives them an avenue to appeal on up to the governing body.

Esseks asked staff to clarify paragraph #3 of the Analysis on page 2 of the staff report for Change of Zone No. 06062, where it states that,

> ....The provision that the Planning Commission shall act in 12 weeks will apply to change of zone applications but the applicant will not have authority to appeal the application forward to the City Council without a report and recommendation from the Planning Commission.

He is fearful that as long as this sentence stands, someone could file a suit against the Planning Commission claiming that there still is a prejudice of 12 weeks. Hill clarified that the Planning Commission could not be forced to make a decision on a change of zone. He will change this language before it moves on to the City Council or County Board, if necessary, to make it clear.

There was no testimony in opposition.

CHANGE OF ZONE NO. 06062
ACTION BY PLANNING COMMISSION: January 31, 2007

Carroll moved approval, with amendment to delete the 12-week time period provision, seconded by Strand.

Hill suggested that if the word “shall” is bothersome, the Commission could add language that the Planning Commission “shall use its best efforts to make a decision within the 12 weeks.”

Carroll reiterated that state statute requires the Planning Commission to act on zoning issues. Therefore, he believes that the Planning Commission should act on everything that is in front of the Commission, whether it takes times or not, and not allow it to go forward without the Planning Commission recommendation. He believes that the state statute clearly defines that this should be controlled by the Planning Commission. He agrees with the one-year expiration date on applications that do not go forward. He believes that the 12-week time period gives the Planning Commission powers away.

Strand concurred with Carroll.

Esseks did not disagree, but he also believes there should be some rule to make things move with a fair amount of speed. Applicants deserve an up or down decision, and 12 weeks seems to be a more than liberal allocation of time. Some discipline should be imposed. He agrees with the 12 weeks.

Cornelius agreed with Esseks, but he believes that there is self-discipline exercised and for that reason this ordinance is not necessary. He believes that the Planning Commission does move things through relatively quickly and he will support the motion.

Kristy Bauer, Deputy County Attorney, clarified that the provision that the Planning Commission shall act in certain cases relates to changes of zone. There is no statutory authority that the Planning Commission must act in regard to special permits, community unit plans, etc. The Commission cannot be required to act within 12 weeks on changes of zones. There must be a report and recommendation from the Planning Commission before the City Council or County Board can act on a change of zone.

Carroll also pointed out that the two times that this came up in the last long number of years was on a change of zone application, and this legislation does not affect a change of zone. The Planning Commission can hold a change of zone as long as it wants. Why change part of the rules and not all of the rules? The Planning Commission should act on everything and not have a time constraint on part of it. It's either all or nothing. He believes the Planning Commission has done things correctly over the years and there has not been a terrible situation. He does not see the reason for this legislation.

Esseks commented that in Illinois, there were time constraints, and he believes it is a good idea to protect future applicants. Maybe this group should be trusted with complete freedom of action, but he would rather have a liberal standard such as the 12 weeks to act on those issues where state statute does not require it.

Sunderman pointed out that of the two downzonings, only one of them was a deferral at the request of the Planning Commission. The other deferral was requested by the applicant. So we're really only talking about one situation in three years. He does not believe there is any abuse.

Motion to approve, with amendment deleting the 12-week provision, carried 7-1: Sunderman, Krieser, Taylor, Carroll, Cornelius, Strand and Carlson voting 'yes'; Esseks voting 'no'; Larson absent. <u>This is a recommendation to the City Council.</u>

<u>COUNTY CHANGE OF ZONE NO. 06070</u>
<u>ACTION BY PLANNING COMMISSION:</u> January 31, 2007

Carroll moved approval, with amendment deleting the 12-week time period, seconded by Cornelius.

Strand asked staff to explain the change to require that no buildings or uses may be permitted in a yard via an administrative amendment by the Planning Director. Ray Hill of Planning staff provided the explanation and indicated that this will make the county and city regulations more uniform. It allows the Planning Director to reduce the building setback down to the minimum of the zoning district without going through the whole process.

Motion for approval, with amendment deleting the 12-week time period, carried 8-0: Sunderman, Krieser, Taylor, Carroll, Cornelius, Esseks, Strand and Carlson voting 'yes'; Larson absent. This is a recommendation to the County Board.

MISCELLANEOUS NO. 06012
ACTION BY PLANNING COMMISSION: January 31, 2007

Carroll moved approval, with amendment deleting the 12-week time period, seconded by Strand and carried 7-1: Sunderman, Krieser, Taylor, Carroll, Cornelius, Strand and Carlson voting 'yes'; Esseks voting 'no'; Larson absent. This is a recommendation to the City Council.

MISCELLANEOUS NO. 06014
ACTION BY PLANNING COMMISSION: January 31, 2007

Carroll moved approval, seconded by Strand and carried 8-0: Sunderman, Krieser, Taylor, Carroll, Cornelius, Esseks, Strand and Carlson voting 'yes'; Larson absent. This is final action.

COUNTY MISCELLANEOUS NO. 06016
ACTION BY PLANNING COMMISSION: January 31, 2007

Carroll moved approval, with amendment deleting the 12-week time period, seconded by Strand and carried 7-1: Sunderman, Krieser, Taylor, Carroll, Cornelius, Strand and Carlson voting 'yes'; Esseks voting 'no'; Larson absent. This is a recommendation to the County Board.