MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, January 17, 2007, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska
MEMBERS IN ATTENDANCE:	Jon Carlson, Gene Carroll, Michael Cornelius, Dick Esseks, Gerry Krieser, Roger Larson, Lynn Sunderman and Tommy Taylor (Mary Strand absent); Marvin Krout, Ray Hill, Brian Will, Brandon Garrett, Teresa McKinstry and Michele Abendroth of the Planning Department; media and other interested citizens.
STATED PURPOSE OF MEETING:	Regular Planning Commission Meeting

Chair Jon Carlson called the meeting to order and requested a motion approving the minutes for the regular meeting held January 3, 2007. Motion for approval made by Carroll, seconded by Larson and carried 7-0: Carlson, Carroll, Cornelius, Esseks, Krieser, Larson and Taylor voting 'yes' (Sunderman abstaining and Strand absent).

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: January 17, 2007

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

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 06083, COMPREHENSIVE PLAN CONFORMANCE NO. 06017, COMPREHENSIVE PLAN CONFORMANCE NO. 06019, STREET AND ALLEY VACATION NO. 06009, STREET AND ALLEY VACATION NO. 06010 and STREET AND ALLEY VACATION NO. 06011.**

Ex Parte Communications: None.

Item No. 1.1, Change of Zone No. 06083, was removed from the Consent Agenda and scheduled for separate public hearing.

Sunderman moved to approve the remaining Consent Agenda, seconded by Krieser and carried 8-0: Carlson, Carroll, Cornelius, Esseks, Krieser, Larson, Sunderman and Taylor voting 'yes'; Strand absent. All recommendations to the City Council.

CHANGE OF ZONE NO. 06083,
FROM AG AGRICULTURAL DISTRICT TO I-1 INDUSTRIAL DISTRICT
ON PROPERTY GENERALLY LOCATED
AT N. 84TH STREET AND HIGHWAY 6.
PUBLIC HEARING BEFORE PLANNING COMMISSION: January 17, 2007

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

Staff recommendation: Approval.

Ex Parte Communications: None.

This application was removed from the Consent Agenda due to two letters received in opposition from Dennis Anderson and Scott Allen. The record also consists of two letters in support from Loren Neujahr and Fred Retzlaff.

Staff presentation: **Brandon Garrett of Planning staff** stated that this area was shown as industrial in the Comprehensive Plan. With the 2030 Comprehensive Plan update, there was a change in the designation to AG Agricultural. That has caused some confusion. The applicant is applying for change of zone to I-1 Industrial. The applicant met with staff before the adoption of the 2030 Comprehensive Plan. His assumptions were based on the previous plan. He was somewhat caught in the process. The application is for three acres. His piece is outside of the flood plain. The surrounding areas are in the 100-year flood plain. Some areas are in the 500-year flood plain. There is floodway to the north. This entire application is not in the flood prone areas. The building is entirely out of the flood plain. The zoning for the surrounding area is I-1 Industrial to the south, a few areas of AGR Agricultural Residential to the north, and the rest is AG Agricultural with some I-2 Industrial to the east. The corridor between Lincoln and Waverly is industrial in character.

Proponents

1. Danay Kalkowski appeared on behalf of Steve and Kim Harms and Charles and Marylinn Jetton. The Harms and Jettons own approximately 150 acres. This change of zone is for 2.9 acres. They run a garbage collection business. They own the property to the east and the south. The property on the west side of 84th St. is owned by Nebco. This property and some of the surrounding property was shown as industrial in 2025 Comprehensive Plan as well as the Nebco property. Mr. Harms became aware of zoning issues with the 2030 Comprehensive Plan process. As a result, the owner submitted an amendment to the 2030 Comprehensive Plan requesting that approximately six acres remain industrial. The Planning Dept. indicated that due to flood plain issues, a request for a change of zone up to four acres would be appropriate. As a result of that, the owner did not follow through with a comprehensive plan amendment. There is significant industrial development to the south. The Nebco property to the west is shown as industrial in the

Comprehensive Plan. The other large neighbor is the city. Once the zoning is in place, the applicant will comply with the screening requirements and will work with Building and Safety to make sure the building complies with the safety requirements.

Larson questioned if this will be for the storage and maintenance of the trucks. Kalkowski replied, “yes”.

Esseks asked what is the nature and magnitude of investment in this business. Steve Harms replied that the investment in the building itself is pushing $200,000.00.

Esseks questioned when the building was erected. Harms replied late winter 2005. They moved in approximately July of 2005.

Esseks wondered if there had been any investment in the driveway or facilities. Harms stated they knew this was not in the flood plain. They invested for AG Agricultural use and garbage trucks. He is also engaged in farming. The driveway is rock right now. The building is concreted inside.

