

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, February 14, 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, Mary Strand, Lynn Sunderman and Tommy Taylor (Roger Larson absent); Marvin Krout, Ray Hill, Brian Will, Tom Cajka, Christy Eichorn, Brandon Garrett, Jean Walker and Teresa McKinstry 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 31, 2007. Motion for approval made by Carroll, seconded by Krieser and carried 7-0: Carlson, Carroll, Cornelius, Esseks, Krieser, Strand and Sunderman voting 'yes' (Taylor absent at time of vote; Larson absent).

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

February 14, 2007

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

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 07003, CHANGE OF ZONE NO. 07004 and SPECIAL PERMIT NO. 07002.**

Ex Parte Communications: None.

Item No. 1.1, Special Permit No. 07002, was removed from the Consent Agenda at the request of Mark Hunzeker and scheduled for separate public hearing.

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

Note: This is final action on Special Permit No. 07002, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

SPECIAL PERMIT NO. 07002
TO ALLOW A ROCK CRUSHING-RECYCLING PLANT
ON PROPERTY GENERALLY LOCATED AT
NORTH 3RD STREET AND Q STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 14, 2007

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

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

This application was removed from the Consent Agenda at the request of the applicant's representative, Mark Hunzeker.

Staff presentation: Tom Cajka of Planning staff presented this proposal for a rock crusher/recycling plant within an industrial area. The proposed use is allowed in the I-1 Industrial district by special permit. The property is surrounded by I-1 zoning on all four sides. The only non-industrial use in somewhat close proximity is the City Mission one block to the west.

Some of the issues and concerns pertain to the property being within the 100-year floodplain and the applicant will need to meet all floodplain requirements. There is a GIS map showing a small area of wetlands on the site; however, the applicant indicates that their review of the site shows no wetlands. The Public Works Department has imposed a condition that the rubble pile shown in the wetland area be removed and that the existing wetland be identified or that the applicant provide information that the area is not a wetland (Condition #2.1.1.1). Cajka pointed out that the proposed hours of operation are 6:00 a.m. to 10:00 p.m., Monday through Saturday, but that the typical hours of operation will be 7:00 a.m. to 5:00 p.m., Monday through Friday.

Esseks noted that the conditions allow only 40% fill. Cajka noted that to be a condition being requested by Public Works. Ben Higgins of Watershed Management pointed out that the Planning Commission recently adopted the new Salt Creek floodplain regulations, which allow the 40% fill. The FEMA study recommends no fill in that area, so Esseks is curious about allowing 40% fill. Higgins explained that to be a result of the re-study of the Salt Creek floodplain mapping and it is now considered a 40% allowable fill area. Esseks inquired whether this could be challenged on this parcel. Higgins stated that a technical memo has been submitted to FEMA for review and it has been accepted. He believes that there is good basis for those numbers on storage by storage area basis. There might be several parcels in one storage area, but it would be 40% for each parcel.

Carroll wondered how reliable the GIS map is that shows the wetland area. Higgins stated that if the applicant can demonstrate that there is no wetland, Public Works would be satisfied.

Proponents

1. Mark Hunzeker appeared on behalf of **TCW Construction**, the applicant. This is a facility which will be used for storage of material taken from various demolition projects. For example, the demolition project nearest to this site is the Harris Overpass. When a project like that is demolished, material needs to be removed from the site. The cost of a project like that is affected greatly by the distance that material has to traffic before it can be dumped. This kind of facility will be able to accept that material, and then crush it into reusable material, and, in this case, the material would be reused by TCW with a concrete plant a short way from this site.

As far as the rock crusher, that machinery will be on this site periodically. It is on tracks. It moves. It won't be there all the time and will not be operating 5-6 days a week, except when it is necessary to handle material from a large project. The only other crusher in town is located at the far northeast part of the community.

Hunzeker then referred to Condition #2.1.1.1 which requires the applicant to revise the site plan by deleting the rubble pile. He believes the existing wetlands are already identified on the site plan. He requested that the phrase, "by deleting the rubble pile" be removed from this condition.

Hunzeker then referred to Condition #2.1.1.2, which requires a note be added to the site plan that there shall be no more than 40% fill on the site. Hunzeker requested that this condition be deleted because due to existing regulations, the applicant already has a permit in hand which would enable them to fill this entire site 100% and take the whole thing out of the floodplain. The applicant proposes to be able to store things that will not float (piles of rubble or piles of crushed 2" chunks of concrete, etc.) on this site at various times, sometimes exceeding 40% of the surface area of the site. Obviously, the fill computations are volume computations, making it hard to know how much you have actually filled. Hunzeker pointed out that they will only be at this site temporarily. There will be temporary piles of rubble and temporary piles of material that have been through the crusher. It does not make much sense to have to fill this site entirely in order to be able to use the entire site for this purpose. The applicant intends to simply fill it temporarily (sometimes more than 40%, but most of the time probably not), and move it back and forth and off the site as fast as it needs to be moved in order to be used.

