LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for JANUARY 31, 2007 PLANNING COMMISSION MEETING

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.

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:

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Ray F. Hill, Planner

DATE: January 18, 2007

APPLICANT: Marvin Krout, Director of Planning
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Same address

Proposed text is attached.

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06-
Change of Zone 06062

Introduce:

ORDINANCE NO. _____

AN ORDINANCE amending Title 27 of the Lincoln Municipal Code relating to Zoning by amending Section 27.27.080, 27.28.090, 27.31.100, 27.37.070, and 27.51.100 relating to the O-3 Office Park District, R-T Residential Transition District, B-2 Planned Neighborhood Business District, B-5 Planned Regional Business District, I-3 Employment Center District, respectively, by amending said sections to add a new subsection requiring the Planning Commission to take final action or make a required report and recommendation within twelve weeks following the date of their first public hearing on the matter and upon failure thereof authorizing the applicant to appeal to the City Council requesting final action, and providing that all applications which have been placed on pending by the applicant shall automatically expire one year thereafter unless the applicant requests the application be removed from pending prior to the expiration date; amending Section 27.60.040 relating to Planned Unit Developments to require the Planning Commission to issue its report to the City Council within twelve weeks from the date of their first public hearing on the application and upon failure thereof authorizing the applicant to appeal to the City Council requesting final action and adding a provision providing that applications placed on pending by the applicant shall automatically expire one year thereafter unless the applicant files a request with the Planning Director requesting that the application be removed from pending; amending Section 27.63.020 relating to special permits to require the Planning Commission to make its decision and/or to issue its report to the City Council within twelve weeks from the date of their first public hearing on the application and upon failure thereof authorizing the applicant to appeal to the City Council requesting final action and adding a provision providing that applications placed on pending by the applicant shall automatically expire one year thereafter unless the applicant files a request with the Planning Director requesting that the application be removed from pending; amending Section 27.65.030 relating to Community Unit Plans to require the Planning Commission to make its

decision and/or to issue its report to the City Council within twelve weeks from the date of their first public hearing on the application and upon failure thereof authorizing the applicant to appeal to the City Council requesting final action and adding a provision providing that applications placed on pending by the applicant shall automatically expire one year thereafter unless the applicant files a request with the Planning Director requesting that the application be removed from pending; and amending Section 27.81.040 relating to amendments to the Zoning Code to require the Planning Commission to submit its recommendation report to the City Council within twelve weeks following the date of their first public hearing on the change of zone, and adding a provision that applications placed on pending by the applicant shall automatically expire one year thereafter unless the applicant files a request with the Planning Director requesting that the application be removed from pending; and repealing Sections 27.27.080, 27.28.090, 27.31.100, 27.37.070, 27.51.100, 27.60.040, 27.63.020, 27.65.030 and 27.81.040 of the Lincoln Municipal Code as hitherto existing.

BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

Section 1. That Section 27.27.080 of the Lincoln Municipal Code be amended to read as follows:

27.27.080 Use Permit; Procedures and Requirements.

(a) Minimum requirements: No use permit shall be granted upon any property having a total area of less than two acres, except as otherwise provided herein, nor for any plan unless it is in conformance with all applicable city standards and with all regulations of the applicable sections of this chapter. The Planning Commission shall impose such conditions as are appropriate and necessary to ensure compliance with the Comprehensive Plan and protect the health, safety, and general welfare in the issuance of any such use permits. Such conditions may include an increase in the minimum yard requirements and decrease in the maximum height restrictions set forth in this chapter. Lots fronting on private roadways may be permitted. Unless expressly modified by the terms of the use permit, all regulations of the O-3 Office Park District shall apply.

(b) Application requirements: Applications for a use permit under this section shall be filed in writing by the owner on a form provided by the city with the Planning Department. Where any portion of the land area of a use permit for technology transfer industries or applications is proposed to be adjacent to the perimeter of the O-3 zoning district and such use is not permitted in the adjacent zoning district, then the applicant must provide information demonstrating how the proposal will mitigate any negative impacts on the adjacent zoning district. The Planning Commission may impose such other standards and requirements for perimeter treatment as are appropriate and necessary to protect adjoining properties from adverse effects and to achieve an appropriate transition of land uses and densities. A preliminary plan shall accompany each application and shall include the following information:

(1) Boundary survey and gross acreage;

(2) Contour lines at intervals not to exceed five feet based on NAVD 1988. Spot elevations on 100-foot grid shall be required to fully indicate the topography on flat land;

(3) Street right-of-way;

(4) Utility easements;

(5) Adjacent land use and zoning classifications;

(6) Location of structures on property;

(7) Vicinity map;

(8) Date prepared, scale, and north point;

(9) Schematic and location of buildings;

(10) Parking areas and capacity;

(11) Open space for residential uses;

(12) Use of buildings, such as retail, service, restaurant, office, residential, and other uses;

(13) Height of buildings;

(14) Location of existing trees and proposed landscape plan;

(15) Proposed vehicular and pedestrian circulation system including egress and ingress;

(16) Building and parking setback lines;

(17) Grading plan;

(18) On-site and off-site water and sanitary sewer improvements;

(19) On-site and off-site drainage and storm sewer improvements;

(20) Location of proposed free-standing signs;

(21) Cross-section for paving of parking lots and sidewalks;

(22) Proposed name of the shopping center;

(23) Name, address, and telephone number of developer; certified record owner or owners and addresses; and legal description of the proposed use permit area, including the number of acres.

(c) Environmental performance standards: Any applicant for a use permit under the provisions of this section shall comply with environmental performance standards relating to noise, emission, dust, odor, glare, and heat as shall be from time to time established by various municipal departments and approved by resolution of the City Council.

(d) Landscape plan: Each application for a use permit under this section shall include a landscape plan which shall show proposed plantings in conformance with city standards in all required yard areas, open space areas, malls, parking areas, and around proposed buildings. The Planning Director shall develop appropriate written standards for such landscape plans, which standards shall be approved by resolution of the City Council.

(e) Planning Commission review: Upon the filing of an application together with all maps, data, and information required by this section, the City Council shall refer the application to the Planning Commission. The Planning Commission shall hold a public hearing upon such application and shall consider the effect of the proposed use upon the surrounding neighborhood, the community as a whole, and other matters relating to public health, safety, and general welfare.

(f) Planning Commission action: After holding at least one public hearing, the Planning Commission shall proceed to give final consideration to the application and may require that certain conditions be fulfilled by the applicant in conjunction with approval of the use permit applied for, and may include the requirement that applicant grant additional right-of-way in accordance with the Comprehensive Plan. The Planning Commission may require the execution of a written agreement with the city relating to the installation of public improvements by the applicant, together with the execution of performance bonds or provision of other appropriate surety relating thereto. The installation of all public improvements shall be accomplished in compliance with existing city standards as provided by ordinance or by departmental publications approved by resolution of the City Council. ~~In the event the Planning Commission fails to act upon the application within sixty days from the date of referral, the applicant may appeal to the City Council requesting final action. If the City Council determines that the delay of the Planning Commission is unjustified, it shall direct the commission to act upon the application no later than the commission's next regularly scheduled meeting.~~

(g) Appeal of Planning Commission action:

(1) Any aggrieved person or any person or group officially designated to participate in the administration of this title may appeal any action of the Planning Commission to the City Council by filing notice of appeal with the City Clerk within fourteen days following the action of the Planning Commission.