Carlson believes this will be used to parks trucks and rolloffs. Harms stated that the trucks go out at approximately 5:30 a.m. and come back in the afternoon. There is no engine work done on this site. It is used for storage of the vehicles.

Krieser asked about the size of the building. Harms replied it is 60 feet by 105 feet and insulated.

Opposition

1. Scott Allen and Lynne Foxvog, 7801 N. 84th St. Scott Allen stated that they just purchased this property. They have a problem. This is a fairly pristine environment. There are no fences around the facility.

Lynne Foxvog stated that the agricultural building currently holds the trucks. There were no dumpsters when they moved into their property. The applicant has started to move in red dumpsters. This is one of their biggest concerns, trash and blowing trash. They keep the trucks in the building.

Allen foresees the high speed of the trucks being a problem. They kick up a lot of limestone. They are not following the speed laws. It is going to be a disaster. The area is primarily cornfield and pristine environment. He intends to do agriculture with his property. He is concerned that the first thing you see when you drive to his house is dirty stinky dumpsters. He is concerned about debris. The new building is beautiful.

Esseks wondered where they live. Allen replied they live about one city block away. Once the trucks get a run down the street, they are flying and kick up a lot of dust.

Foxvog noted that once the south wind blows, it will smell up their property.

Esseks questioned how many feet it is from the new building and parking storage to their driveway. Allen believes it is about 100 yards. Directly behind him is a large soccer field. There is a creek behind his property also. He wants an environment that is conducive to his investment.

Larson questioned how many acres Mr. Allen owns. Allen replied that he owns approximately 5 acres.

2. Marlene Tracy, 17500 N. 84th St. She travels this road quite frequently. The trucks pull out of the property with no regard to traffic. She has had to avoid getting hit. She believes it is a safety hazard. She thinks it is more than conceivable that the trucks will go down 84th St. to travel to the dump. She is concerned about increased traffic. The road between the trash facility and the Allens' has a low spot and is not in very good condition. She would like to speak about the applicant stating that the facility does not have any utilities. There is a light on the front of the building. She assumes that means he has electricity. She believes he also has a well. There are rolloff containers, mostly located around the farmhouse. Very few have been located around the area in question. If this is changed to I-1 Industrial zoning, maybe they should request both areas to be changed. She is concerned because this building was constructed on AG Agricultural land for AG Agricultural use. Shortly after, the garbage business moved in. This is another case of someone purchasing a piece of AG land, requesting a change, and it turns out to be another possible drag strip. This is frustrating for people who live in the county. It looks like spot zoning. Most of us in the area had no clue what was going on until we saw the garbage trucks on the property. She is asking the Planning Commission to deny the request for a change of zone.

Esseks wondered where her residence is located. Tracy replied she lives close to Davey Rd. She uses this road to come into town.

3. Dennis Anderson, 8000 N. 84th Street, lives in the same section of ground on the east side of 84th St., south side of Salt Creek. He has lived there for about 16 years. He is concerned with setting a precedent with allowing the zoning change. Right now, this building is 3/4 of a mile from his house. He is concerned that five years from now there will be another building that is 100 yards away. Is this a one time thing or will it expand again next year? He personally has not seen a lot of traffic except on the weekends. There is a housing development going on further north. The traffic will probably get worse. With regard to the issue of flood plain, he doesn't know how much of an impact that would have on potential zoning changes in the future. He does not want to see a precedent set.

Staff response

Esseks wondered about this piece of property and the new Comprehensive Plan update. Garrett replied that the current plan shows the future service limit along Cornhusker Highway. This property is just to the north and east of the future service limit. Surrounding property is designated as agricultural stream corridor.

Carlson questioned if the applicant will have to get a permit and if outdoor storage would need to be screened. Garrett replied that Building and Safety has indicated that screening would be required along N. 84th St. The applicant will be working with Building and Safety to bring the building up to code and all codes relating to the driveway and parking area will be addressed at that time. This initially did not go to Building and Safety for review. It was an agricultural building on agricultural property.

Response by the Applicant

Kalkowski stated that 84th St. is a major section line road. It is going to get a lot of traffic. There is already significant traffic that uses 84th St. There are roughly six to ten companies that use 84th St. to get to the landfill. The applicant intends to meet the screening requirements for the I-1 Industrial zoning. If screening is a big issue, they are willing to live by some additional screening requirements to make this more palatable to the neighbors. Any trucks or dumpsters stored on the site are empty. The owners have owned the farm since 1995. They did not just buy this. When it was turned into this use, she believes the use was consistent with what was shown in the Comprehensive Plan at the time. She believes that one of the major reasons the Comprehensive Plan designation was changed was the flood plain designation. While the property surrounding this property is flood plain, this property is clearly not in the flood plain. Industrial designation on the Nebco property goes all the way up to the creek. There are industrial uses to the south . She would not call this spot zoning due to surrounding land uses. The property owner to the north was concerned about additional zoning. She believes it is unlikely there will be a lot more industrial in this area due to the flood plain in the area.