The fill permit was issued by Building & Safety.

Esseks pointed out that this is a special permit, and he believes the City should have authority to establish conditions which the city believes to be in the interest of the public. Hunzeker believes that it is inconsistent and unreasonable for the city to impose conditions

simply because this applicant is required to come and ask for a different permission than it already has. They have permission to fill this entire site. However, they do not intend to do that. The intent is to use it periodically, and on some occasions there will be more than 40% of the surface area of the site covered either with rubble that is waiting to be run through the crusher or with a pile of material that has been through the crusher and is in 2" chunks. There will be nothing on the site that will float or in any way be a danger of causing damage in event of a flood. Hunzeker suggested that 80% of the time they are probably not going to have even that 40% full. Furthermore, the 40% fill regulation has not yet been adopted by the City Council and is not in effect at this time.

Hunzeker indicated that the area in question about the wetland is right along the railroad track bed that runs to the northeast part of the site. Most of it is off of the site but it has been identified and they intend to stay out of it. He does not believe it is an issue.

Carroll asked Hunzeker to expound on the rubble pile. Hunzeker showed its location on the site plan. The different piles of concrete and asphalt will be moved to different places on the site. The machine will only be brought in for as long as it takes to run the material through.

Hunzeker stated that the applicant will agree not to fill the wetland.

Strand wondered whether the applicant would agree to "40% 'permanent' fill" in Condition #2.1.1.2 rather than deleting. Hunzeker agreed. By the time this permit is no longer being used, the permit to fill 100% will have expired anyway.

There was no testimony in opposition.

Staff response

Cajka suggested that there is some confusion about Condition #2.1.1.1. The condition provides that if there are wetlands, show them. If there are no wetlands, provide information that there are no wetlands. He believes the applicant has done the delineation but it was not submitted with the application. The condition only asks that the applicant provide a delineation study showing that there are no wetlands. If there are wetlands, then the rubble pile must be removed. Cajka acknowledged that it probably won't be an issue in the end anyway.

With regard to the 40% fill, Cajka believes that the City Attorney office would advise that even though the standard has not been adopted, it can be applied in the case of a special permit.

Higgins also pointed out that this is a special permit and is not by right.

With regard to 40% "permanent" fill, Higgins acknowledged that in the long term he would not have a problem, but in the short term if we get a major flood and there is 100% fill, it

could be an issue and there could be a lawsuit. Yes, they do have a permit allowing 100% and that is the reason for the revised regulations for Salt Creek. Once someone comes through with a special permit, it is not by right and the City can impose these conditions. This is an attempt to meet the federal minimum standards. Strand believes it necessary to be somewhat flexible for a recycling process.

Esseks commented that the problem is apparently a matter of how the storage is organized. He wondered whether city government could help the applicant when it comes to the point of where to locate the debris. Maybe there is a way to have a win-win situation. Higgins responded that once above the floodplain elevation, the city does not care how much fill is placed on top of it. It is a fairly flat area when you look at the map and it looks like more than 40% fill.

Carlson questioned “permanent” versus “temporary”. When he thinks of fill, he thinks of dirt and clay. Is there a distinction between temporary and permanent? Higgins stated that the city classifies fill as dirt, rubble, concrete, etc. It will not be like dirt that takes up all the volume. There will be big chunks of concrete. He would be willing to take that into consideration because the water will fill in and around the concrete rubble.

Response by the Applicant

Hunzeker reiterated that he does not think they have a wetland that they are encroaching upon, and they do not intend to encroach.

With respect to the fill issue, Hunzeker believes this is a situation where the applicant should get the benefit of a doubt. This is an operation that will facilitate recycling of building materials. It will reduce the cost to the city and the taxpayers for that kind of material, and it is really splitting hairs to say that it will cause additional flood problems to utilize a portion of this site to store concrete rubble on a temporary basis while it awaits crushing and removal from the site, particularly when those regulations are not in effect and the applicant has a permit allowing 100% fill of the site. He believes the applicant is being responsible about the use of this site when it would be possible to fill it up and put buildings on it. This use will partially fill the site, temporarily and periodically, rather than having it permanently filled to the full extent possible. Hunzeker reiterated his request that Condition #2.1.1.2 be deleted.