(2) Upon receipt of the appeal by the City Council, the council shall hold a public hearing thereon within thirty days from the date of appeal. Notice of the public hearing shall be given as provided in Chapter 27.81.

(3) In exercising its appellate jurisdiction, the action appealed from shall be deemed advisory and the City Council may, after public hearing, in conformity with the provisions of this title make such decision as ought to be made.

(h) Adjustment: Upon request of the applicant, the City Council may, after report and recommendation of the Planning Commission, decrease the minimum yard requirements and

increase the maximum height restrictions set forth in this chapter at the periphery of the use permit area consistent with adequate protection of the environment of the use permit area and adjacent areas. Upon the request of the applicant, the City Council may, after report and recommendation of the Planning Commission, decrease the minimum yard requirements and increase the maximum height restrictions and may adjust the requirements relative to the location of buildings, required parking spaces, and lot frontage set forth in this chapter in the interior of the use permit area consistent with the adequate protection of the environment of the use permit area. The Planning Commission shall hold a public hearing upon the requested adjustment at the same time that it hears the application for the use permit and shall make a report to the City Council regarding the effect the proposed use and adjustment has upon the surrounding neighborhood, the community as a whole, and other matters relating to public health, safety, and general welfare. Upon receiving a report from the Planning Commission, the City Council shall take final action upon the application for the use permit and the requested adjustment.

(i) Amendment: The Planning Director is authorized to approve amendments to any use permit granted under this section, provided that:

(1) A request for amendment is filed with the Planning Director, together with any of the information specified in paragraph (b) above which is pertinent to the proposed amendment;

(2) Such amendment shall not violate any provisions of this title;

(3) Such amendment may provide for minor increases in total floor area and storage space originally permitted;

(4) There is no increase in the number of dwelling units;

(5) No reduction is made to the applicable setback or yard requirements;

(6) No public land is accepted;

(7) Such amendment shall not be contrary to the general purpose of this chapter;

(8) Any amendment not in conformance with this paragraph shall be submitted to the Planning Commission in the same manner as an original application for a use permit.

(j) Building permits, certificates of occupancy, and certificates of compliance: Upon the approval of a use permit as provided for under this section, building permits and certificates of occupancy may be issued. Certificates of compliance shall not be issued until there has been compliance with all conditions of a use permit and subsequent amendments within each phase of development of a use permit.

(k) Preexisting uses: An existing use of a type permitted in this chapter which was lawfully established in this district on the effective date of this title shall be deemed to have received a use permit as herein required and shall be provided with such permit by the Director of Building and Safety upon request, and it shall not be a nonconforming use; provided, however, for any enlargement, extension, or relocation of such existing use, an application in conformance with this section shall be required.

(l) If an application for a use permit located within a flood plain is granted approval by the city, it shall not be necessary for the applicant to make an application for a special permit to be approved by the City Council as required by Resolution Nos. A-55150, A-56382, and A-57540. It shall be presumed that the applicant has received all such approvals as may be required by the foregoing resolutions by virtue of the city granting approval to the use permit.

(m) A use permit may be granted for a lot of less than two acres, provided:

(1) The lot was legally created prior to the effective date of this ordinance; and

(2) The lot has remained under separate ownership from adjoining properties in the O-3 district.

The Planning Commission may, under the above conditions, adjust the requirements under paragraph (a) to permit the applicant a reasonable use of his property.

<u>(n) Failure of Planning Commission to act in a timely manner. In the event the Planning Commission fails to take final action upon an application for a use permit or fails to make a required report and recommendation within twelve weeks following the date of their first public hearing on the matter, the applicant may appeal to the City Council requesting final action by filing a notice of appeal with the City Clerk unless the delay is at the request of or due to the default of the applicant.</u>

Upon receipt of the appeal, the City Council shall hold a public hearing thereon within thirty days from the date of the appeal. Notice of public hearing shall be given as provided in Chapter 27.81. The City Council may, after public hearing in conformity with the provisions of this chapter, make such decision as ought to be made.

(o) Expiration of Application. All existing applications for a use permit which have been placed on pending by an applicant shall automatically expire and become null and void one year after the date this ordinance (Change of Zone No. 06062). All such applications which have been placed on pending by an applicant after the effective date of this ordinance (Change of Zone No. 06062) shall automatically expire and become null and void one year thereafter. At least thirty days before the date of expiration, the Planning Director shall cause notice of expiration to be sent to the applicant by regular United States mail, postage prepaid. Said notice shall advise the applicant that the application shall automatically expire unless prior to the expiration date, the Planning Director receives a request from the applicant to remove the application from pending and reschedule the matter on the Planning Commission or City Council agenda as appropriate.

Section 2. That Section 27.28.090 of the Lincoln Municipal Code be amended to read as follows:

27.28.090 Use Permit; Procedures and Requirements.

(a) Minimum requirements: The Planning Commission shall impose such conditions as are appropriate and necessary to ensure compliance with the Comprehensive Plan and protect the health, safety, and general welfare in the issuance of any such use permit. Such conditions may include an increase in the minimum yard requirements and decrease in the maximum height restrictions set forth in this chapter. Lots fronting on private roadways may be permitted. Unless expressly modified by the terms of the use permit, all regulations of the R-T Residential Transition District shall apply.

(b) Application requirements: Applications for a use permit under this section shall be filed by the owner in writing on a form provided by the city with the Planning Department. Plans shall accompany each application and shall include the following information:

(1) Boundary survey and gross acreage;

(2) Contour lines at intervals not to exceed five feet based on NAVD 1988. Spot elevations on 100-foot grid shall be required to fully indicate the topography on flat land;

(3) Street right-of-way;

(4) Utility easements;

(5) Adjacent land use and zoning classifications;

(6) Location of structures on property;

(7) Vicinity map;

(8) Date prepared, scale, and north point;

(9) Schematic and location of buildings;

(10) Parking areas and capacity;

(11) Use of buildings, such as retail, service, restaurant, office, residential, and other uses;

(12) Height of buildings;

(13) Location of existing trees and proposed landscape plan;

(14) Proposed vehicular and pedestrian circulation system including egress and ingress;

(15) Building and parking setback lines;

(16) Grading plan;

(17) On-site and off-site water and sanitary sewer improvements;

(18) On-site and off-site drainage and storm sewer improvements;

(19) Location of proposed free-standing signs;

(20) Cross-section for paving of parking lots and sidewalks;

(21) Name, address, and telephone number of developer; certified record owner or owners and addresses; and legal description of the proposed use permit area, including the number of acres.

(c) Environmental performance standards: Any applicant for a use permit under the provisions of this section shall comply with environmental performance standards relating to noise, emission, dust, odor, glare, and heat as shall be from time to time established by various municipal departments and approved by resolution of the City Council.

(d) Landscape plan: Each application for a use permit under this section shall include a landscape plan which shall show proposed plantings in conformance with city standards in all required yard areas, open space areas, malls, parking areas, and around proposed buildings. The Planning Director shall develop appropriate written standards for such landscape plans, which standards shall be approved by resolution of the City Council.