Larson is somewhat confused as to how close the first person who testified in opposition lives. Kalkowski replied it is 5/10 and 6/10 of a mile away.

Sunderman wondered about the containers on the old home site. Kalkowski replied that if this zoning is approved, those containers would be moved to the I-1 property. They would be willing to address screening with landscaping.

Taylor questioned what could be done with the odor and how vehicles are maintained. Is storage of refuse allowed overnight? Harms replied that it is too expensive to leave trash in the vehicles with the price they pay at the dump.

Taylor wondered if the applicant has had any contact with the Health Dept. Kalkowski replied the Health Dept. would have submitted any comments or concerns to the Planning Dept. They did not appear to have any.

Taylor asked about traffic. Harms noted that there is a lot of traffic using N. 84th St. His drivers are instructed to keep it under the speed limit on gravel roads.

Esseks wondered about the scenario. This was built without a permit for AG use, now it is used for a refuse business. Harms replied that the farm was built in 1995. The building was put up in Spring 2005 thinking it would be a mixed use building. They knew it was designated down the road as I-1.

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Carroll moved approval with fencing and screening of the whole site, seconded by Larson.

Esseks will vote against this. He thinks people in business should follow appropriate procedures. This was supposed to be used for agricultural use. This request is coming after the incompatibility with existing uses.

Carroll remembers working on the Comprehensive Plan last fall. He remembers this site. The decision was made to change this to AG due to floodplain but leaving a small site for industrial. He believes this was discussed very thoroughly and knowing full well that this would probably happen. He believes the applicant took us at our word that this would be okay.

Larson remembers and agrees with Carroll.

Taylor will vote in favor of this application. This was projected to be zoned industrial. He thinks the proper steps have been taken. He has sympathy for the neighbors but he thinks they are far enough away where this operation should not affect their environment.

Motion for approval with condition carried 7-1: Carlson, Carroll, Cornelius, Krieser, Larson, Sunderman and Taylor voting ‘yes’; Esseks voting ‘no’; Strand absent. This is a recommendation to the City Council.

CHANGE OF ZONE 06084,
A TEXT AMENDMENT TO TITLE 27,
TO ALLOW A KENNEL AS A SPECIAL PERMITTED USE
IN THE H-4 GENERAL COMMERCIAL DISTRICT
AND THE I-1 INDUSTRIAL DISTRICT.
PUBLIC HEARING BEFORE PLANNING COMMISSION: January 17, 2007

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

Staff recommendation: Approval.

Ex Parte Communications: None.

Staff presentation: **Brian Will of Planning staff** submitted a letter of opposition from Nanci Kyhn.

He stated that this request is for a text amendment to the zoning ordinance. It adds a provision to make a kennel a special permit in the H-4 zoning district. These changes are being brought forward at the same time that the Health Dept. is considering changes to Title 6. Currently, kennels are prohibited inside city limits. This request was initially brought forward by the local franchise, Camp Bow Wow. Those amendments to Title 6 are being discussed by the Board of Health. The Planning Dept. thought it appropriate to consider changes to Title 27. At this time, the staff is requesting a four-week delay. He believes there will be proposed amendments suggested today. The H-3 zoning district is similar to H-4. He believes the applicant might propose that kennels be allowed in H-3. Any outdoor storage associated with vet clinics, dog runs, etc., are currently prohibited and this needs to be addressed.

Marvin Krout, Director of Planning, stated that due to the fact that staff is asking for a deferral, there will almost certainly be additional testimony. He would like to see a motion at the end of the public hearing so all opinions can be heard.

Proponents

1. Peter Katt appeared on behalf of Tom and Colleen Ryan. They are franchisers of Camp Bow Wow, headquartered in Boulder, Colorado. They have been somewhat stymied by different regulations. Kennels are also licensed by the State Dept. of Agriculture. He believes they are also a permitted use in I-2, but you can't locate in that district due to Health Dept. regulations. Kennels can be operated by Animal Control, humane societies or facilities operated by a licensed veterinarian.