ACTION BY PLANNING COMMISSION:

February 14, 2007

Strand moved to approve the staff recommendation of conditional approval, with amendment to Condition #2.1.1.1 to read:

“Revise the site plan by identifying the existing wetland or provide information that the area is not a wetland and agree that no storage/fill be in that area if determined to be a wetland.”,

and with amendment to Condition #2.1.1.2:

“Add a note to the site plan that there shall be no more than 40 percent permanent fill on the site.”,

seconded by Carroll.

Strand believes that there is a meeting of the minds on Condition #2.1.1.1. With regard to Condition #2.1.1.2, it will be difficult to know whether they are 40% or 50%, but in the end when they leave the property, it will be at 40%, which is a lot better than 100%.

Esseks stated that he will not support the motion because of the change to Condition #2.1.1.2 on the 40% fill issue because: 1) the city can impose these standards because it is a special permit, using the best information available to insist upon a regulation that is in the public interest – flooding is very nasty and the consequences are terrible; 2) 40% of 7.4 acres is a large storage area. He assumes the storage capacity would be very large and with reasonably good engineering, he believes they could meet the 40% standard; and 3) we have to start getting adjusted to this new standard. Since this group has adopted and recommended the new standard of 40%, he believes it should be implemented. He is sure Public Works will be flexible in interpreting the 40% standard.

Cajka corrected the number of acres for this permit to be 4.2 acres (as opposed to 7.4). Carroll noted that the applicant does have a 100% fill permit which has already been issued by the city, so they could have filled the site and then come back to ask for this special permit. He does not think they should be penalized by waiting to get the most benefit out of the site. He also pointed out, again, that the new floodplain requirements have not yet been adopted by the City Council, so we don't know whether they might change. He wants to allow this permit to move forward because it is a benefit to have an area to crush rubble close to the construction sites. It is beneficial to the public.

Taylor agreed, but he would like to get some assurance from the city that it is adequate in terms of the 100-year flood. Higgins believes the chance is remote, but he cannot guarantee whether a public citizen may have a lawsuit or not. There is floor space on the site, so if you want to take the 40% fill and work out the floor space, there might be a greater percentage there. Higgins did not have the engineering tables for the floor space for concrete rubble, but he guessed it would be 30 to 40%. Esseks suggested, “...no more than 40% fill adjusted for the porosity of the material.” Higgins believes that would be acceptable.

Esseks made a motion to amend to require that there be no more than 40% fill on the site,

adjusted for the porosity of the fill material, seconded by Taylor.

Carroll believes it will be difficult to measure any day of the week because of the rubble coming in and out. It would have to be calculated every hour. He does not believe it would work. Strand believes it is getting too technical.

Motion to amend failed 2-6: Taylor and Esseks voting 'yes'; Cornelius, Strand, Carroll, Sunderman, Krieser and Carlson voting 'no'; Larson absent.

Main motion for conditional approval, with amendment to Condition #2.1.1.1 and Condition #2.1.1.2, carried 7-1: Cornelius, Strand, Carroll, Taylor, Sunderman, Krieser and Carlson voting 'yes'; Esseks voting 'no'; Larson absent. This is final action, unless appealed to the City Council within 14 days.

ANNEXATION NO. 07001;
CHANGE OF ZONE NO. 07002,
FROM AG AGRICULTURAL DISTRICT AND
B-2 PLANNED NEIGHBORHOOD BUSINESS DISTRICT
TO B-1 LOCAL BUSINESS DISTRICT,
B-2 PLANNED NEIGHBORHOOD BUSINESS DISTRICT,
R-3 RESIDENTIAL DISTRICT AND R-4 RESIDENTIAL DISTRICT;
SPECIAL PERMIT NO. 07001,
WATERFORD ESTATES 1ST ADDITION COMMUNITY UNIT PLAN;
and
PRELIMINARY PLAT NO. 07001,
WATERFORD ESTATES 1ST ADDITION,
ON PROPERTY GENERALLY LOCATED
AT 98TH AND O STREETS.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 14, 2007

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

Staff recommendation: Conditional approval of the annexation, community unit plan and preliminary plat, and approval of the change of zone.

Ex Parte Communications: None.

Staff presentation: Brandon Garrett of Planning staff informed the Commission that he received a phone call from a gentleman at Sky Ranch Acres, which is located just to the northeast of the subject site. He was not in opposition but he wanted the Commission to understand that there are private airplanes that utilize a private air strip to the northeast of this proposal. Sky Ranch Acres has been in existence since 1971.

