MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, March 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, Roger Larson, Mary Strand, Lynn Sunderman and Tommy Taylor; Marvin Krout, Ray Hill, Mike DeKalb, Brian Will, Tom Cajka, Sara Hartzell, 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 February 28, 2007. Motion for approval made by Carroll, seconded by Krieser and carried 7-0: Carlson, Carroll, Cornelius, Esseks, Krieser, Sunderman and Taylor voting 'yes' (Larson and Strand abstaining).

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: March 14, 2007

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

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 07008, CHANGE OF ZONE NO. 07009, COMPREHENSIVE PLAN CONFORMANCE NO. 07001 and WAIVER NO. 07003.**

Ex Parte Communications: None.

Taylor moved to approve the Consent Agenda, seconded by Carroll and carried 9-0: Carlson, Carroll, Cornelius, Esseks, Krieser, Larson, Strand, Sunderman and Taylor voting 'yes'.

Note: This is final action on Comprehensive Plan Conformance No. 07001 and Waiver No. 07003, 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.

CHANGE OF ZONE NO. 07010
FROM AG AGRICULTURAL TO
AGR AGRICULTURAL RESIDENTIAL
ON PROPERTY GENERALLY LOCATED
AT 134TH STREET AND "A" STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: March 14, 2007

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

Ex Parte Communications: None.

Staff recommendation: Denial.

Staff presentation: **Mike DeKalb of Planning staff** presented this proposal for a change of zone from AG to AGR on approximately 125 acres generally located at 134th & A Streets, about ½ mile south of "O" Street on the west side of 134th Street. The area south of Crooked Creek is shown as AG in the Comprehensive Plan, which is the primary reason for a staff recommendation of denial. The staff could not find sufficient reasons to overrule what is shown in the Comprehensive Plan.

Esseks inquired how many dwelling units could be built on this site using a community unit plan under the existing AG zoning, with the bonuses for open space and farm land preservation, etc. DeKalb explained that this parcel currently has an AG CUP with seven lots. With the bonuses and a community sewer system they might be able to get eight lots.

Esseks inquired as to the approximate distance to the nearest emergency medical station. DeKalb indicated that the property is in the Southeast Rural Fire District, with stations located at 84th & Holdrege to the northwest and 77th & Pine Lake, so it would be approximately five to seven miles.

Proponents

1. Peter Katt appeared on behalf of the applicant, **Steve Champoux.** His client has been working on this property since 1994. The last time was in 2002 when his client voluntarily removed it from the County Board agenda because of the adoption of the new Comprehensive Plan and the desire to apply new standards in the siting and selection of acreages. Unfortunately, there is still not a completed performance standard point system, and Katt does not believe this application should be delayed because of that.

With regard to the staff analysis, Katt pointed out that the Comprehensive Plan land use map is just one factor to be considered – it is not “the” factor -- it is one factor of many. When the Comprehensive Plan was updated in 2002, no additional acreage areas were added because we were going to develop a performance point standard. Mr. Champoux should not be penalized because this property is not shown on the land use map.

In addition, Katt purported that grouping has value - the staff indicates there are sufficient acreages in this area for AG CUP’s and two three’s per 40. Katt suggested that that encourages acreage parcels to be spread throughout the county and not clustered. Grouping is important as we locate acreages in the county.

Katt pointed to the Comprehensive Plan concept of performance criteria. The development of this performance standard system was an attempt to identify areas appropriate for acreages because the facilities were in place and to have a market based component.

Katt explained that the applicant has elected to proceed on a change of zone without an associated community unit plan at this time because there is significant added cost in developing the CUP and it is difficult in layout if zoned AG or AGR. The purpose in bringing this change of zone forward is to determine what needs to be designed in the CUP. Any requirements that need to be accomplished through build-through will be met or exceeded when the applicant comes forward with the CUP.

Katt believes the staff analysis and recommendation violates the Comprehensive Plan provision on grouping. Katt then referred to The Bridges, a community unit plan that was approved for AGR zoning. In terms of performance criteria, Katt believes that this proposal is better than The Bridges, and the only significant difference is the fact that The Bridges has a map designation and this site does not.

In terms of market demand, Katt stated that there really is not the same number or volume of acreage lots in this sector in Lincoln, which is one of the reasons his client believes that acreage development in this area is important to meet market demands. This is a very logical location, applying all of the non-arbitrary performance criteria for AGR zoning.