(e) Planning Commission review: Upon the filing of an application together with all maps, data, and information required by this section, the City Council shall refer the application to the Planning Commission. The Planning Commission shall hold a public hearing upon such application and shall consider the effect of the proposed use upon the surrounding neighborhood, the community as a whole, and other matters relating to public health, safety, and general welfare.

(f) Planning Commission action: After holding at least one public hearing, the Planning Commission shall proceed to give final consideration to the application and may require that certain conditions be fulfilled by the applicant in conjunction with approval of the use permit applied for, and may include the requirement that applicant grant additional right-of-way in accordance with the comprehensive plan. The Planning Commission may require the execution of a written agreement with the city relating to the installation of public improvements by the applicant, together with the execution of performance bonds or provision of other appropriate surety relating thereto. The installation of all public improvements shall be accomplished in compliance with existing city standards as provided by ordinance or by departmental publications approved by resolution of the City Council. ~~In the event the Planning Commission fails to act upon the application within sixty~~

~~days from the date of referral, the applicant may appeal to the City Council requesting final action. If the City Council determines that the delay of the Planning Commission is unjustified, it shall direct the commission to act upon the application no later than the Commission's next regularly scheduled meeting.~~

(g) Appeal of Planning Commission action:

(1) Any aggrieved person or any person or group officially designated to participate in the administration of this title may appeal any action of the Planning Commission to the City Council by filing notice of appeal with the City Clerk within fourteen days following the action of the Planning Commission.

(2) Upon receipt of the appeal by the City Council, the council shall hold a public hearing thereon within thirty days from the date of appeal. Notice of the public hearing shall be given as provided in Chapter 27.81.

(3) In exercising its appellate jurisdiction, the action appealed from shall be deemed advisory and the City Council may, after public hearing, in conformity with the provisions of this title make such decision as ought to be made.

(h) Adjustment: Upon request of the applicant, the City Council may, after report and recommendation of the Planning Commission, decrease the minimum yard requirements and increase the maximum height restrictions and may adjust the requirements relative to the location of buildings and required parking spaces and lot frontage set forth in this chapter consistent with adequate protection of the environment of the use permit area and adjacent areas provided the building shall not exceed the height of the tallest residence on the same and facing block fronts. The Planning Commission shall hold a public hearing upon the requested adjustment at the same time that it hears the application for the use permit and shall make a report to the City Council regarding the effect the proposed use and adjustment has upon the surrounding neighborhood, the community as a whole, and other matters relating to public health, safety, and general welfare. Upon receiving a report from the Planning Commission, the City Council shall take final action upon the application for the use permit and the requested adjustment.

(i) Amendment: The Planning Director is authorized to approve amendments to any use permit granted under this section, provided that:

(1) A request for amendment is filed with the Planning Director, together with any of the information specified in paragraph (b) above which is pertinent to the proposed amendment;

(2) Such amendment shall not violate any provisions of this title;

(3) Such amendment may provide for minor increases in total floor area and storage space originally permitted;

(4) There is no increase in the number of dwelling units;

(5) No reduction is made to the applicable setback or yard requirements;

(6) No public land is accepted;

(7) Such amendment shall not be contrary to the general purpose of this chapter;

(8) Any amendment not in conformance with this paragraph shall be submitted to the Planning Commission in the same manner as an original application for a use permit.

(j) Building permits, certificates of occupancy, and certificates of compliance: Upon the approval of a use permit as provided for under this section, building permits and certificates of occupancy may be issued. Certificates of compliance shall not be issued until there has been compliance with all conditions of a use permit and subsequent amendments within each phase of development of a use permit.

(k) Preexisting uses: An existing use of a type permitted in this chapter which was lawfully established in this district on the effective date of this title shall be deemed to have received a use permit as herein required and shall be provided with such permit by the Director of Building and Safety upon request, and it shall not be a nonconforming use; provided, however, for any enlargement, extension, or relocation of such existing use, an application in conformance with this section shall be required.

(l) If an application for a use permit located within a flood plain is granted approval by the city, it shall not be necessary for the applicant to make an application for a special permit to be

approved by the City Council as required by Resolution Nos. A-55150, A-56382, and A-57540. It shall be presumed that the applicant has received all such approvals as may be required by the foregoing resolutions by virtue of the city granting approval to the use permit.

(m) Failure of Planning Commission to act in a timely manner. In the event the Planning Commission fails to take final action upon an application for a use permit or fails to make a required report and recommendation within twelve weeks following the date of their first public hearing on the matter, the applicant may appeal to the City Council requesting final action by filing a notice of appeal with the City Clerk unless the delay is at the request of or due to the default of the applicant. Upon receipt of the appeal, the City Council shall hold a public hearing thereon within thirty days from the date of the appeal. Notice of public hearing shall be given as provided in Chapter 27.81. The City Council may, after public hearing in conformity with the provisions of this chapter, make such decision as ought to be made.

(n) Expiration of Application. All existing applications for a use permit which have been placed on pending by an applicant shall automatically expire and become null and void one year after the date this ordinance (Change of Zone No. 06062). All such applications which have been placed on pending by an applicant after the date of this ordinance (Change of Zone No. 06062) shall automatically expire and become null and void one year thereafter. At least thirty days before the date of expiration, the Planning Director shall cause notice of expiration to be sent to the applicant by regular United States mail, postage prepaid. Said notice shall advise the applicant that the application shall automatically expire unless prior to the expiration date, the Planning Director receives a request from the applicant to remove the application from pending and reschedule the matter on the Planning Commission or City Council agenda as appropriate.

Section 3. That Section 27.31.100 of the Lincoln Municipal Code be amended to read as follows:

27.31.100 Use Permit; Procedures and Requirements.

(a) Minimum requirements: No use permit shall be granted upon any property having a total area of less than five acres, except as provided under Section 27.31.100(k), nor for any plan unless it is in conformance with all applicable city standards and with all regulations of the applicable sections of this chapter. The Planning Commission shall impose such conditions as are appropriate and necessary to ensure compliance with the Comprehensive Plan and protect the health, safety, and general welfare in the issuance of any such use permits. Such conditions may include an increase in the minimum yard requirements and decrease in the maximum height restrictions set forth in this chapter. Lots fronting on private roadways may be permitted. Unless expressly modified by the terms of the use permit, all regulations of the B-2 Planned Neighborhood Business District shall apply.

(b) Application requirements: Applications for a use permit under this section shall be filed by the owner in writing on a form provided by the city with the Planning Department. A preliminary plan shall accompany each application and shall include the following information:

(1) Boundary survey and gross acreage;

(2) Contour lines at intervals not to exceed five feet based on NAVD 1988. Spot elevations on 100-foot grid shall be required to fully indicate the topography on flat land;

(3) Street right of way;

(4) Utility easements;

(5) Adjacent land use and zoning classifications;

(6) Location of structures on property;

(7) Vicinity map;

(8) Date prepared, scale and north point;

(9) Schematic and location of buildings;

(10) Parking areas and capacity;

(11) Open space for residential uses;

(12) Use of buildings, such as retail, service, restaurant, office, residential and other uses;

(13) Height of buildings;

(14) Location of existing trees and proposed landscape plan;

(15) Proposed vehicular and pedestrian circulation system including egress and ingress;

(16) Building and parking setback lines;

(17) Grading plan;

(18) On-site and off-site water and sanitary sewer improvements;

(19) On-site and off-site drainage and storm sewer improvements;

(20) Location of proposed free-standing signs;

(21) Cross-section for paving of parking lots and sidewalks;

(22) Proposed name of the shopping center;

(23) Name, address, and telephone number of developer; certified record owner or owners and addresses; and legal description of the proposed use permit area, including the number of acres.

