City Council Introduction: **Monday**, October 5, 2009
Public Hearing: **Monday**, October 12, 2009, at **3:00** p.m.

Bill No. 09-134

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 09021,** requested by the Director of Planning, amending Chapter 27.81 of the Lincoln Municipal Code relating to General Provisions of the Zoning Code, to provide a procedure for appeals of administrative approvals by the Planning Director and to provide the manner for giving notice.

STAFF RECOMMENDATION: Approval

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 09/09/09 and 09/23/09
Administrative Action: 09/23/09

RECOMMENDATION: Approval (9-0: Francis, Gaylor Baird, Taylor, Larson, Cornelius, Lust, Partington, Esseks and Sunderman voting 'yes').

FINDINGS OF FACT:

1. This is a request by the Director of Planning to amend Chapter 27.81 of the Lincoln Municipal Code to add a new section to provide a procedure for appeals of administrative approvals by the Planning Director, and to add a new section to provide the manner for giving notice of administrative approvals by the Planning Director. Administrative approvals include zoning applications such as administrative amendments, administrative permits for wireless facilities and alternate locations for replacement sign for nonconforming off-premises sign.

2. The staff recommendation of approval is based upon the "Analysis" as set forth on p.2-3, concluding that this amendment will provide an additional avenue for public interaction in the plan review process. The staff presentation is found on p.4-5.

3. There was no testimony in support nor in opposition.

4. On September 23, 2009, the Planning Commission agreed with the staff recommended language and voted 9-0 to recommend approval.

FACTSHEET PREPARED BY: Jean L. Preister **DATE**: September 28, 2009

REVIEWED BY:_____ **DATE**: September 28, 2009

REFERENCE NUMBER: FS\CC\2009\CZ.09021 text

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for September 9, 2009 PLANNING COMMISSION MEETING

PROJECT #: Change of Zone No. 09021

PROPOSAL: To amend section 27.81 by adding a new section 27.81.021 to provide a procedure for appeals of administrative approvals by the Planning Director, and by adding a new section numbered 27.81.022 to provide the manner for giving notice of the Planning Director's grant of administrative approvals.

CONCLUSION: The proposed text will provide an additional avenue for public interaction in the plan review process.

RECOMMENDATION: Approval

GENERAL INFORMATION:

LEGAL DESCRIPTION: Section 27.81 of the Lincoln Municipal Code.

ANALYSIS:

1. This proposal will allow the applicant or any aggrieved person, or Council member to appeal any administrative decision made by the Planning Director to the Planning Commission. Further appeal could continue on to the City Council.

2. Administrative approvals include zoning applications such as administrative amendments, administrative permits for personal wireless services and alternate locations for a replacement sign for nonconforming off-premises sign.

3. Currently Section 27.75.040 regarding the jurisdiction of the Board of Zoning Appeals (BZA) gives the Board the jurisdiction to hear appeals where it is alleged there is an error in any order, decision, or determination made by an administrative official.

   Administrative approvals or denials of waivers to the Subdivision Ordinance or Design Standards are processed through the Planning Commission with the option of further appeal to City Council.

   It is important that we have a consistent process for all zoning related appeals of administrative processes.

4. Since the Planning Commission and City Council are the bodies authorized to approve special permits, use permits and planned unit developments it makes sense that they would be better equipped to evaluate an appeal rather than the BZA.

5. Staff added Section 27.80.022 Notice of Administrative Approvals to make it clear how the public will be notified of administrative approvals. This is not clear in the existing ordinance. Although all administrative approvals are currently posted on our website, the weekly report that will be placed on the City Council agenda is new.

6. Under the proposed text, any aggrieved person could make an appeal of a decision of the Planning Director to the Planning Commission within 14 days of the approval. Within that 14 day appeal period, the applicant of the administrative amendment or final plat could get a building permit and start work on their project, but they would be doing so at their own risk.

7. Staff is not aware of ever having an appeal of an administrative amendment, and it is very rare to have an appeal of an approval of a final plat.