2. Mike Eckert of Civil Design Group also appeared on behalf of the applicant. There are only two areas shown in the Comprehensive Plan in this area of the County that are zoned for AGR subdivision and they are both fully built-out. In contrast, if you look at the area in the southwest, there are multiple areas of opportunities for acreages, many of which are also built-out.

Eckert showed an exhibit of the proposed layout of the property, but indicated that he felt it was in the best interest of his client not to develop an entire CUP until the change of zone is approved. With regard to quality of water, Eckert stated that the water report clearly indicates that water is plentiful in this area. There are wells on the golf course with tremendous volume and there were five test wells done on this property. Water is not an issue.

With regard to the sewage treatment system, Eckert stated that the applicant is committed and prepared to do a treatment plant. This layout would cluster the smaller lots, requiring the community system. There were some issues with contamination from nitrates and terracing effects, but these are all things that are fairly standard and can be treated.

With regard to the floodplain, Eckert explained that this is an area where there are revised maps for the Stevens Creek Watershed and this property abuts that. There will be no attempt to fill any of the floodplain property.

With regard to any concerns about increased traffic, Eckert stated that the applicant is prepared, during the CUP process, to commit to paving 134th Street past the golf course, and is also committed, at his cost, to pave to the entrance facilitating the 48-49 units. This development will comply with the build-through standards.

Eckert believes that this property stands up highly, as well as any other in the county, due to the paved roads, water, proximity to a major highway, the ability to cluster the development and it is not prime agricultural land.

Larson noted that the applicant discussed a community water treatment plant for sanitary sewer. What about water? Katt responded that most will be individual wells.

Larson wanted to know the number of lots anticipated. Katt stated that they would be requesting 48 to 49 lots on 125 acres.

Opposition

1. Robert Batcher, 720 S. 134th Street, testified in opposition on behalf of a group of land owners and home owners in the area. He is concerned about the water. He has three wells and wants to know what will happen if his wells are affected by this development. The neighboring property owners are also concerned about the sewage treatment system and how things will be handled in theory and practice. Presently, there is a large settling basin, with a terrific odor problem. He does not understand the difference between the AG and AGR CUP. Is there anything to say that they cannot make a change later on and put in multiple units on given lots?

Staff questions

Esseks noted that the staff report indicates that there is a large inventory of AGR parcels. He wanted to know where. DeKalb reminded the Commission that the Comprehensive Plan was adopted on November 11, 2006, and the Planning Department was asked to write a report on what is occurring across Lancaster County. That report pointed out 32 square miles of land that is shown for potential AGR, but, in addition, we are finding that more than half of the lots are being created in the AG areas. In fact, 10 to 14 percent of the single family dwellings constructed in Lancaster County are outside the city on acreages. Therefore, the staff took the position that the desires and need to market for acreage development are very adequately addressed, but one of the keys to that is distribution. It would be a much bigger impact on the support system of the county.

Esseks noted that the area east of Walton appears to be left out. Are there no AGR parcels approved in this area? DeKalb stated that from 112th to 120th south of Walton there is almost a square mile approved with build-through lots that have not been built yet. The staff is currently working on an AGR about 1.5 miles south of there, Hidden Valley Golf Course. The reason Stevens Creek does not have a lot of AGR shown is that it is an area into which the city can grow. This property is in Tier II and shown for future city growth.

Esseks noted the Comprehensive Plan goal of approximately 6% of the county population being in unincorporated areas. Is there some other way to achieve that goal besides turning down an application like this? DeKalb suggested that more and more flexibility has been built into the regulations to allow the AG areas more opportunities to create 3-acre lots. There is a Transfer of Development Rights (TDR) request in front of Legislature this year to give flexibility for adding density to cluster subdivisions.

Carroll confirmed that Stevens Creek is on the west side of this parcel. What is the timeline for the sewer line coming down Stevens Creek, crossing “O” Street and going south? DeKalb was not sure about crossing “O” Street, but the Tier I areas on the map are anticipated to have city sewer in the mid-range of 25 years, with Tier II between 25-50 years. It’s coming on the west side but not on the east side.

Carroll wondered whether the paving of 134th Street down to the entrance would change the staff recommendation or help in any way. DeKalb stated that paving to be a minimum necessity. That would not change the staff recommendation. He would assume there would be more than one access at the time of subdivision. The portion now paved is because of the golf course development.