(c) Environmental performance standards: Any applicant for a use permit under the provisions of this section shall comply with environmental performance standards relating to noise, emission, dust, odor, glare, and heat as shall be from time to time established by various municipal departments and approved by resolution of the City Council.

(d) Landscape plan: Each application for a use permit under this section shall include a landscape plan which shall show proposed plantings in conformance with city standards in all required yard areas, open space areas, malls, parking areas and around proposed buildings. The Planning Director shall develop appropriate written standards for such landscape plans, which standards shall be approved by resolution of the City Council.

(e) Planning Commission review: Upon the filing of an application together with all maps, data, and information required by this section, the City Council shall refer the application to

the Planning Commission. The Planning Commission shall hold a public hearing upon such application and shall consider the effect of the proposed use upon the surrounding neighborhood, the community as a whole, and other matters relating to public health, safety, and general welfare.

(f) Planning Commission action: After holding at least one public hearing, the Planning Commission shall proceed to give final consideration to the application and may require that certain conditions be fulfilled by the applicant in conjunction with approval of the use permit applied for, and may include the requirement that applicant grant additional right of way in accordance with the Comprehensive Plan. The Planning Commission may require the execution of a written agreement with the city relating to the installation of public improvements by the applicant, together with the execution of performance bonds or provision of other appropriate surety relating thereto. The installation of all public improvements shall be accomplished in compliance with existing city standards as provided by ordinance or by departmental publications approved by resolution of the City Council. ~~In the event the Planning Commission fails to act upon the application within sixty days from the date of referral, the applicant may appeal to the City Council requesting final action. If the City Council determines that the delay of the Planning Commission is unjustified, it shall direct the commission to act upon the application no later than the commission's next regularly scheduled meeting~~.

(g) Appeal of Planning Commission action:

(1) Any aggrieved person or any person or group officially designated to participate in the administration of this title may appeal any action of the Planning Commission to the City Council by filing notice of appeal with the City Clerk within fourteen days following the action of the Planning Commission.

(2) Upon receipt of the appeal by the City Council, the council shall hold a public hearing thereon within thirty days from the date of appeal. Notice of the public hearing shall be given as provided in Chapter 27.81.

(3) In exercising its appellate jurisdiction, the action appealed from shall be deemed advisory and the City Council may, after public hearing, in conformity with the provisions of this title make such decision as ought to be made.

(h) Adjustment of yard requirements and height restrictions: Upon request of the applicant, the City Council may, after report and recommendation of the Planning Commission, decrease the minimum yard requirements and increase the maximum height restrictions and may adjust the requirements relative to the location of buildings and required parking spaces and lot frontage set forth in this chapter consistent with adequate protection of the environment of adjacent land uses. The Planning Commission shall hold a public hearing upon the requested adjustment at the same time that it hears the application for the use permit and shall make a report to the City Council regarding the effect the proposed use and adjustment has upon the surrounding neighborhood, the community as a whole, and other matters relating to public health, safety, and general welfare. Upon receiving a report from the Planning Commission, the City Council shall take final action upon the use permit and the adjustment.

(i) Amendment: The Planning Director is authorized to approve amendments to any use permit granted under this section, provided that:

(1) A request for amendment is filed with the Planning Director, together with any of the information specified in paragraph (b) above which is pertinent to the proposed amendment;

(2) Such amendment shall not violate any provisions of this title;

(3) Such amendment may provide for minor increases in total floor area and storage space originally permitted;

(4) There is no increase in the number of dwelling units;

(5) No reduction is made to the applicable setback or yard requirements;

(6) No public land is accepted;

(7) Such amendment shall not be contrary to the general purpose of this section as specified in Section 27.31.020;

(8) Any amendment not in conformance with this paragraph shall be submitted to the Planning Commission in the same manner as an original application for a use permit.

(j) Building permits, certificates of occupancy, and certificates of compliance: Upon the approval of a use permit as provided for under this section, building permits and certificates of occupancy may be issued. Certificates of compliance shall not be issued until there has been compliance with all conditions of a use permit and subsequent amendments within each phase of development of a use permit.

(k) Preexisting uses: An existing use of a type permitted in this chapter which was lawfully established in this district on the effective date of this title shall be deemed to have received a use permit as herein required and shall be provided with such permit by the Director of Building and Safety upon request, and it shall not be a nonconforming use; provided, however, for any enlargement, extension, or relocation of such existing use, an application in conformance with this section shall be required.

(l) A use permit may be granted for a lot of less than five acres, provided:

(1) The lot was legally created prior to the effective date of this ordinance;

(2) The lot has remained under separate ownership from adjoining properties in the B-2 district.

The Planning Commission may, under the above conditions, adjust the requirements under paragraph (b) to permit the applicant a reasonable use of his property.

(m) If an application for a use permit located within a flood plain is granted approval by the city, it shall not be necessary for the applicant to make an application for a special permit to be approved by the City Council as required by Resolution Nos. A-55150, A-56382, and A-57540. It shall be presumed that the applicant has received all such approvals as may be required by the foregoing resolutions by virtue of the city granting approval to the use permit.

(n) Failure of Planning Commission to act in a timely manner. In the event the Planning Commission fails to take final action upon an application for a use permit or fails to make a required report and recommendation within twelve weeks following the date of their first public hearing on the matter, the applicant may appeal to the City Council requesting final action by filing a notice of appeal with the City Clerk unless the delay is at the request of or due to the default of the applicant. Upon receipt of the appeal, the City Council shall hold a public hearing thereon within thirty days from the date of the appeal. Notice of public hearing shall be given as provided in Chapter 27.81. The City Council may, after public hearing in conformity with the provisions of this chapter, make such decision as ought to be made.

(o) Expiration of Application. All existing applications for a use permit which have been placed on pending by an applicant shall automatically expire and become null and void one year after the date this ordinance (Change of Zone No. 06062). All such applications which have been placed on pending by an applicant after the date of this ordinance (Change of Zone No. 06062) shall automatically expire and become null and void one year thereafter. At least thirty days before the date of expiration, the Planning Director shall cause notice of expiration to be sent to the applicant by regular United States mail, postage prepaid. Said notice shall advise the applicant that the application shall automatically expire unless prior to the expiration date, the Planning Director receives a request from the applicant to remove the application from pending and reschedule the matter on the Planning Commission or City Council agenda as appropriate.

Section 4. That Section 27.37.070 of the Lincoln Municipal Code be amended to read as follows:

27.37.070 Use Permits; Procedures and Requirements.

(a) Minimum requirements. No use permit shall be granted upon any property having a total area of less than thirty acres, nor for any plan unless it is in conformance with all applicable city standards and with all regulations of the applicable sections of this chapter. The Planning Commission shall impose such conditions as are appropriate and necessary to ensure compliance with the Comprehensive Plan and protect the health, safety, and general welfare in the issuance of

any use permits. Such conditions may include an increase in the minimum yard requirements and a decrease in the maximum height restrictions set forth in this chapter. Lots fronting on private roadways may be permitted. Unless expressly modified by the terms of the use permit, all regulations of the B-5 Planned Regional Business District shall apply.

