


COUNTY BOARD FACTSHEET

TO : County Clerk: Attn: Kelly Lundgren

FROM : David R. Cary, Director of Planning 

RE : **County Text Amendment No. 17008**
(Amend various articles of the Lancaster County Zoning Resolution)

DATE : May 17, 2017

1. On May 10, 2017, the Planning Commission held a public hearing on County Text Amendment No. 17008 requested by the Director of the Planning Department.
2. Attached are the Planning staff report (pp.2-7) and the minutes of the Planning Commission (pp.8-10) on **County Text Amendment No. 17008**, requested by the Director of Planning, to amend Articles 2, 3, 4, 5, 6, 7, 9, 13, 14, 15, 16, 17, 20 and 22 to the Lancaster County Zoning Regulations, including but not limited to amendments to the definitions, AG District, AGR District, R District, B District, special permits, and changing "church" to "place of religious assembly" throughout the zoning regulations. The proposed legislative changes to the County Zoning Regulations will be provided by the County Attorney's Office separately.
3. The staff recommendation of approval is based upon the Analysis as set forth on (pp.2-7), concluding that the current format of the special permit chapter of the zoning regulations can be confusing and difficult to interpret in regard to land uses. The proposed changes to the format and the minor content changes will make the document more user friendly. The staff/applicant presentation is found on pp.8-9, including a request for a proposed amendment to Section 4.005(d) to Public Uses as found on p.11.
4. The testimony of proponents is found on p.10. Staff discussion with the Planning Commission is found on p.9.
5. On May 10, 2017, the Planning Commission agreed with the staff recommendation as amended as requested by staff and voted 7-0 to recommend approval (Finnegan and Weber absent). The Planning staff is scheduled to brief the County Board on this item at their regular staff meeting on Thursday, May 18, 2017, at 11:45 a.m., in Room 113 of the County-City Building, 555 South 10th Street, Lincoln, Nebraska. Subsequently, the public hearing before the County Board has been scheduled for Tuesday, May 30, 2017, at 9:00 a.m. in Hearing Room 112 on the First Floor of the County-City Building, 555 South 10th Street, Lincoln, Nebraska.

If you need any further information, please let me know (402-441-6365).

cc: County Board
David Derbin, County Attorney's Office
Pam Dingman, County Engineer
Kerry Eagan, County Commissioners

Ann Ames, County Commissioners
Tom Cajka, Planning

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for MAY 10, 2017 PLANNING COMMISSION MEETING

PROJECT #: Text Amendment No.17008

PROPOSAL: To amend the Lancaster County Zoning Regulations to reformat the zoning regulations by amending and adding definitions, clarifying special permitted uses for each zoning district and reorganizing the special permit chapter.

CONCLUSION: The current format of the special permit chapter of the zoning regulations can be confusing and difficult to interpret in regard to land uses. The proposed changes to the format and the minor content changes will make the document more user friendly.

<u>RECOMMENDATION:</u>	Approval
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GENERAL INFORMATION:
This is a set of proposed text amendments to the Lancaster County Zoning Regulations. These revisions range from reformatting, adding definitions, clarification of terms, updating terminology and specifying zoning districts for each special permit.

ANALYSIS:
The following is a summary of the proposed amendments.

DEFINITIONS- ARTICLE 2

Amend definition for “Grade”

Amend the definition of “grade” to match the definition used in the Building Code. This will also match the definition in the City zoning code

Amend definition for “Health Care Facility”

Amend the definition of “Health Care Facility” to “Health Care Facility Non-Residential and Health Care Facility-Residential” to differentiate between different types of health care facilities such as hospitals, clinics, assisted living facility and convalescent home.

Add definitions for “Academies”, “Place of Religious Assembly”, “Private School”, and “Social Hall.”

These uses are listed in other sections of the zoning code. The term "Church" is used many times throughout the Zoning Ordinance but is not defined, and the more inclusive term "Place of Religious Assembly" should be substituted. Academies include uses such as dance, music or gymnastics. Private schools mean privately owned educational facilities. Social Hall shall mean a building or premises available for rent on a daily basis.

Add definitions for “Anaerobic Digestion”, “Anaerobic Digestion Operation Commercial”, “Biodegradable”, Biogas”, “Biosolids”, “Composted Material or Compost”, “Compostable”, “Digestate”, “Food Waste”, “Non-Green Feedstocks”, “Paint Filter Test”, “Vermicomposting” and “Vermiculture”

These definitions were added to help further define terms used in a commercial composting operation. These terms were requested to be added by the Lincoln-Lancaster County Health Department.