Carlson commented that it does seem like a timing issue, i.e. land banking or urban reserve and the ability of Lincoln to grow. The staff is trying to create flexibility in the AG to give someone an interim use. DeKalb agreed.

Response by the Applicant

Eckert urged that it is very unlikely that a residential well will have any kind of impact on another well.

Eckert also explained that the settling basin, or what is currently a lagoon for the 40 existing townhouses, is something that would be merged with the existing lots. The idea is to get away from that and do the package plant, which will, per NDEQ approval, dump its effluent into the creek. This is another highlight for this area. Cardwell Branch is very close to reaching its maximum ammonia level. There are not many developments along Stevens Creek and he does not believe there are any with package plants. The likelihood of approval by NDEQ is very high.

As far as density, Eckert stated that this is the maximum. If they use the bonus for clustering and for community sewer, this is the most units that can be done on this property until it is urbanized and annexed. 48 to 49 lots would be the maximum.

Eckert also noted that the policy of the city is that it is the west bank of Stevens Creek that will be developed first, clear down to Highway 2. It is in the 25-50 year window.

Katt noted that acreages are not to be located in the Tier I properties. They are to be located in Tier II areas, and this is a Tier II area relatively close to the city with a federal highway system that is less than one mile away that will be connected with pavement.

Katt believes that “demand” is the biggest policy issue – where does the demand for acreage lots arise? Is it people living in the small towns? The farm operations on the edge? Or does the demand arise from people working in the city? He believes the primary demand comes from people that live and work in the city. If the staff solution to that demand is to say, let them go do an AG CUP with two three’s per forty – what does that imply? It implies that all those people that want acreage lots have to go further and further out of the city – they are not compact and not clustered – and the ability to provide services is very difficult. Clearly there is a demand. Is it better to meet that demand closer to the city in compact developments? Or is it better to force them out further? That is the policy choice to be made. What better place than in the county – outside growth of 25 years, adjacent to existing AGR development with a golf course, not interrupting existing agricultural operations, across the creek to the west is the Boy Scout camp, at 134th & O Street is an industrial facility with bars, restaurants, 200 storage sheds and Campbell’s is developing a major facility on the other corner. The pattern has been set that this part of the county will become more urban, not agriculturally oriented. This is a good place to meet the demand for acreage lots.

Katt also suggested that the primary beneficiaries of residential land values are school districts. This land is in the Waverly School District. The city has just taken over a tremendous amount of the Waverly Public Schools tax base. This is another location for Waverly to re-establish some tax base that it has lost.

Esseks commented that the issue of whether new homes are net benefits to school districts is really an open issue. It depends on how many children would be going to the Waverly District and it depends upon the Waverly District's tax rate as well as the value of these homes. Existing studies indicate that these homes do not pay for themselves in terms of the school issue. If you want to come forward with more of these developments, he would like more information on the cost-revenue issue. He does not think these homes would be net benefits to the Waverly District. Katt's response was that when they talked with Waverly Public Schools, it was the Waverly Public Schools' opinion that these developments are net benefits. They have capacity in their schools. The last development that we did up there was primarily retirement – non-family. These acreage homes will probably be in the price range in excess of $400,000 so the income levels necessary to live in these homes generally have higher incomes and have the tendency to have smaller families.

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Larson moved approval, seconded by Strand.

Larson stated that he lives in the Tier I area on the west side of Stevens Creek. This 125 acres of which he is very familiar is really not a good size for any farm operation. He is concerned about using that piece of land for 20-acre lots as opposed to 3-acre lots, which would result from this change of zone. He believes it creates an inefficient use of land if we leave it in AG and require 20 acres per lot. There are many reasons to increase the density.

Strand agreed with Larson.

Carroll commented that it is a difficult issue according to the Comprehensive Plan because we do not want to leapfrog out to the edge of the County with acreages. But they are putting in build-through. The paving is a big issue because the developer will pave the roads. It is next to AGR to the north with the golf course; there is a creek to the west; and there is development at 134th & O that is commercial now with additional commercial coming forward. It is not a good thing to allow acreages like this, but he believes this specific area and site is okay.

Esseks stated that he is opposed to the motion. He believes that the whole community benefits from a population distribution where most of the growth is found in the city and not in scattered areas around the city. How can we achieve 6% of the total population being in unincorporated areas unless we have the will to say "no" to some of these acreage

developments? There are other undeveloped AGR parcels in the general area. He thinks we should wait for them. They can go ahead now with an AG CUP of eight units and then before long they would be ready to be annexed.