(b) Environmental performance standards. Any applicant for a use permit under the provisions of this section shall comply with such environmental performance standards relating to noise, emission, dust, odor, glare, and heat as shall be from time to time established by various municipal departments and approved by resolution of the City Council.

(c) Environmental impact statement and market analysis. If any application for a change of zone to the B-5 Planned Regional Business District or for a use permit under the provisions of this section substantially deviates from the Comprehensive Plan in terms of location or size, as determined by the Planning Director, the applicant shall submit an environmental impact statement and a market analysis which shall serve as a guide to the Planning Commission for evaluation of such application in terms of need, desirability, supportability, and its implications for the overall growth of the community. The Planning Director shall develop appropriate written standards and forms for such environmental impact statement and market analysis, which shall be approved by the City Council after report and recommendation of the Planning Commission.

(d) Landscape plan. Each application for a use permit under this section shall include a landscape plan which shall show proposed plantings in conformance with city standards in all required yard areas, open space areas, malls, parking areas and around proposed buildings. The Planning Director shall develop appropriate written standards for such landscape plans, which standards shall be approved by resolution of the City Council.

(e) Application requirements. Applications for a use permit under this section shall be filed by the owner in writing with the Planning Department on a form provided by the city. A preliminary plan shall accompany each application and shall include the following information:

(1) Boundary survey and gross acreage;

(2) Contour lines at intervals not to exceed five feet based on NAVD 1988. Spot elevations on one hundred foot grids shall be required to fully indicate the topography on flat land;

(3) Street right of way;

(4) Utility easements;

(5) Adjacent land use and zoning classifications;

(6) Location of structures on property;

(7) Vicinity map;

(8) Date prepared, scale and north point;

(9) Schematic building layout;

(10) Parking areas and capacity;

(11) Open space for residential uses;

(12) Use of buildings, such as retail, service, restaurant, office, residential, and other uses. Buildings to be included in the first phase construction shall include tenant occupancies where known. A clear demonstration shall be made that the residential use will be protected from adverse effects, such as traffic, air pollution, noise, and glare; and the mixing of residential and commercial uses on the ground level shall be discouraged;

(13) Acreage and percentage of total developed building area, parking lots, open space, malls, and other features;

(14) Height of buildings;

(15) Location of existing trees and proposed landscape plan;

(16) Proposed vehicular and pedestrian circulation system, including ingress and egress;

(17) Building and parking setback lines;

(18) Grading plan;

(19) Phase of development and proposed starting dates;

(20) Discussion of adverse environmental effects of the project and proposed steps to minimize these effects;

(21) On-site and off-site water and sanitary sewer improvements;

(22) On-site and off-site drainage and storm sewer improvements;

(23) Location of proposed free-standing signs;

(24) Cross-section for paving of parking lots and sidewalks;

(25) Proposed name, if any, of the shopping center;

(26) Name, address, and telephone number of developer, certified record owner, or owners, and addresses; legal description of the proposed use permit area, including the number of acres.

(f) Planning Commission review. Upon the filing of an application together with all maps, data, and information required by this section, the City Council shall refer the application to the Planning Commission. The Planning Commission shall hold a public hearing upon such application and shall consider the effect of the proposed use upon the surrounding neighborhood, the community as a whole, and other matters relating to public health, safety, and general welfare.

(g) Planning Commission action. After holding at least one public hearing, the Planning Commission shall proceed to give final consideration to the application and may require that certain conditions be fulfilled by the applicant in conjunction with approval of the use permit applied for, and may include the requirement that applicant grant additional right of way in accordance with the Comprehensive Plan. The Planning Commission may require the execution of a written agreement with the city relating to the installation of public improvements by the applicant, together with the execution of performance bonds or provision of other appropriate surety relating thereto. The installation of all public improvements shall be accomplished in compliance with existing city standards as provided by ordinance or by departmental publications approved by resolution of the City Council. ~~In the event the Planning Commission fails to act upon the application within sixty days from the date of referral, the applicant may appeal to the City Council requesting final action. If the City Council determines that the delay of the Planning Commission is unjustified, it shall direct the commission to act upon the application no later than the commission's next regularly scheduled meeting.~~

(h) Appeal of Planning Commission action.

(1) Any aggrieved person or any person or group officially designated to participate in the administration of this title may appeal any action of the Planning Commission to the City Council by filing notice of appeal with the City Clerk within fourteen days following the action of the Planning Commission.

(2) Upon receipt of the appeal by the City Council, the council shall hold a public hearing thereon within thirty days from the date of appeal. Notice of the public hearing shall be given as provided in Chapter 27.81.

(3) In exercising its appellate jurisdiction, the action appealed from shall be deemed advisory and the City Council may, after public hearing, in conformity with the provisions of this title make such decision as ought to be made.

(i) Adjustment of yard requirements, height restrictions, and parking.

(1) Upon request of the applicant, the City Council may, after report and recommendation of the Planning Commission, decrease the minimum yard requirements and increase the maximum height restrictions and may adjust the requirements relative to the location of buildings and required parking spaces and lot frontage set forth in this chapter consistent with adequate protection of the environment of adjacent land uses.

(2) Upon request of the applicant, the City Council may, after report and recommendation of the Planning Commission, decrease the required parking set forth in this chapter and Chapter 27.67 if it is determined that the mix of uses or ownership patterns create situations where the applicability of a particular standard is not feasible.

(3) The Planning Commission shall hold a public hearing upon the requested adjustment at the same time that it hears the application for the use permit and shall make a report to the City Council regarding the effect the proposed use and adjustment has upon the surrounding neighborhood, the community as a whole, and other matters relating to public health, safety, and general welfare. Upon receiving a report from the Planning Commission, the City Council shall take final action upon the application for the use permit and the requested adjustment.

(j) Amendment. The Planning Director is authorized to approve amendments to any use permit granted under this section, including square footage of floor area and storage space in phases of development; provided, that:

(1) A request for amendment is filed with the Planning Director, together with any of the information specified in paragraph (f) above which is pertinent to the proposed amendment;

(2) Such amendment shall not violate any provisions of this title;

(3) Such amendment may provide for minor increases in total floor area and storage space originally permitted;

(4) There is no increase in the number of dwelling units;

(5) No reduction is made to the applicable setback or yard requirements;

(6) No public land is accepted;

(7) Such amendment shall not be contrary to the general purpose section as specified in paragraph (a) above;

(8) Any amendment not in conformance with this paragraph shall be submitted to the Planning Commission in the same manner as an original use permit.

(k) Building permits, certificates of occupancy and certificates of compliance. Upon the approval of a use permit as provided for under this section, building permits and certificates of occupancy may be issued. Certificates of compliance shall not be issued until there has been compliance with all conditions and subsequent amendments within each phase of development of a use permit.

(l) Preexisting uses. An existing use of a type permitted in this chapter which was lawfully established in this district on the effective date of this title, and any enlargement or extension as permitted in this section, shall be deemed to have received a use permit as herein required and shall be provided with such permit by the Director of Building and Safety upon request, and shall not be a nonconforming use.