Prepared by:

Christy Eichorn
Planner

DATE: August 31, 2009

APPLICANT: Planning Director
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CHANGE OF ZONE NO. 09021

PUBLIC HEARING BEFORE PLANNING COMMISSION: September 9, 2009

Members present: Taylor, Esseks, Cornelius, Francis, Gaylor Baird and Sunderman; Larson, Lust and Partington absent.

Ex Parte Communications: None.

Staff recommendation: Approval

This application was removed from the Consent Agenda at the request of Planning staff.
Staff presentation: **Christy Eichorn of Planning staff** requested a two-week deferral due to some questions that have been raised by the development community that need to be addressed before moving forward.

This text amendment helps to clarify how someone might go about making an appeal of an administrative decision, such as an administrative amendment to a special permit, use permit or PUD. Generally, these administrative amendments are extremely minor and do not have a public hearing. If the amendment is determined not to be minor, the applicant is directed to bring the amendment forward to the Planning Commission. In any event, staff has determined that it is important to give the opportunity to appeal an administrative decision that might be made. This legislation provides the opportunity for appeal of the Planning Director decision to the Planning Commission, and then to appeal the Planning Commission decision to the City Council.

This text amendment also requires the action on administrative amendments to be posted on the City Web site (which is being done today), and to list the administrative amendments on the weekly City Council agenda to provide notice.

There was no other testimony in support or opposition.

Cornelius moved to defer for two weeks, with continued public hearing and action on Wednesday, September 23, 2009, seconded by Taylor and carried 6-0: Taylor, Esseks, Cornelius, Francis, Gaylor Baird and Sunderman voting 'yes'; Larson, Lust and Partington absent.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: September 23, 2009

Members present: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Partington, Sunderman and Taylor.

Ex Parte Communications: None.

Staff recommendation: Approval.

Staff presentation: **Christy Eichorn of Planning staff** explained that this proposal is another attempt to streamline the process because as the Planning Director makes administrative decisions we want a clean clear-cut way for appealing that decision, such as approvals of administrative

amendments to special permits or use permits or if the Planning Director makes an administrative decision to allow someone to move a billboard and someone wants to appeal that decision. Today, if you wanted to appeal an administrative decision, you would have to go to the Board of Zoning Appeals showing you were an aggrieved person and that the Planning Director action was somehow in error – and it is not entirely clear what "error" means.

In order to clarify that question and to make the process of appeal easy to understand and to streamline, the proposed text amendment provides that instead of going to the Board of Zoning Appeals with an alleged error, the applicant would appeal an administrative decision to Planning Commission to be taken up at a public hearing. Planning Commission is the appropriate body because the Planning Commission deals most often with use permits and special permits and might be familiar with the original permit as it went through the process.

Lust asked for a definition of "aggrieved person" and whether it is defined in the ordinance. Eichorn does not believe it is specifically defined in the ordinance. The Planning Commission would have to decide whether the appellant is an aggrieved person. **Rick Peo of City Law Department,** indicated that it will be a case law determination as to whether a person qualifies as aggrieved – whether it be a property owner or City Council members, etc., but beyond that you have to look to case law to determine what is an aggrieved person. Our guidelines talk about sending notice to people within 200' and perhaps they would be worthy of being an aggrieved party. It is not always going to be black and white.

Assuming the appellant is an aggrieved party, Lust inquired as to the procedure the Planning Commission would follow. Peo advised that it would be scheduled for public hearing before the Planning Commission with an independent review and decision.

There was no testimony in support or opposition.

ACTION BY PLANNING COMMISSION: September 23, 2009

Larson moved approval, seconded by Francis.

Sunderman believes this is somewhat of a clarification of what we already do and he agrees with bringing the appeals back in front of Planning Commission because that is where the decision is usually made in the first place.

Motion for approval carried 9-0: Francis, Gaylor Baird, Taylor, Larson, Cornelius, Lust, Partington, Esseks and Sunderman voting 'yes'. This is a recommendation to the City Council.