With regard to the annexation, Garrett explained that Public Works is recommending that

where the annexation area meets “O” Street be much narrower and more concentrated on the east side to take in the right-of-way of 104th Street.

Garrett clarified that the change of zone from B-2 to B-1 would allow for a marina, which in the City’s zoning code is only allowed in B-1, thus the purpose for this part of the change of zone request.

Garrett then referred to the community unit plan and advised that the waiver to exceed maximum block length is no longer necessary. Staff and the applicant have agreed to find a solution and that will be addressed in the preliminary plat.

Garrett also advised that the waiver to exceed the maximum block length for Block 2 on the preliminary plat will be recommended for conditional approval by staff and the waiver for Block 3 will no longer be necessary because the applicant has agreed to provide the extra street connection to the east.

Proponents

1. Danay Kalkowski appeared on behalf of **Waterford Estates, LLC**, the owners. This addition is a continuation of the development of Waterford Estates. In June last year, the City Council approved the Waterford annexation agreement setting out the infrastructure for this entire development from “O” Street to Holdrege Street. The preliminary plat and zoning for the area north of the lake were approved last summer along with the annexation. The proposal today includes the area from the middle of the lake to the south and does not yet include any of the commercial area.

Kalkowski explained that this proposal brings forward four different zones: The change of zone from B-2 to B-1 would potentially permit a marina at some point in the future. The R-3 zoning is for the single family residential areas, the R-4 zoning is for the community unit plan area and potential future apartment area, and then there will be B-2 zoning on a strip of property that is basically along the south side of the residential, the purpose being to get that zoning in place that puts those neighbors on notice that there is commercial zoning and future commercial development.

Kalkowski also explained that in conjunction with the changes of zone, the owners have applied for a community unit plan on approximately 11 acres, located south of South Shore Drive and north of the future commercial area, providing a nice transition between the commercial area and single family users on the north. The trail network comes along the south side of North Shore Drive, and provides a pedestrian connection down to the commercial or over to the residential to the east.

Kalkowski showed photographs of the type of homes that will be marketed for this area.

Kalkowski then submitted proposed amendments to the conditions of approval on the community unit plan as follows:

~~4.1.1.1 Show Half Moon Drive extending from South Shore Drive to Boathouse Road or other roadway alignment that will satisfy the block length requirement.~~

~~4.1.4 A recreation plan approved by the Director of Planning.~~

The applicant has met with the staff and the applicant has agreed to meet the block length so that the street connection in Condition #4.1.1.1 is no longer necessary. They have also agreed that Condition #4.1.4 may be deleted because the recreation area has already been shown on the site plan.

Kalkowski then explained that the preliminary plat consists of 104 single family units. They have discussed the road connectivity and block length issues with the staff, and as a result, she proposed amendment to Condition #1.1.2 as follows:

Show a north/south public street or private roadway with public access easements from South Shore Drive (new name) to Boathouse Road through either Outlot A (C.U.P.) or Outlot B in a location that is satisfactory to the Director of Planning for ~~. If the road is in Outlot B, the road must be at least 90' east of Outlot A to provide an area for a row of lots west of the road. This will satisfy the block length requirement.~~

The staff is in agreement with this amendment.

There was no testimony in opposition.

The conditions of approval were then discussed again with the staff.

ANNEXATION NO. 07001

ACTION BY PLANNING COMMISSION:

February 14, 2007

Taylor moved approval, subject to a revised legal description as recommended by staff, seconded by Strand and carried 8-0: Cornelius, Strand, Carroll, Taylor, Esseks, Sunderman, Krieser and Carlson voting 'yes'; Larson absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 07002

ACTION BY PLANNING COMMISSION:

February 14, 2007

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

SPECIAL PERMIT NO. 07001

ACTION BY PLANNING COMMISSION:

February 14, 2007

Carroll moved to approve the staff recommendation of conditional approval, with the amendments proposed by the applicant and staff today, seconded by Strand and carried 8-0: Cornelius, Strand, Carroll, Taylor, Esseks, Sunderman, Krieser and Carlson voting 'yes'; Larson absent. This is final action, unless appealed to the City Council within 14 days.

PRELIMINARY PLAT NO. 07001

ACTION BY PLANNING COMMISSION:

February 14, 2007

Carroll moved to approve the staff recommendation of conditional approval, with the amendments proposed by the applicant and staff today, seconded by Strand and carried 8-0: Cornelius, Strand, Carroll, Taylor, Esseks, Sunderman, Krieser and Carlson voting 'yes'; Larson absent. This is final action, unless appealed to the City Council within 14 days.