(m) If an application for a use permit located within a flood plain is granted approval by the city, it shall not be necessary for the applicant to make an application for a special permit to be approved by the City Council as required by Resolution Nos. A-55150, A-56382, and A-57540. It shall be presumed that the applicant has received all such approvals as may be required by the foregoing resolutions by virtue of the city granting approval to the use permit.

(n) Failure of Planning Commission to act in a timely manner. In the event the Planning Commission fails to take final action upon an application for a use permit or fails to make a required report and recommendation within twelve weeks following the date of their first public hearing on the matter, the applicant may appeal to the City Council requesting final action by filing a notice of appeal with the City Clerk unless the delay is at the request of or due to the default of the applicant. Upon receipt of the appeal, the City Council shall hold a public hearing thereon within thirty days from the date of the appeal. Notice of public hearing shall be given as provided in Chapter 27.81. The City Council may, after public hearing in conformity with the provisions of this chapter, make such decision as ought to be made.

(o) Expiration of Application. All existing applications for a use permit which have been placed on pending by an applicant shall automatically expire and become null and void one year after the date this ordinance (Change of Zone No. 06062). All applications which have been placed on pending by an applicant after the date of this ordinance (Change of Zone No. 06062) shall automatically expire and become null and void one year thereafter. At least thirty days before the date of expiration, the Planning Director shall cause notice of expiration to be sent to the applicant by regular United States mail, postage prepaid. Said notice shall advise the applicant that the application shall automatically expire unless prior to the expiration date, the Planning Director receives a request from the applicant to remove the application from pending and reschedule the matter on the Planning Commission or City Council agenda as appropriate.

Section 5. That Section 27.51.100 of the Lincoln Municipal Code be amended to read as follows:

27.51.100 Use Permit Section.

(a) Minimum Requirements. No use permit shall be granted upon any property having a total area of less than fifty acres, nor for any plan unless it is in conformance with all applicable city standards and with all regulations of the applicable sections of this chapter. The Planning Commission shall impose such conditions as are appropriate and necessary to ensure compliance with the comprehensive plan and protect the health, safety, and general welfare in the issuance of any use permits. Such conditions may include an increase in the minimum yard requirements and decrease in the maximum height restrictions set forth in this chapter. Lots fronting on private roadways may be permitted. Unless expressly modified by the terms of the use permit, all regulations of the I-3 Employment Center District shall apply.

(b) Environmental Performance Standards. Any applicant for a use permit under the provisions of this section shall comply with environmental performance standards relating to noise, emission, dust, odor, glare, and heat as shall be approved by resolution of the City Council.

(c) Landscape Plan. Before building permit approval, each application for a use permit under this section shall include a landscape plan which shall show proposed plantings in conformance with city standards in all required yard areas, open space areas, parking areas, and around proposed buildings. The Planning Director shall develop appropriate written standards for such landscape plans, which standards shall be approved by resolution of the City Council.

(d) Application Requirements. Applications for a use permit under this section shall be filed in writing on a form provided by the city with the Planning Department. A preliminary plan shall accompany each application and shall include the following information:

(1) Boundary survey and gross acreage;

(2) Contour lines at intervals not to exceed five feet based on NAVD 1988. Spot elevations on one hundred foot grid shall be required to fully indicate the topography of flat land.

(3) Street right-of-way;

(4) Utility easements;

(5) Adjacent land use and zoning classifications;

(6) The amount of traffic to be generated and the street facilities required to accommodate said traffic;

(7) Location of building envelopes within which structures may be located;

(8) Vicinity map;

(9) Date prepared, scale and north point;

(10) Location of parking envelopes within which parking lots shall be located and stating the required number of parking stalls;

(11) Proposed use and total square feet of buildings to be located within the proposed I-3 employment center in accordance with Section 27.51.030(b);

(12) Acreage and percentage of total developed building area, parking lot, open space, and similar uses;

(13) Location of existing tree masses;

(14) Identify vehicular ingress and egress points;

(15) Building and parking set-back lines;

(16) Generalized grading plan;

(17) On-site and off-site water and sanitary sewer improvements;

(18) On-site and off-site drainage and storm sewer improvements;

(19) Proposed name of the project;

(20) Name, address, and telephone number of developer, certified record owner or owners, and their addresses; and legal description of the proposed use permit area including the number of acres.

(e) Planning Commission Review. Upon the filing of an application together with all maps, data, and information required by this section, the City Council shall refer the application to the Planning Commission. The Planning Commission shall hold a public hearing upon such application and shall consider the effect of the proposed use upon the surrounding neighborhood, the community as a whole, and other matters relating to public health, safety, and general welfare.

(f) Planning Commission Action. After holding at least one public hearing, the Planning Commission shall proceed to give final consideration to the application and may require that certain conditions be fulfilled by the applicant in conjunction with approval of the use permit applied for, and may include the requirement that applicant grant additional right of way in accordance with the Comprehensive Plan. The Planning Commission may require the execution of a written agreement with the city relating to the installation of public improvements by the applicant, together with the execution of performance bonds or provision of other appropriate surety relating thereto. The installation of all public improvements shall be accomplished in compliance with existing city standards as provided by ordinance or by departmental publications approved by resolution of the City Council. ~~In the event the Planning Commission fails to act upon the application within sixty days from the date of referral, the applicant may appeal to the City Council requesting final action. If the City Council determines that the delay of the Planning Commission is unjustified, it shall direct the commission to act upon the application no later than the commission's next regularly scheduled meeting.~~

(g) Appeal of Planning Commission Action.

(1) Any aggrieved person or any person or group officially designated to participate in the administration of this title may appeal any action of the Planning Commission to the City Council by filing notice of appeal with the City Clerk within fourteen days following the action of the Planning Commission.

(2) Upon receipt of the appeal by the City Council, the council shall hold a public hearing thereon within thirty days from the date of appeal. Notice of the public hearing shall be given as provided in Chapter 27.81.

(3) In exercising its appellate jurisdiction, the action appealed from shall be deemed advisory and the City Council may, after public hearing, in conformity with the provisions of this title make such decision as ought to be made.

(h) Adjustment of Yard Requirements and Height Restrictions. Upon request of the applicant, the City Council may, after report and recommendation of the Planning Commission,

decrease the minimum yard requirements and increase the maximum height restrictions and may adjust the requirements relative to the location of buildings and required parking spaces and lot frontage set forth in this chapter consistent with adequate protection of the environment of adjacent land uses. The Planning Commission shall hold a public hearing upon the requested adjustment at the same time that it hears the application for the use permit and shall make a report to the City Council regarding the effect the proposed use and adjustment has upon the surrounding neighborhood, the community as a whole, and other matters relating to public health, safety, and general welfare. Upon receiving a report from the Planning Commission, the City Council shall take final action upon the application for the use permit and the requested adjustment.

(i) Amendment. The Planning Director is authorized to approve amendments to any use permit granted under this section, including square footage of floor area and storage space in phases of development; provided that:

(1) A request for amendment is filed with the Planning Director, together with any of the information specified in paragraph (d) above which is pertinent to the proposed amendment;

(2) Such amendment shall not violate any regulations set forth in this title;

(3) Such amendment may provide for up to ten percent (10%) increase in total floor area of the project over the total floor area originally permitted;

(4) No reduction is made to the applicable setback or yard requirements;

(5) No public land is accepted;

(6) Such amendment shall not be contrary to the general purposes of this chapter as set forth in paragraph (a) above;

(7) Any amendment not in conformance with this paragraph shall be submitted to the Planning Commission in the same manner as an original use permit.