Carlson stated that his opinion falls on the side of denial. We need to constantly remind ourselves – what is the policy question? Should we have acreages in small scattered sites around the county? Should people be able to live on an acreage right outside the city? It becomes inconvenient when the city bumps up against them. He agreed with Esseks. The dynamic exists for an interim use of an AG CUP. He believes that the parcel is now approved for three-acre units. He is concerned that if we approve piece by piece - one at a time - without a view to the overall plan, we don't get to meet the goal in the end.

Motion for approval failed 3-6: Carroll, Strand and Larson voting 'yes'; Cornelius, Sunderman, Esseks, Krieser, Taylor and Carlson voting 'no'.

Sunderman moved to deny, seconded by Esseks and carried 6-3: Cornelius, Sunderman, Esseks, Krieser, Taylor and Carlson voting 'yes'; Carroll, Strand and Larson voting 'no'. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 06084
A TEXT AMENDMENT TO TITLE 27 OF THE
LINCOLN MUNICIPAL CODE RELATING TO KENNELS.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: March 14, 2007

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

Ex Parte Communications: None.

Staff recommendation: Approval, as revised.

Additional Information for the record: Brian Will of Planning staff submitted a letter in opposition from David Bargen on behalf of Nebraska Animal Medical Center. He also submitted a staff memorandum including some recommended changes to the staff recommendation at the request of the Law Department for clarification purposes, and a recommendation that an additional condition be added to the special permit section:

> Animals in the outdoor exercise area shall be under the supervision of handlers at all times.

Will also provided the Commission with a copy of the Title 6 amendments for proposed alternative commercial boarding kennel ordinances, for information purposes only. Title 6 is not in the jurisdiction of the Planning Commission but will go forward to the City Council with the proposed amendments to Title 27.

Staff presentation: **Brian Will of Planning staff** recalled that the Planning Commission wanted to see some revised language, and chief among those was more equity among the way that animal hospitals and kennels are treated. The revised proposal has three major changes:

1. Adds definitions for Animal Hospital, Indoor Animal Hospital, Kennel, Indoor Kennel and Outdoor Exercise Area Associated with an Animal Hospital or Kennel;

2. Treats indoor kennels and indoor animal hospitals the same way – they would be permitted uses in the B-1, B-2, B-3, H-1, H-3 and H-4 districts (the distinction for indoor animal hospital or indoor kennel would be the outdoor area with no more than three animals in that area at any one point in time); and

3. Creation of a special permit in the H-3 and H-4 districts for outdoor exercise area with seven conditions.

Carroll noted that the definitions for kennel and indoor kennel still appear to exclude "animal hospital" from that definition. Will agreed. Carroll does not understand how the conditions put on indoor kennels for different zoning districts can be held up under the code if we are excluding them under the definition. How could an animal hospital have an indoor kennel when it's not in the definition? Will explained that to be the reason for the definition of "animal hospital" and "indoor animal hospital".

Carroll inquired why animal hospital is excluded from the definition of kennel and indoor kennel. Will explained that the genesis of these definitions is from Title 6 in the Health Code. That exception is also included in the definitions of Title 6.

Marvin Krout, Director of Planning, noted that at the last meeting the discussion was about when an animal hospital becomes a kennel and where to draw the line between those two. If we say these are two uses, they could each be operated independently but also operated together in one building, and we would treat them the same in terms of what zoning districts in which they are permitted. Indoor hospital and kennel are allowed in the same districts. If you want an outdoor play area, whether animal hospital or kennel, it is a special permitted use in the H-3 and H-4.

Carroll posed the question, what if an animal hospital in B zoning wanted to have an indoor kennel? Krout stated that they could have a kennel because a kennel is a permitted use. Carroll does not see the difference.

Strand noted the provision in Title 6 that no animal shall be allowed in outdoor exercise or play areas after business hours. She wanted a definition of "business hours". Will reminded the Commission that the Title 6 provisions are for information purposes only.

Title 6 does not go through the Planning Commission. These proposed amendments to Title 27 are exclusive of the amendments to Title 6.

Carroll then pondered, if an animal hospital in B zoning is sized to a kennel, there is no limit to the number they can kennel inside their facility? Will agreed that to be correct as long as the kennel meets the definition of animal hospital. There is a limit on the outdoor component. Will believes the intent was to treat them exactly the same. The definitions were brought forward in order to treat them the same.