CHANGE OF ZONE NO. 06084,

TEXT AMENDMENT TO TITLE 27

RELATING TO KENNELS.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: February 14, 2007

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

Staff recommendation: Approval, as revised.

Ex Parte Communications: None.

Staff presentation: Brian Will of Planning staff reminded the Commission that this legislation was first introduced at the Planning Commission meeting on January 17, 2007. At that time, the staff requested a four week delay for some additional fact finding. This legislation is associated with amendments to Title 6 relating to regulation of animals. At the last public hearing one of the questions raised related to vet clinics and animal hospitals in the city and whether some of those currently in the city were actually a kennel or a vet clinic. The staff had requested the delay to investigate this question and staff did visit all of those clinics and hospitals that advertise as being animal boarding, and some others advertised as vet clinics. The finding of staff was that generally speaking, the vast majority of vet clinics do some amount of animal boarding. The percentage of the business varies from clinic to clinic; however, it is also clear that none of the vet clinics had kennels as the principal use. The staff is taking the position that a kennel operation is a normal and customary accessory use to the vet clinic. The zoning ordinance as well as Title 6 both make a distinction between vet clinics and kennels.

Will explained that the current proposal does two things:

1) it deletes the limitation on hospitals and clinics for animals by deleting “but not open kennels”. This is an attempt to acknowledge that all of the clinics, whether they board or not, typically sometimes keep animals overnight for surgical care, etc. This proposal also acknowledges that some of the vet clinics do boarding.

2) it creates two conditional uses and allows kennels as a conditional use in the H-3 and H-4 districts. The rationale is that when you compare a kennel to those ranges of uses found in those two districts, this use appears to be consistent with the intensity of those uses and would not be incompatible.

Will advised that the Board of Health considered the proposed changes to Title 6 that would accompany this legislation and they voted not to forward those changes to Title 6 to the City Council.

Esseks inquired about the 100' buffer. Will explained that there were a couple of separations that were originally proposed by the Health Department and this 100' buffer was one of them that remained and was at the recommendation of the Health Department. It provides at least some minimum buffer – some minimum separation – from those residential districts.

Esseks then inquired why the two highway districts, H-3 and H-4? Will suggested that it is clear that there are some districts where kennels are not appropriate, but as we look at the range of uses and the intensity of the uses allowed in H-3 and H-4, it is staff's position that a kennel would be consistent and not incompatible with those ranges of uses that are allowed in those districts.

Esseks indicated that his only concern is the nuisance of odors and sound, especially sound. With the H-3 and H-4, he wonders how much of that space has vulnerable residential areas adjacent so that the issue of the buffer size is relevant. Will did not have a specific number and agrees that there will be incidents where residential abuts the H-3 or H-4 district. One of the conditions is that:

Outdoor play areas shall be screened 100% from the ground to 6' in height with an opaque fence or wall. Slats in chain link fence are not acceptable.

In visiting some of the clinics, Will advised that he was told that if the outdoor play area is screened to where the animals cannot see out and are not distracted, it greatly reduces the amount of noise. The screening should significantly reduce or eliminate the source of distractions which make the dogs bark, etc.

Bruce Dart, Director of the Health Department, gave a report on the action by the Board of Health. There was concern about regulating the noise and nuisances; however, he advised that the Health Department has not had any complaints of noise, nuisance or otherwise at any commercial kennel or vet clinic here in the community. The vote was something like 5-3 not to take the proposed amendments to the City Council.

Carlson pointed to the B-1 and B-3 districts, suggesting that certainly there are vet clinics that board animals in these zones now and they are close to residential with no outdoor facilities. Will advised that this proposal does not change anything in the B-1 and B-3 districts. It is the staff's position that the language about "open kennels" should be deleted because it is not clear and the majority of these clinics have them now. In addition, the Health Department has had no complaints on record on any of those facilities. A vet clinic should have authority to have the accessory use of boarding animals with some provision to take them outside. This proposal just acknowledges the reality that exists in the community now by making this deletion.

Strand inquired whether the outside facilities are just merely a fenced yard or are they actual outdoor runs? Will indicated that he did not see any with just an outdoor run. Strand wondered whether this language allows the 24/7 outdoor kennels. Will responded that kennels are already allowed in 5 districts. This proposal makes it a conditional use in the H-3 and H-4. It does not change anything relative to where a vet clinic can be located. Carlson is concerned about opening up the opportunity for more outdoor facilities and expansion. Will believes there is a distinction between outdoor play areas and stay areas. Once the principal use becomes a kennel, then they must comply with the requirements of a kennel. As long as it is operating as a vet clinic, the city considers that to be the principal use, and they must comply with the provisions for a vet clinic.