(j) Building Permits, Certificates of Occupancy, and Certificates of Compliance. Upon the approval of a use permit as provided for under this section, building permits and certificates of occupancy may be issued. Certificates of compliance shall not be issued until there has been compli-

ance with all conditions of a use permit and subsequent amendments within each phase of development of a use permit.

(k) Preexisting uses.

(1) An existing use of a type permitted in this chapter which was lawfully established in this district on the effective date of this chapter shall be deemed to have received a use permit as herein required and shall be provided with such permit by the Director of Building and Safety upon request, and it shall not be a nonconforming use; provided, however, for any enlargement, extension, or relocation of such existing use, an application in conformance with this section shall be required.

(2) If an application for a use permit located within a flood plain is granted approval by the city, it shall not be necessary for the applicant to make an application for a special permit to be approved by the City Council as required by Resolution Nos. A-55150, A-56382, and A-57540. It shall be presumed that the applicant has received all such approvals as may be required by the foregoing resolutions by virtue of the city granting approval to the use permit.

(l) Failure of Planning Commission to act in a timely manner. In the event the Planning Commission fails to take final action upon an application for a use permit or fails to make a required report and recommendation within twelve weeks following the date of their first public hearing on the matter, the applicant may appeal to the City Council requesting final action by filing a notice of appeal with the City Clerk unless the delay is at the request of or due to the default of the applicant. Upon receipt of the appeal, the City Council shall hold a public hearing thereon within thirty days from the date of the appeal. Notice of public hearing shall be given as provided in Chapter 27.81. The City Council may, after public hearing in conformity with the provisions of this chapter, make such decision as ought to be made.

(m) Expiration of Application. All existing applications for a use permit which have been placed on pending by an applicant shall automatically expire and become null and void one year after the date this ordinance (Change of Zone No. 06062). All such applications which have been placed on pending by an applicant after the date of this ordinance (Change of Zone No. 06062) shall

automatically expire and become null and void one year thereafter. At least thirty days before the date of expiration, the Planning Director shall cause notice of expiration to be sent to the applicant by regular United States mail, postage prepaid. Said notice shall advise the applicant that the application shall automatically expire unless prior to the expiration date, the Planning Director receives a request from the applicant to remove the application from pending and reschedule the matter on the Planning Commission or City Council agenda as appropriate.

Section 6. That Section 27.60.040 of the Lincoln Municipal Code be amended to read as follows:

27.60.040 Plan; Procedure.

Upon filing of a development plan, together with all maps, data, and information required, the Planning Director shall distribute copies of the development plan and all accompanying materials to other city departments and governmental agencies which are directly concerned or potentially affected by the proposed planned unit development. Within fifteen days from the filing of the development plan, representatives of those city departments and governmental agencies described above shall provide written recommendations to the Planning Director who shall, within fifteen days thereafter, prepare a written report to the Planning Commission. Such report shall specify the Planning Director's recommendations regarding the conformity of the proposal to the comprehensive plan and shall recommend either approval, approval with revisions, or denial, as the case may be. The Planning Commission shall hold a public hearing on such application and provide notice thereof in accordance with Section 27.81.050, and shall make a report to the City Council. The report to the City Council shall include the effect of the development plan upon the surrounding neighborhood, the community, and other matters relating to public health, safety, and general welfare, reasons for recommending approval or denial of the application and if approval is recommended shall find that the proposed planned unit development meets the following conditions:

(a) The surrounding land will not be adversely affected;

(b) The proposed planned unit development is consistent with the intent and purpose of this title to promote the public health, safety, and general welfare;

(c) The buildings and land in the proposed planned unit development shall be used only for those purposes permitted by Section 27.60.020;

(d) The development plan meets the requirements of Chapters 27.52 and 27.53 of the Lincoln Municipal Code.

The City Council shall not take final action upon any application for a planned unit development under this plan until a report from the Planning Commission has been filed with the City Clerk; provided, that in the event the Planning Commission has failed to issue its report within twelve weeks from the date of their first public hearing on the application, the applicant may appeal to the City Council requesting final action by filing a notice of appeal with the City Clerk unless the delay is at the request of or due to the default of the applicant. Upon receipt of the appeal, the City Council shall hold a public hearing thereon within thirty days from the date of the appeal. Notice of public hearing shall be given as provided in Chapter 27.81. The City Council may, after public hearing in conformity with the provisions of this chapter, make such decision as ought to be made. ~~that there is a delay of more than 60 days from the Planning Commission's initial public hearing date on the part of the Planning Commission in reporting its recommendation to the City Council, the applicant may appeal to the City Council requesting final action. If the City Council determines that the delay of the Planning Commission is unjustified, it shall direct the commission to submit a report no later than immediately after the commission's next regularly scheduled meeting.~~

Upon receipt of a report from the Planning Commission, the City Council shall proceed to give final consideration to the plan and may require that certain conditions be fulfilled by the applicant in conjunction with approval of the planned unit development.

Approval of a development plan shall be by ordinance after public hearing, in accordance with the requirements of Section 27.81.050.

All existing applications for a planned unit development which have been placed on pending by an applicant shall automatically expire and become null and void one year after the date this

ordinance (Change of Zone No. 06062). All such applications which have been placed on pending by an applicant after the date of this ordinance (Change of Zone No. 06062) shall automatically expire and become null and void one year thereafter. At least thirty days before the date of expiration, the Planning Director shall cause notice of expiration to be sent to the applicant by regular United States mail, postage prepaid. Said notice shall advise the applicant that the application shall automatically expire unless prior to the expiration date, the Planning Director receives a request from the applicant to remove the application from pending and reschedule the matter on the Planning Commission or City Council agenda as appropriate.

Section 7. That Section 27.63.020 of the Lincoln Municipal Code be amended to read as follows:

27.63.020 Action of Planning Commission.

Before the issuance of any special permit for any of the buildings or uses enumerated in this chapter, the Planning Commission shall hold a public hearing upon such application and shall consider the effect of the proposed use upon the surrounding neighborhood, the Comprehensive Plan of the City of Lincoln, the community as a whole, and other matters relating to the public health, safety, and general welfare. If the applicant requests the City Council to make a permitted decrease in the minimum regulations of the district in which the permitted special use is located or to modify the specific conditions for approval of the special permit, the Planning Commission shall hold a public hearing upon such adjustment or modification at the same time that it hears the application for the special permit and shall make a report to the City Council regarding the effect the proposed use and adjustment has upon the surrounding neighborhood, safety, community as a whole, and other matters relating to public health, safety, and general welfare. Upon receiving a report from the Planning Commission, the City Council, after public hearing, shall take final action upon the application for the special permit and the adjustment. In the event the Planning Commission fails to take final action upon an application or fails to make a required report within twelve weeks from the date of their first public hearing on the application, the applicant may appeal to the City Council

requesting final action by filing a notice of appeal with the City Clerk unless the delay is at the request of or due to the default of the applicant. Upon receipt of the appeal, the City Council shall hold a public hearing thereon within thirty days from the date of the appeal. Notice of public hearing shall be given as provided in Chapter 27.81. The City Council may, after public hearing in conformity with the provisions of this chapter, make such decision as ought to be made. ~~In the event the Planning Commission fails to act upon the application within sixty days from the date the application is referred to the Planning Commission, the applicant may appeal to the City Council requesting final action. If the City Council determines that the delay of the Planning Commission is unjustified, it shall direct the commission to act no later than the commission's next regularly scheduled meeting.~~