Esseks inquired about the 100' buffer between the boarding facility and the nearest residential district. Why not 200 feet or 50 feet? Will advised that to be a community standard selected in doing research. There are some ordinances with a much greater standard and some with none at all. The Planning staff is suggesting, given the circumstances we have here and the requirements in the code, that 100 feet seems reasonable and prudent for this use. Currently, in Title 6, there is a provision that already regulates barking dogs and treats it as a misdemeanor. Therefore, there are regulations already in place to regulate the potential nuisance. Additionally, by making that outdoor component a special permit, the Planning Commission, through public hearing, can consider other circumstances associated with any particular location and make a decision based on the circumstances.

Esseks is concerned about 60 or more dogs inside the facility at one time. He is okay with the three outdoor at a time, but 60 or more animals inside at one time can be a problem unless the windows and walls are constructed to suppress that noise. For example, the city of Scottsdale, Arizona, provides that all animal kennels must be in sound-proofed buildings. Why don't we recommend that? Will suggested that the staff did not go down that path because there are already provisions in place in Title 6 that regulate either noise or barking dogs. Sound-proofing could be problematic and would need more investigation as to what it means as far as noise levels, etc.

With the Health Department enforcing the noise complaints, Strand expressed concern because she believes the Health Department has suffered some major budget cuts in that division. Will suggested that it also relates to the absence of any complaints regarding the operations currently in the community.

Cornelius sought confirmation whether the absence of complaints relates to "boarding facilities". Will noted that it has been reported that some of the vet clinics can accommodate upwards of 80 animals, but he does not believe that is typical. He would have to rely on the Health Department to get specific in that regard.

Carlson confirmed that with the new definitions, indoor and outdoor becomes the controlling factor. Will stated that an indoor kennel or indoor animal hospital is allowed in B-1, B-2 and B-3, so there is no advantage one over the other. If you want outdoor or more than three animals you need to go to a commercial area or get a special permit to facilitate the outdoor component, which is only allowed in the H-3 and H-4.

Carlson expressed concern about the definition of indoor kennel: "....shall mean any building, yard, enclosure or place...". Rick Peo of Law Department believes it was an attempt to be broad on the definition of kennel as to what might constitute a kennel as to both indoor and outdoor. Indoor would exclude the yard provision. He agreed that possibly the word "yard" should be excluded from the definition for indoor kennel. It might need some clarification.

Support

1. Heidi Flammang, founder and CEO of Camp Bow-Wow, a national dog care facility and franchise, testified in support. Camp Bow-Wow is excited about coming to Lincoln to provide a service to the community. She has been involved in about 75 like situations around the country. The text amendment as proposed is very typical of how communities are dealing with this around the country. The proposal addresses the grandfathering issue in terms of annexation. It also addresses the issue that the current vets within the city limits are in fact doing boarding. This levels the playing field. The key that is really important that will be helpful is the special permit provision. It allows a lot of control on a case-by-case basis and that is something that cities are having a lot of success with. It is a good solution. She did suggest that the Commission might consider coming up with a general term such as "animal care facility", which allows more leeway as these "super" facilities come into play with vets, boarding, grooming, etc. With regard to sound, an acoustical study done in Durham, North Carolina, found that the equivalent of 70 barking dogs did not cause a noise nuisance 100' away.

Esseks inquired whether there was any need for sound-proofing. What about the windows? The representative of Camp Bow-Wow stated that the windows would need to be closed. Esseks wondered whether residents could complain if the windows are left open. The representative of Camp Bow-Wow stated that it is important to keep a good relationship with the neighbors in the area. In some cases, the cities have put into place a complaint process and that is another way to alleviate concerns.

2. Colleen Clark, testified on behalf of **Camp Bow-Wow,** and advised that the Belmont Vet Clinic has 88 indoor heated runs and the Nebraska Animal Medical Center has built a multi-million dollar addition with 50+ kennels, both in Lincoln.

3. Megan Allen, Director of the Site Search Group for **Camp Bow-Wow,** stated that dog safety and their well-being is really important. In most of their facilities, it is not an option to open the windows because of the required temperature guidelines. It would waste utilities to have the windows open.