Add definition for “Excavation”

The term “excavation” has been added to the definitions chapter. Elsewhere in the zoning code “mining or extraction of minerals” is being replaced with “excavation.” This definition will match the definition in the City Zoning code.

Remove definition of “Boarding House”, “Tourist House” and “Trailer”

The term “Boarding House” and “Tourist House” is not found anywhere in the zoning code except definitions. The term “Trailer” has been changed to “Mobile Home.”

DISTRICTS and BOUNDARIES- ARTICLE 3

Deleted “main” from Section 3.013(f) to clarify that a main building requires a building permit on a farmstead. A building permit has been required since 2002 for a main building on a farmstead.

AG-AGRICULTURAL DISTRICT- ARTICLE 4

Amend 4.003-Permitted Uses to change churches to places of religious assembly.

Amend 4.005(j)-Permitted Conditional Uses to add conditions that a farm winery shall produce a minimum of 500 gallons a wine per year on site on average over a 3-year period, have only a Class Y, YC or YK liquor license and allow the farm winery to be on the same premises as the main residence of the owner or operator.

The six farm wineries in Lancaster County and the Nebraska Wine Growers Association were notified about the proposed changes to add the conditions to produce a minimum amount of wine per year and the liquor license. Currently there is no regulation for producing a minimum amount of wine for a farm winery. The Planning Department has received inquiries in the past on being a farm winery in order to have social events such as wedding receptions. Social events are allowed as accessory to the farm winery. Adding the new conditions would ensure that the main use is a farm winery. The third new condition would allow the owner or operator to live on site. Currently this would only be allowed if the farm winery was 40 acres or larger.

Amend 4.005 (k) to exempt Places of Religious Assembly from the limit of one amusement license per year.

Amend 4.007-Permitted Special Uses, by removing the special permit in the AG zoning for a trailer court, mobile home court; outdoor theaters, semi-public buildings, government landfill, and parking lots. The special permit for semi-public building and outdoor theaters have never been used. The special permit for parking lots and government landfill have only been used once and are not anticipated to be used again. Trailer/Mobile Home courts have been applied for 5 times, but only approved twice. Mobile home courts are more appropriate in urban areas than in AG. Due to the lack of use of these special permits it is recommended that they be removed.

Amend 4.007 to add commercial feedlot, community unit plan, health care facility non-residential, private recreational activities, flood plain construction, and personal wireless services facility as special permitted uses. Commercial feedlot and community unit plan were listed in Section 4.009. The uses should be listed under Special Uses and Section 4.009 should be eliminated. The other uses are either new or were listed in Article 13-Special Permits, but were not listed under 4.007. This helps to clarify which uses require a special permit in the AG District.

Amend 4.007 to change the term “private school” to “academies, private school or post-secondary facilities”. The new term provides a better description of what a “private school” is. It is not clear in the current zoning code if private schools would include gymnastics, dance or karate school or if it was only for academic schools.

Amend 4.007 to change “radio and television towers and stations, and television production facilities” to “broadcast towers.” Broadcast towers is more inclusive and matches the term used in the definitions chapter.

Amend 4.007 to change “mining or extraction of minerals from any portion of the district, and the storage and processing thereof” to “excavation.”

Amend 4.017-Height and Area Regulations to waive the frontage requirement for lots created prior to January 1, 2017 that are 20 acres or larger and to declare any residence constructed within the required yard setbacks on a farmstead of 20 acres or more to be considered non-standard. The AG District requires a minimum of 20 acres and 550' of street frontage to build on a lot.

Prior to September 2002 building permits and zoning could not be enforced on parcels of 20 acres or more zoned AG per State Statute. Resolution R-02-0106 passed on September 17, 2002 required building permits and conformance with zoning regulations for non-farm buildings used as a residence regardless of the size of the parcel. The enforcement of the frontage requirement was not enforced until recently. The lack of the frontage requirement not being enforced has resulted in many parcels with no or little street frontage. A survey of parcels in Lancaster County showed that there are 288 parcels in the county with no street frontage. We were unable to determine the number of parcels that have less than 550' of street frontage. Of the 288 parcels with no street frontage, 56 have houses on them. This amendment will allow all of these lots to be buildable.

Amend 4.017(b) to remove the ownership condition. Currently if a lot has less than the required area (20 acres) it is buildable only if the ownership has not changed since 1979.

