

## **FACTSHEET**

**TITLE:** **CHANGE OF ZONE NO. 3431**, a text amendment to Title 27 of the Lincoln Municipal Code, requested by Brian D. Carstens and Associates, to amend §27.03.470 to revise the definition of "Office Buildings" to include "medical testing laboratory", and to amend §§ 27.27.030, 27.28.040, 27.37.020 and 27.63.390 to allow "Medical Testing Laboratories" without a special permit in any zoning district that allows office buildings.

**SPONSOR:** Planning Department

**BOARD/COMMITTEE:** Planning Commission  
Public Hearing: 12/10/03 and 01/07/04  
Administrative Action: 01/07/04

**RECOMMENDATION:** Approval (8-0: Carlson, Krieser, Larson, Marvin, Sunderman, Pearson, Carroll and Bills-Strand voting 'yes'; Taylor absent).

**STAFF RECOMMENDATION:** Approval.

### **FINDINGS OF FACT:**

1. The purpose of this text amendment is to amend the definition of Office Building to allow Medical Testing Laboratories in any zoning district that allows office buildings, without a special permit. Office buildings are allowed in the O-1, O-2, O-3, R-T, B-1, B-2, B-3, B-4, B-5, H-2, H-3, I-1, I-2 and I-3 zoning district.
2. The applicant had originally made application to amend the zoning ordinance to allow medical testing laboratories in B-1; however, the application brought forward includes alternative language as proposed by the staff to clarify the definition and to include more zoning districts.
3. The applicant's testimony is found on p.5.
4. There was no testimony in opposition.
5. On January 7, 2004, the Planning Commission agreed with the staff recommendation and voted 8-0 to recommend approval.

**FACTSHEET PREPARED BY:** Jean L. Walker

**DATE:** January 20, 2004

**REVIEWED BY:** \_\_\_\_\_

**DATE:** January 20, 2004

**REFERENCE NUMBER:** FS\CC\2004\CZ.3431

# LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

## for January 7, 2004 PLANNING COMMISSION MEETING

**P.A.S.:** Change of Zone #3431

**PROPOSAL:** Amend Section 27.03.470 of the Zoning Ordinance to revise the definition of Office Buildings to include “medical testing laboratory” and amend Sections 27.27.030, 27.28.040, 27.37.020 and 27.63.390 of the Zoning Ordinance to allow Medical Testing Laboratories without a Special Permit.

**CONCLUSION:** This application is to amend the definition of Office Building to allow Medical Testing Laboratories. The impact of Medical Testing Laboratories in office buildings should not be significantly different than medical offices.

**RECOMMENDATION:**

Approval

### **HISTORY:**

1. Medical Testing Laboratories are permitted uses in the B-4, B-5, I-1 and I-2 zoning districts. Medical Testing Laboratories are allowed by special permit in the O-3 and RT zoning districts. The 1979 zoning update added Medical Testing Laboratories to the zoning code.
2. Change of Zone #2494 approved by City Council in September 1989 added Medical Testing Laboratories as a permitted use in the B-5 district.
3. Change of Zone #3113 approved by City Council on April 20, 1998 amended the definition of office buildings to add the following:

“Office buildings shall also include the use of an office or clinic by a practitioner, or a group of practitioners, in the field of medicine, dentistry, or podiatry; provided, however, that patients upon whom surgical procedures have been performed or who have otherwise received care or treatment at such office or clinic shall not be permitted to stay on the premises for recovery or observation for more than 24 hours.”

### **ANALYSIS:**

1. The proposed text change would allow medical testing laboratories in any zoning district that allows office buildings. Office buildings are allowed in O-1, O-2, O-3, RT, B-1, B-2, B-3, B-4, B-5, H-2, H-3, I-1, I-2 and I-3 zoning districts.
2. Medical Testing Laboratories are related to medical office. Medical offices are allowed in any zoning district that allows office buildings. Often some type of medical testing is performed within these offices. From a land use issue there does not appear to be any difference between a medical office and a medical testing laboratory. There does not seem to be any compelling reason to not allow medical testing labs in office buildings.