Taylor wondered whether the H-3 and H-4 districts are more liberal in terms of proximity of homes. Will stated, "no, the H-3 and H-4 would be more restrictive than the AG and AGR."

Carlson is still concerned about the B districts and wondered whether the requirement that all animal boarding must occur inside the building applies to the B district. Will indicated that that requirement only applies to the H-3 and H-4 districts. Title 6 would allow Health to be the licensing entity. The proposed conditions for H-3 and H-4 would not apply to the other districts. Carlson is concerned about outdoor boarding in the B districts. Will suggested that it is happening and there is an inconsistency. Carlson would rather have the restrictions in the H-3 and H-4 apply also to the B districts. Will suggested that the proposal recognizes the practical reality – the majority of clinics will have an outdoor area. Without striking that language, we are left with some potential enforcement action. You could make the argument that the outdoor area is an open kennel and in violation, and thus a majority of the vet clinics would be operating in violation.

Carroll purported that this gives an advantage to the vet clinics over the kennels. But if you are in H-3 and H-4 you are restricted under the definition of kennels. Will stated that these are two separate and distinct uses. By virtue of that, the staff believes that it makes sense to regulate them differently. You can have a vet clinic in some areas where you may not want a kennel. The boarding of animals in an outdoor area associated with the principal use of a vet clinic was just that – it's like the incidental sale of pet food, incidental grooming, etc. It is not the primary use of the business. There is a different level of care found with a veterinarian. There is a different focus in the nature of the business. This is an

accessory use much as a lot of the uses around the city have smaller, subordinate accessory uses.

Carroll suggested that vets will take advantage if we take away the restriction of no open kennels. It's just business sense. Why can't we add the definitions in H-3 and H-4 back into the B-1, B-2 and B-3, making it equal to everyone? He does not want to allow a vet clinic to decide to be in the boarding business with this change. Will reiterated that there are no complaints on record or criticism with clinics and hospitals currently operating in the city. There was no intent to create nonconforming uses. It was just to recognize the reality.

Marvin Krout, Director of Planning, advised that the staff did talk about some threshold to define the number of dogs or cages that make it no longer an accessory use, but the enforcement agency, Building & Safety, felt comfortable that they could tell whether it was an accessory use or something larger. There is at least one emerging business out there which is in the midst of an expansion plan which would have the number of dogs being kenneled so large that it would be difficult to be considered a customary and ancillary use to the vet clinic. This proposal would treat that as a conditional use.

On the issue of outside nighttime boarding of animals, Krout suggested that it might be helpful to get input from the Health Department because in their definition of commercial boarding kennels in Title 6, they were dealing with outside uses and overnight outside boarding.

Bruce Dart, Director of Health, clarified that vet clinics are exempt from the state regulations that oversee commercial boarding kennels. The Health Department took its licensing proposal off the table. The state will continue to oversee commercial boarding kennels and vet clinics would continue to be exempt. The language that the Health Department proposed in terms of animals being outdoors after business hours stipulated that staff would be there to monitor dogs when they are outside. What the Health Department has proposed would insure that staff be on-site to mitigate that problem when it occurs, basically in the evening hours. This would only be for commercial boarding kennels, not vet clinics. However, that language was not approved by the Board of Health.

Esseks likes the idea that where the animals are outside, there be certain conditions to protect nearby residents, but he does not believe 100 feet is enough. He likes the idea of having staff on-site. Esseks would rather wait for that language in Title 6 to come before the Planning Commission.

Will advised that the amendments to Title 6 will not come to the Planning Commission -- only to the City Council.

Carlson inquired whether the kennel requirements proposed for H-3 and H-4 could also be applied to the hospital and animal clinics. Will stated that the staff did discuss it and the

rationale for not doing it was primarily that there have been no complaints or violations. In addition, if that were to happen, there would be a good number of the existing facilities that would not be able to meet these conditions/requirements. They would become nonconforming uses.

Cornelius observed that a good number of these facilities are nonconforming uses as the law is written today. Will concurred.

Carroll observed that there is a vet clinic that is going to expand and if we delete the “no open outside kennels” language, then they have the opportunity to have open kennels without meeting all the requirements. Will reminded the Commission that the difference is the principal use. There may be an issue with kennels and that is the reason to draw the distinction between the two uses. As soon as you become a kennel, you are regulated.

Cornelius suggested that the Planning Commission is looking for the bright line between a vet clinic and a kennel. Will suggested that that responsibility falls on the city in any number of cases where the zoning ordinance describes a use and there is a complaint. The staff is suggesting the same here – you’re a vet clinic and at some point you may become a kennel, but when you do, you are regulated as a kennel.