Katt submitted that the issues are twofold. Currently, in the City of Lincoln, there are boarding facilities. The yellow pages show pet boarding. Commercial kennels are

operated by veterinary animal clinics in the City of Lincoln. In B-1, B-2, B-3, H-1, H-2 and H-3, those facilities are authorized as hospitals and clinics but not boarding kennels. Boarding has been an accessory use. An accessory use is incidental to the main use of the premise. The existing businesses have some issues with land use compliance. He presented a map showing existing animal clinics in the city. He proposes what he believes is a good solution to make all the clinics lawful. A number of spaces for commercial boarding kennels would be found.

Taylor wondered about the average size of a kennel in Lincoln. Katt does not know. He believes the average of 60 would be correct. Competitors have been a little reticent to supply him with numbers. He sees current regulations for boarding being only related to medical care. People want nice, clean, good facilities for their pets conveniently located. He believes this use should be accommodated. Indoor boarding kennels are not a toxic use in the city.

Carlson wondered about kennels in B-1 district. He thinks there needs to be research to see what districts currently have hospitals operating today. Katt is sure the information could be obtained from the Dept. of Agriculture. Carlson sees size of the operation being considered. Katt does not know the sizes. The size being proposed by his client would be 60.

Sunderman wondered if there is a size regulation, etc. Katt replied that is regulated by the Health Dept.

Sunderman questioned the size of the building that would be needed. Katt replied 8,000 square feet.

Opposition

1. Henry Sader, Wilderness Kennels, 2030 Saltillo Road, Roca, testified in opposition. He is concerned whether there is a need to have kennels allowed in the city limits. He was forced to build outside the city limits on a certain number of acres. He wouldn't look at allowing kennels as a strip mall type boarding facility. This would open up to groom shops and pet shops who would be able to board animals. This will create a lot of turmoil down the road; the waste, the nuisance and the barking. There will be a lot more to changing this. In light of the Planning Dept. recommendation, if there is any further discussion, he would like to review and address it.

2. Mike Anderson, Driftwood Kennels, 100 McKelvie Road (located north of Fallbrook), testified in opposition. His facility was built in 2003. This is a complicated issue. There are health, zoning and state agriculture issues. There are the issues of the pets themselves. These laws and ordinances have been on the books for a long time. He purchased 24 acres for his business. This would open the door for unfriendly or unfair competition for existing kennels that have abided by the law. It would be an advantage to be in the city.

There is the issue of the animals. He is sure this is a tremendous organization. He is concerned about the availability of anyone to walk in and become a dog kennel. He is also concerned with the fact that there are health issues involved. Everyone talks about the need for more kennels in the City of Lincoln. He does not currently operate at 100 percent capacity. It fluctuates up and down. Fairness should be considered.

Sunderman wondered about the size of Anderson's kennel. Anderson replied he can accommodate 50 animals with an average stay of about three to five days.

Anderson stated that one of the reasons behind the current 20 acre requirement would be the noise issue. If you allow 100 feet between a kennel and a residence, it would defeat the purpose of him having 20 acres.

Staff response

Will stated that the amendments to Title 6 being considered by the Board of Health would ultimately be reviewed by the City Council. He mentioned that Judy Halstead from the Board of Health was present today if the Commissioners had any questions. As far as any revised language, a revised staff report would be published and made available before the next public hearing.

Krout stated that some more research needs to be done on this issue. He suspects there is no more than incidental boarding. The larger facilities that they know of are in the H-3 and H-4 districts. His inclination is to suggest that a substantial kennel with outside runs should be in the more intensive commercial districts and not in office or business districts, and certainly not by right. Staff is struggling with the wording. One of the issues that came up at the Health Board meeting is that with city expansion, the city would be annexing kennels that are currently outside the city limits. If a kennel is annexed and the health code is not changed, the health code would override the grandfathering of a non-conforming use. As far as he knows, it is not a state requirement to have 20 acres for a kennel. In AG, you have 20 acres for any kind of use.

Taylor questioned incidental boarding. Is it allowed for strictly medical related only? Krout replied this is where the research needs to be done. The way this is interpreted today, that is the only type of boarding that is allowed in the city. He is guessing that there is some type of boarding being done where the boarding is independent, but it is relatively small. That is different than a facility at S. 56th & Hwy. 2 where there are 50 spaces for boarding. That is certainly not incidental and he believes Building and Safety would surely say it is not a legal use.

ACTION BY PLANNING COMMISSION: January 17, 2007

Taylor moved a four week deferral, seconded by Sunderman and carried 8-0: Carlson, Carroll, Cornelius, Esseks, Krieser, Larson, Sunderman and Taylor voting 'yes'; Strand absent. This application will have continued public hearing before Planning Commission on February 14, 2007.

There being no further business, the meeting was adjourned at 2:30 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on January 31, 2007.

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