Opposition

1. Dr. Tom Haug, veterinarian at **Belmont Veterinary Center,** with 5 vets in the practice, testified in opposition. He clarified that their Web page does refer to 88 kennels for boarding; however, it is incorrect. They have a total of about 37 runs and 51 cages. Belmont Vet Center is not a boarding kennel. When this clinic was built, it was imperative that all runs and cages be inside and the only time the animals are allowed outdoors is on a leash with direct supervision. It is common knowledge that a dog is less likely to bark if on a leash. If turned out in an exercise run, the subsequent barking and noise would increase. The Belmont Vet Center only generates 5% of its income from boarding. He believes that a lot of outdoor exercise pens would lead to a significant noise problem.

2. Henry Sader, 2030 Saltillo Road, **Wilderness Kennels**, testified in opposition. He agreed with the letter submitted by David Bargen on behalf of the Nebraska Animal Medical Center. Allowing more kennels in the city limits will result in more of these facilities in all of these different zoning areas popping up that are probably not as well accredited as Camp Bow-Wow. You will have to let everyone that applies and meets the criteria to put a kennel in a strip mall, for example. The 100' is absurd. It is absurd to think that you cannot hear dogs. He has one building at Wilderness Kennels with 28 kennel runs and you definitely can hear the dogs from 100 feet. There is no doubt. He believes this proposal has been created by the Planning staff on behalf of Camp Bow-Wow. He does not have a problem with Camp Bow-Wow. They can build outside the city limits. That's what he had to do. The benefit of having them in the city is not going to outweigh the public disgruntlement of others because of the barking noise, the odor, etc. Dogs are animals – they are not people – they don't think like people. You need to look at the benefits of not having them within the city limits. The Animal Advisory Board has voted "no" and the Health Board has voted "no".

Other Testimony in Support

1. Peter Katt, attorney representing the local franchisee, **Camp Bow-Wow,** addressed the comments in opposition. The proposal defines indoor kennel and perhaps it is unfortunate that we have to use the word "kennel". The point to be made is that we have facilities today that operate within this function within the city limits. Animals are boarded in vet clinics, so it is a land use that has operated successfully in the city without any problems. He does not believe that it requires a veterinarian to manage animals. We don't require doctors to run day cares. This concept of a pet day care is important to be facilitated inside the city limits. It is a day care. it is not an overnight stay. Lincoln has been a unique experience for Camp Bow-Wow in terms of finding a way to accommodate the

concerns and locate in the city. He does not understand why Lincoln cannot find a way to accommodate this type of business in our community.

Katt pointed out that there is a complaint process in place today. There are enforcement mechanisms in place today. This is a use that is needed today, and one which is allowed in a lot of communities throughout the nation. We have examples of how they successfully operate in the city today.

Katt supports the revised staff recommendation.

Staff Questions

Relative to Title 6, Will explained that currently the zoning ordinance allows kennels as a permitted use in the city. Title 6 currently prohibits kennels within the city limits. The change to Title 6 must occur in order for the proposed changes to Title 27 to have any meaning. Both Title 6 and Title 27 will need to go forward to the City Council.

Will noted that Camp Bow-Wow described the nature of their use. However, we must be careful when writing provisions to make sure we have everyone in mind, that is, the range of operators that could potentially come in.

Strand inquired whether Will believes this legislation covers all contingencies. Will answered in the affirmative. He pointed out again that Lincoln already has these facilities within the city. The Health Department has said there have been no complaints, so the staff did not see any reason not to support it. Relative to the special permit, those applications will come forward to Planning Commission and will be reviewed on a case-by-case basis. That is also the reason for adding that the Planning Commission may increase the requirements in consideration of the adjacent environment. The special permit is only allowed in H-3 and H-4.

Esseks wanted to know what could be done if a nearby resident or worker at an office had a real gripe against one of these kennels, such as the noise, smell, etc. Will suggested that it would either be a zoning violation or a Health Code violation. In any event, a city agency is going to respond and be responsible for investigating. Those provisions are already in place.

Esseks wondered whether there is any remedy for enforcement if one agency were over-taxed for lack of budgetary resources. Will's response was that we can't stop doing development and we can't stop uses from coming in. That would be a broader policy issue. Rick Peo of the Law Department advised that occasionally noise complaints have to be brought directly into the City Attorney for prosecution when there is not a health officer available, so there is a remedy through the City Attorney office.