All existing applications for a special permit which have been placed on pending by an applicant shall automatically expire and become null and void one year after the date this ordinance (Change of Zone No. 06062). All applications which have been placed on pending by an applicant after the date of this ordinance (Change of Zone No. 06062) shall automatically expire and become null and void one year thereafter. At least thirty days before the date of expiration, the Planning Director shall cause notice of expiration to be sent to the applicant by regular United States mail, postage prepaid. Said notice shall advise the applicant that the application shall automatically expire unless prior to the expiration date, the Planning Director receives a request from the applicant to remove the application from pending and reschedule the matter on the Planning Commission or City Council agenda as appropriate.

Section 8. That Section 27.65.030 of the Lincoln Municipal Code be amended to read as follows:

27.65.030 Procedures.

An application and plot plan and plans for development of a community unit plan under this chapter shall be filed in writing with the planning department. Upon the filing of an application, together with all information required by this chapter, the City Council will refer the application to

the Planning Commission. The Planning Commission shall hold a public hearing upon such application and shall consider the effect of the proposed use upon the surrounding neighborhood, the Comprehensive Plan of the City of Lincoln, the community as a whole, and other matters relating to the public health, safety, and general welfare.

The Planning Commission shall approve the application upon receipt of specific evidence and facts showing that the proposed community unit plan meets the following conditions:

(a) That the land surrounding the tracts for the proposed community unit plan will not be adversely affected;

(b) That the proposed community unit plan is consistent with the intent and purpose of this title to promote the public health, safety, and general welfare;

(c) That the buildings and land in the proposed community unit plan shall be used only for single-family dwellings, two-family dwellings, townhouses, multiple dwellings, or dwellings for non-related persons and accessory uses and any other uses permitted in the zoning district in which the land is located;

(d) That the average lot area per family within the proposed community unit plan will not be less than the lot area per family required in the zoning district or districts in which the tracts of the proposed community unit plan is located, except as otherwise provided in this chapter. The lot area per dwelling for non-related persons shall not be less than the lot area required under Section 27.70.020 for the zoning district in which the use is proposed to be located.

(e) For a community unit plan located in the BTA Overlay District, the Council shall require the execution of a written agreement with the City relating to conversion of the Acreage Development Component to higher urban density and future annexation of the Urban Reserve Component and implementation of the Master Plan for the future development of the Urban Reserve Component of the community unit plan. The written agreement shall include, but not be limited to, the following provisions:

(1) The timing of annexation and the final platting of the Urban Reserve Component following the extension of sanitary sewer and water utilities to the Urban Reserve Component;

(2) A plan for funding infrastructure cost for conversion of the Acreage Development Component and implementation of the master plan for the Urban Reserve Component, including an agreement to agree to petition for the creation of special assessment districts for the installation of such improvements if not installed by the permittee at permittee's own cost and expense.

If after public hearing the Planning Commission finds that the proposed community unit plan does not meet the above requirements for approval, the Planning Commission may deny the application or approve the application upon condition that the applicant make specific changes in the proposed community unit plan which will remove the objection. Approval of a community unit plan shall be by special permit in conformance with Chapter 27.63. In the event the Planning Commission fails to act upon the application within ~~sixty days from the date the application is referred to the Planning Commission~~ twelve weeks following the date of their first public hearing on the matter, the applicant may appeal to the City Council requesting final action by filing a notice of appeal with the City Clerk unless the delay is at the request of or due to the default of the applicant. Upon receipt of the appeal, the City Council shall hold a public hearing thereon within thirty days from the date of the appeal. Notice of public hearing shall be given as provided in Chapter 27.81. The City Council may, after public hearing in conformity with the provisions of this chapter, make such decision as ought to be made. If the City Council determines that the delay of the Planning Commission is unjustified, it shall direct the Commission to act no later than the Commission's next regularly scheduled meeting.

All existing applications for a community unit plan which have been placed on pending by an applicant shall automatically expire and become null and void one year after the date this ordinance (Change of Zone No. 06062). All such applications which have been placed on pending by an applicant after the date of this ordinance (Change of Zone No. 06062) shall automatically

expire and become null and void one year thereafter. At least thirty days before the date of expiration, the Planning Director shall cause notice of expiration to be sent to the applicant by regular United States mail, postage prepaid. Said notice shall advise the applicant that the application shall automatically expire unless prior to the expiration date, the Planning Director receives a request from the applicant to remove the application from pending and reschedule the matter on the Planning Commission or City Council agenda as appropriate.

Section 9. That Section 27.81.040 of the Lincoln Municipal Code be amended to read as follows:

27.81.040 Amendments.

The City Council may from time to time on its own motion, or on petition, amend, supplement, or otherwise modify this title. The Planning Commission shall submit its recommendations and report to the City Council within twelve weeks following the date of their first public hearing on the matter unless the delay is at the request of the applicant or the default of the applicant. Any such proposed amendment, supplement, or modification shall first be submitted to the Planning Commission for its recommendations and report. Said report shall contain the findings of the commission regarding the effect of the proposed amendment, supplement, or modification upon adjacent property and upon the Comprehensive Plan of the City of Lincoln. After the recommendations and report of the Planning Commission have been filed, the City Council shall, before enacting any proposed amendment, supplement, or modification hold a public hearing in relation thereto, giving notice of the time and place of such hearing as provided in Section 27.81.050 hereafter. The applicant may withdraw a request for amendment at any time before notice of the public hearing before the City Council is given. After notice of public hearing has been given, the application may only be withdrawn with the approval of the City Council.

All existing applications for a change of zone which have been placed on pending by an applicant shall automatically expire one year after the date this ordinance (Change of Zone No. 06062). All such applications which have been placed on pending by an applicant after the date of this ordinance (Change of Zone No. 06062) shall automatically expire and become null and void one

year thereafter. At least thirty days before the date of expiration, the Planning Director shall cause notice of expiration to be sent to the applicant by regular United States mail, postage prepaid. Said notice shall advise the applicant that the application shall automatically expire unless prior to the expiration date, the Planning Director receives a request from the applicant to remove the application from pending and reschedule the matter on the Planning Commission or City Council agenda as appropriate.

In the event that the proposed amendment or change is denied by the City Council, no new request shall be made for the same or substantially similar amendment or change within one year of said denial thereof.

Section 10. That Sections 27.27.080, 27.28.090, 27.31.100, 27.37.070, 27.51.100, 27.60.040, 27.63.020, 27.65.030 and 27.81.040 of the Lincoln Municipal Code as hitherto existing be and the same are hereby repealed.

Section 11. That this ordinance shall take effect and be in force from and after its passage and publication according to law.

Introduced by:

_____

Approved as to Form & Legality:

_____

City Attorney

Approved this ___ day of _____, 2006:

_____

Mayor