Strand suggested that you could suddenly have 55.5 percent of your business be vet clinic and 49.5 percent be boarding. We have a law that you cannot have more than a certain amount of pets in the city limits, and suddenly they would be allowed to exceed that. Are we suddenly going to allow outdoor kennels with a vet clinic? She does not want to suddenly have 6-10 dog runs within 100 feet of a neighborhood with all those dogs outside all night long.

Taylor suggested putting the stop sign up after something happens as opposed to reacting. We may be overreacting to a problem that won’t even exist. Should we really be that concerned? He understands that the vets are pretty much exempt from most of these regulations anyway. He thinks we are putting the cart before the horse.

Will suggested that the Lincoln Municipal Code is providing some guidance now. Title 6 specifically exempted vet clinics when it talked about regulating kennels. It is recognition of a distinction between those uses and a level of care or attention to those activities and those accessory uses.

Support

1. **Peter Katt** appeared on behalf of the franchise holders of a **Camp Bow Wow** facility for Lincoln if they can ever be welcome into town to do business. This is a much more complicated matter than he imagined it could be because it involves the health regulation.

He reminded the Commission that their role is to deal with the land use issues. Both of these bodies (Planning Commission and Health Board) are to make a recommendation to the City Council. The Board of Health last night decided they were not going to forward anything to the City Council. That means that the Director will not forward it unless one or more City Council members ask that it be forwarded anyway. Katt believes that the City Council will ask for the proposal to come forward.

With regard to commercial boarding kennels (which is what his client would operate), he and his clients are satisfied. What are we going to do with commercial boarding kennels? And what are we going to do with "vet clinic"? In the zoning ordinance, you use animal hospital and animal clinic, and Health uses animal hospitals operated by a veterinarian. In his opinion, he believes that he could probably qualify his clients' facility as either an animal clinic or an animal hospital if there were a veterinary involved. It is important to recognize that kenneling operations in animal clinics or hospitals in town can be used creatively to accomplish other things. Katt pointed out that the current kenneling operation associated with vet clinics is an accessory use. Two examples - 88 kennel vet clinic and the one to be expanded to 60 plus kennels. It boggles his mind that those operations are accessory to the veterinary. Those are considered accessory uses to animal hospitals and clinics today in the City of Lincoln, so if we are unsuccessful in changing the Health regulations, there will be the opportunity for his client to open and operate a 60-kennel animal clinic in the city limits. As of today, animal clinics may be operated in the city with up to 88 kennels and be considered an accessory use to the veterinary clinic.

Opposition

1. David Bargan appeared on behalf of the **Nebraska Animal Medical Center**. They are confused about the process in that the Board of Health voted last night not to recommend this proposal to the City Council. The Animal Control Advisory Board also voted twice not to support these changes, and the Health Board voted not to support these changes based on the health issues. He understood that the proposal would now die.

The Nebraska Animal Medical Center is concerned about the buffer being sufficient for the noise issue. The difference is that a vet clinic has professionals on staff who have gone to school to be veterinarians. They have emergency facilities. They are trained in much different ways than just general kennels.

As far as the outdoor boarding, Barga indicated that he was not prepared to answer that question today. His client is confused about what that means and the definition.

The major concern of Nebraska Animal Medical Center is simply with expanding these commercial boarding facilities in the city of Lincoln. The code as it stands now is not changed. Until that is changed, these ordinances are not effective because commercial boarding facilities are not allowed in the city limits. His client has nothing against Camp Bow Wow. The concern, however, is, "where does this go from here?" If we allow

commercial boarding facilities within the city limits, what if WalMart got in the business of having a kennel, or PetsMart? How do we define who gets to do this in the city and what are the regulations? As far as annexation creating nonconforming uses, the Health Code could be rewritten to exempt operations that are brought into the city through annexation without having to make changes to the zoning ordinance. In general, as the entire package was presented, the Nebraska Animal Medical Center is opposed to allowing commercial boarding facilities in the City of Lincoln in terms of nuisance and health issues.

The Nebraska Animal Medical Center is a veterinary clinic in the city. Bargen did not know how many animals boarded at this facility but it is nothing like 88, and maybe not even 60.

Carroll inquired whether the Nebraska Animal Medical Center has an open kennel now. Bargen answered, "no". It may have an outside exercise facility but there are no open kennels. That's the confusion. What does that really mean? If it means outdoor play or walking area, that may be the case, but they do not have an outdoor boarding facility.