Strand wondered whether Camp Bow-Wow could come into Lincoln today if they joined in with a vet clinic. Will stated that currently, the ordinance allows animal hospitals in the city limits. If an entity comes in and if the city has found the use to be appropriate, they could do so.

Cornelius asked what constitutes "sufficient evidence". Peo stated that obviously, it is a case-by-case situation. Usually in a neighborhood issue of dogs barking, the evidence would include the amount of time outside barking, how long, etc. Is it unique to you but not your next-door neighbor? It would be a case-by-case decision to determine whether it is a noise violation. Obviously, a parole officer would go out and investigate.

Cornelius inquired whether we know how many citations have been issued for this type of violation in general. Peo did not know. He did prosecution a few years ago and it was not an infrequent issue that gets investigated, but he was not aware for current situations.

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Strand moved approval, as revised, seconded by Sunderman.

Strand stated that she hates listening to barking dogs and she loves dogs, but this obviously is happening within Lincoln and there need to be rules that allow some conformity and some rules to be applied. Why not make it allowable as a business without having to play the game? Dogs do get bored during the day and to take them to a day care is something that people like to do. There is a need.

Esseks stated that he will support the motion, also, but he believes it will be a rather heavy burden as we deal with the reality of these large facilities and the problems they might cause.

Cornelius stated that he will also support the motion, with one caveat – what we learned over the course of this process is that between the land use ordinance and the Title 6 Heath Code, we have kind of a mess. This is a step toward creating some consistency in those ordinances. He is hopeful that as this proceeds forward that the people to whom the Planning Commission is making a recommendation will also take into account the recommendation of the Health Department with regard to enforcement and location of animal care facilities, hospitals, etc., near residential areas.

Carroll stated that he will support the motion. There are problems that need to be addressed. He expressed appreciation to the staff.

Carlson commented that there is a complex set of questions and there is a varying rate of understanding. He also expressed appreciation to staff.

Motion for approval, as revised, carried 9-0: Carroll, Cornelius, Sunderman, Esseks, Krieser, Taylor, Strand, Larson and Carlson voting 'yes'. This is a recommendation to the City Council.

*** Break ***

ANNEXATION NO. 06002
TO ANNEX APPROXIMATELY 15.9 ACRES,
GENERALLY LOCATED AT
S.W. 40TH STREET AND WEST A STREET.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: March 14, 2007

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

Ex Parte Communications: None.

Staff recommendation: Conditional approval, as revised.

Staff Presentation: **Christy Eichorn of Planning staff** reminded the Commission that at the last meeting, we talked about a package that included annexation, a preliminary plat and a change of zone. We talked about how it was in Tier I, Priority A, with urban services expected within 25 years, and that it should be first provided with basic infrastructure within the next six years. The preliminary plat and change of zone were put on the pending list and this annexation was deferred two weeks to enable the applicant to meet with the neighbors. The issue with the neighbors is running the sanitary sewer from the proposed development across abutting neighbors' property. Eichorn believes the applicant has met with the neighbors but she does not believe they have a written agreement at this time. The staff recommendation is now conditional approval, based on a written agreement with the abutting property owners to acquire the sanitary sewer easement or that the developer enter into an annexation agreement with the city.

Proponents

1. Mark Hunzeker appeared on behalf of **Joe Hausmann**, the developer and applicant. They have met with the three neighbors affected by the sewer line and staff. They have basically agreed to either agree on the routing and terms for a sewer easement or the developer will be required to enter into an annexation agreement with the city, or maybe both. They are in agreement to move forward and attempt to work the agreements out before the City Council acts on the annexation.

Other Testimony

1. Mark McVicker, 3635 West A Street, stated that he is neither for nor against. He acknowledged that the neighbors did meet with the developer and the attorney and the neighbors just voiced their concerns and there was nothing finalized at the meeting. They discussed many options. One of the biggest concerns to Mr. McVicker is his tree care and landscape company – what kind of impact the sewer easement would have on his service yard and the incoming and outgoing use by semi-trailer trucks for deliveries. One option discussed was tunneling underneath his property from the east to the west, decreasing the impact on his business, which made him feel better.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: March 14, 2007

Carroll moved approval, with staff conditions as stated today, seconded by Sunderman and carried 9-0: Carroll, Cornelius, Sunderman, Esseks, Krieser, Taylor, Strand, Larson and Carlson voting 'yes'. This is a recommendation to the City Council.

There being no further business, the meeting was adjourned at 2:58 p.m.

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

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