3. Concerns related to disposal of medical waste and/or the storage of hazardous chemicals on site are regulated by Nebraska Department of Environmental Quality (DEQ). DEQ regulates the disposal of medical waste through Title 132, hazardous waste through Title 128 and air quality through Title 129.
4. The State Department of Health and Human Services (HHS) administers the Clinical Laboratory Improvement Amendments (CLIA) for the federal government. Although CLIA does not regulate disposal or storage of hazardous waste and chemicals, it does ensure quality of laboratory testing. CLIA defines a laboratory as any facility which performs laboratory testing on specimens derived from humans for the purpose of providing information for the diagnosis, prevention, treatment of disease, or impairment of or assessment of health.
5. In The New Illustrated Book of Development Definitions by Harvey S. Moskowitz and Carl G. Lindbloom, Medical Building is defined as "A building that contains establishments dispensing health services." Health Services is defined as, "Health care facilities as well as establishments providing support to the medical profession and patients, such as medical and dental laboratories, blood banks, oxygen, and miscellaneous types of medical supplies and services." By the above definition medical testing laboratories would be allowed in medical offices such as doctors offices.
6. Medical Testing Laboratories would not include companies that manufacture products. That type of facility would be considered a manufacturing business and would have to locate in the appropriate zoning district.
7. Proposed Language:

### **Section 27.03.470 Office Buildings.**

#### **27.03.470 Office Building.**

Office building shall mean a building designed for or used as the office of professional, commercial, industrial, religious, institutional, public, or semipublic persons or organizations, provided no goods, wares, or merchandise shall be prepared or sold on any premises except that a portion of an office building may be occupied and used as a drugstore, barbershop, beauty parlor, shoeshine shop, cosmetologists shop, cigar stand, or newsstand when such uses are located entirely within the building with no entrance from the street nor visible from any sidewalk and having no sign or display visible from the outside of the building indicating the existence of such use. Broadcast stations, offices, and studios shall be considered to be office buildings; broadcast towers as defined in this title shall not be so considered.

Office buildings shall also include the use of an office or clinic by a practitioner, or group of practitioners, in the field of medicine; including other medical uses such as medical testing laboratories that perform routine clinical diagnostic tests on human or animal specimens; dentistry, or podiatry; provided, however, that patients upon whom surgical procedures have been performed or who have otherwise received care or treatment at such office or clinic shall not be permitted to stay on the premises for recovery or observation for more than 24 hours. Medical testing laboratories shall exclude any laboratory which is required by Federal law to hold a certificate of registration for their activity in compliance with CFR 42 Part 73, Selected Agents and Toxins.

8. Medical Testing Laboratories would be allowed in Sections 27.27.030, 27.28.040, 27.37.020 and 27.63.390 without a Special Permit.
9. The select agent program (42 CFR part 73) is a set of laws restricting possession of selected agents and toxins. The law applies to research, medical and veterinary labs. To have a select agent for study or diagnosis you must apply, have a security check through the F.B.I., have the program and facility reviewed and have the facility inspected and approved.

Prepared by:

Tom Cajka  
Planner

December 23, 2003

**Applicant:** Brian D. Carstens  
Brian D. Carstens & Associates  
601 Old Cheney Rd. Suite C  
Lincoln, NE 68512

**Contact:** same as applicant

## CHANGE OF ZONE NO. 3431

### **PUBLIC HEARING BEFORE PLANNING COMMISSION:**

December 10, 2003

Members present: Larson, Carlson, Marvin, Krieser, Taylor, Duvall and Bills-Strand.

Staff recommendation: Deferral until January 7, 2003.

Ex Parte Communications: None.

Carlson moved to defer, with continued public hearing and administrative action scheduled for January 7, 2004, seconded by Larson and carried 7-0: Larson, Carlson, Marvin, Krieser, Taylor, Duvall and Bills-Strand voting 'yes'.

### **CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

January 7, 2004

Members present: Carlson, Krieser, Larson, Marvin, Sunderman, Pearson, Carroll and Bills-Strand (Taylor absent).

Staff recommendation: Approval.

Ex Parte Communications: None.

#### Proponents

**1. Brian Carstens** appeared on behalf of **West Point LLC**. This fall, in an effort to redevelop the building at 5401 South Street, the applicant entered into an agreement to lease about 90% of that building for a medical testing laboratory. Carstens had originally requested an amendment to allow medical testing laboratories in the B-1 zoning district, and Planning staff was concerned about the definition. What is before the Commission is an alternative to the original application as developed by Planning staff and the Health Department.

There was no testimony in opposition.

### **ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**


January 7, 2004

Larson moved approval, seconded by Carlson and carried 8-0: Carlson, Krieser, Larson, Marvin, Sunderman, Pearson, Carroll and Bills-Strand voting 'yes'; Taylor absent. This is a recommendation to the City Council.





**Terry A Kathe**  
11/20/2003 12:06 PM

To: Thomas J Cajka/Notes@Notes  
cc:  
Subject: Re: zoning text change #3431 

Tom -

This department has no objection to the change in text.

TK  
Thomas J Cajka

**Thomas J Cajka**  
11/20/2003 12:02 PM

To: Terry A Kathe/Notes@Notes  
cc:  
Subject: zoning text change #3431

Due to the short work week next week, I will need your comments on this proposed zoning text change ASAP. This is the text change to allow Medical Testing Laboratories in the B-1 District.