2. Henry Sader, Wilderness Kennels, 2030 Saltillo Road, is opposed. He is confused because the Animal Control Advisory Board has reviewed this twice and twice they have said no. It went before the Health Board and the Health Board says no, but yet we're back here discussing things that include having commercial kennels within the city limits. He agrees that passing this would indeed mean open kennels. An open kennel is where dogs can run side-by-side. Open play areas are different. The fenced area and setback of 100' from a residential area for two dogs is absurd. You could take 20 dogs and put them in kennel runs – they don't need to see anything – they are going to bark and they are going to make a mess. They could be one-half mile from a residential use and they could be heard. The fencing will not make a difference.

Wilderness Kennels can facilitate 122 dogs. The property is zoned industrial. The facility is about one-half mile from any residential use. Sader has not received any complaints. His facility is next to Wilderness Park and there is a large gas supply facility next to them. Wilderness Ridge is about 1.5 miles away and those residents have said on a good day in the morning they can hear the dogs barking.

Staff response

Dart confirmed that the Title 6 proposal would normally not be forwarded unless requested by the City Council or Mayor.

As far as why proposing this now, Will advised that the staff believes it to be prudent that the zoning ordinance also be considered in light of the amendments being proposed to Title 6 so that they could come forward together.

Relative to Mr. Katt's comments, Will believes that 88 kennels would mean the principal use is in fact a kennel. It would be obvious to a rational person that it is a kennel, so it would not be a vet clinic.

Carroll made a motion to delay four weeks because he does not believe this is done, seconded by Strand.

Carroll understands the H-3 and H-4 definition of kennels, but there are too many questions about vet clinics and what they can and cannot do. Until we get a definition of kennel and open play area, he does not think a final decision can be made.

Strand wants to provide that vet clinics can have open play area and not open kennels and she wants that redefined.

Esseks wants information on the setbacks and other ways to mitigate noise and possible odor problems. Either we need more evidence that the 6' opaque fence and 100' setback are going to be effective or some better supported standards need to come forward.

Taylor thinks it will be interesting because the opposition comes from kennels and also from representatives of veterinarians.

Carlson thinks it would be interesting to see what kind of response we might get from the hospitals and clinics for animals if we applied some of the additional conditions on their practices. He understands they don't get complaints now, but we aren't getting complaints in H-3 either. He thinks the auxiliary use could be a problem.

Strand would like to see the language about staff over-site while animals are outside in the zoning ordinance as well.

Strand would like to see a definition of play area versus an open kennel.

Carlson wants to make sure the conditions are adequate and whether they should be applied to any expansion of a nonconforming use, even if auxiliary and incidental to a vet clinic.

Sunderman wants to know what "auxiliary to a vet clinic" means. Krout stated that Building & Safety deals with those issues everyday and it is kind of an art. Building & Safety believes that they know when a use is auxiliary or principal when they see it. If that is not satisfactory then there needs to be a number for differentiating.

Carroll suggested that 88 boarding kennels tells you what business they are in. If you are boarding for a fee, then you can qualify as a kennel.

Carlson suggesting leaving H-3 and H-4 on the table, and then have some of those restrictions debated for hospitals and animal clinics. Krout suggested, then, that it would be appropriate to allow a commercial kennel in B-1, B-2 or B-3 if we control the outside play area. Carlson disagreed.

Esseks wants to address the issue of this group making a land use recommendation based

upon our perceptions of what's good for the public health and safety. If the Health Board has said no twice, that leaves us in a real deficit of information. He would like those experts to advise what would represent good conditions to guard against nuisance problems. Zoning decisions have been guided over the years by good advice on the public health and nuisance effects. Who is going to advise us? What are the conditions that will prevent serious nuisances? Krout suggested that the Planning Commission is advisory just like the Health Board is advisory to the City Council. In the end, the City Council is going to have to evaluate both recommendations.

Strand indicated that she is prepared to make a motion to deny and re-define the difference between a play area and vet clinics and move forward with that. She does not want to see kennels inside the city limits unless grandfathered in as the city grows. She is not in favor of letting vet clinics create more of a boarding situation. We either delay four weeks or she is ready to make a motion to deny.

Krout believes that there is probably more I-1 zoning in the city limits than H-3 or H-4.

Motion to defer four weeks, with continued public hearing and action scheduled for March 14, 2007, carried 7-1: Cornelius, Carroll, Taylor, Esseks, Sunderman, Krieser and Carlson voting 'yes'; Strand voting 'no'; Larson absent.

There being no further business, the meeting was adjourned at 3:25 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on February 28, 2007.