AGR- AGRICULTURAL RESIDENTIAL DISTRICT-ARTICLE 5

Amend 5.003-Permitted Uses to change churches to places of religious assembly.

Amend 5.007-Permitted Special Uses by removing campgrounds, veterinary facilities, facilities for the commercial storage or sale of fertilizer or toxic or flammable agricultural chemicals, dog breeding establishments and kennels, trailer and mobile home courts, and parking lot. The AGR district is predominantly a residential district and these uses could be considered incompatible with residential.

Amend 5.007 to change private school to academies, private school or post-secondary facilities and change mining or extraction of minerals from any portion of the district, and the storage and processing thereof to excavation.

Amend 5.007 by adding clubs, pet cemeteries, flood plain construction, and personal wireless facility as special permitted uses. These were listed in Article 13-Special Permit, but not in the special permitted uses in the AGR district.

Amend 5.015-Height and Area Regulations to allow lots that were legally created before October 9, 1979 with less frontage than required to be buildable lots.

R-Residential District–Article 6

Amend 6.003-Use Regulations to change churches” to places of religious assembly.

Amend 6.003-Use Regulations to add recreational facility as a permitted use and remove community buildings as a use. Community buildings are a use that should be in a commercial district.

Amend 6.005-Permitted Special Uses to delete public building erected by any department of a governmental agency, airports or landing fields, private recreational activities, riding stables and private stables, roadside stands for temporary or seasonal operation, mining and storage, clubs and semi-public buildings, and temporary dwellings. These uses should not be in a residential district and are more appropriate in a commercial or agricultural district.

Amend 6.005 to change private schools to academies, private schools or post-secondary education facilities.

Amend 6.005 to change hospitals, clinics and institutions to health care facilities non-residential and change nursing home to health care facility residential.

Amend 6.005 to add dwellings for members of religious order, flood plain constructions, broadcast towers and personal wireless services facility to special uses.

B-Business District-Article 7

Amend 7.003-Use Regulations by adding recreational facility, clubs and social halls.

Amend 7.005-Permitted Special Uses to delete any public building erected by any department of a governmental agency. Governmental agencies are typically exempt from zoning regulations.

Amend 7.005 to delete community buildings or recreation fields. These uses were changed to social hall and recreational facility and moved to permitted uses.

Amend 7.005 to delete trailer courts and trailers for residential occupancy when utilized in conjunction with construction of a residence. These uses are more appropriate in the AG, AGR or R districts.

Amend 7.005 to change private schools to academies, private schools or post-secondary education facilities.

Amend 7.005 to change hospitals, clinics and institutions to health care facilities non-residential and change nursing home to health care facility residential.

Amend 7.005 to change radio and television towers to broadcast towers.

Amend 7.005 to add personal wireless services facility, floodplain construction and off-premises signs.

Special Permit-Article 13

This chapter has been revised to add the applicable zoning district after each special permit. In the current code a person can apply for any special permit in any district. Certain special permits are not appropriate in certain zoning district. For example, industrial uses should not be allowed in a residential district. In addition a listing of special permits was added to the beginning of the chapter.

A few special permits have never been used since the zoning regulations were adopted in 1979. The special permits never used are outdoor theaters, community buildings, and roadside stands for temporary operation in the "R" Residential District.

Two other special permits, government landfill and parking lots in the AG or AGR districts, are being deleted. The government landfill would be exempt from zoning. Stand-a-lone parking lots are not an appropriate land use in the AG and AGR districts. Both of these special permits have only been used once.

Several special permits have been renamed to reflect more current terms. Private schools was changed to academies, private schools or post-secondary education facilities. Hospitals, clinics and institutions was changed to health care facilities non-residential and nursing home was changed to health care facility residential. Radio and television towers and stations was changed to broadcast towers

In the current zoning regulations there are three different special permits for mobile homes. The proposed text consolidates all three into one special permit in Section 13.025. Under the new special permit for "mobile homes" an applicant can request any of the three options.

Amend Section 13.032 for expanded home occupation to remove the list of uses. The list was not inclusive and caused confusion on what is allowed as a home occupation. The definition of what determines an employed person was changed to a person who "participates in the home occupation". This would not include persons doing deliveries.

Community Unit Plan-Article 14

Amend Section 14.003 to allow Community Unit Plans (CUP) in the AG District for lots 5 acres or less to use the height and area regulations district of the AGR District. Currently every CUP in the AG District would need to request waivers to lot area, lot width, lot frontage and setbacks in order to do lots smaller than 20 acres. This amendment would eliminate the need for the waivers. These waivers are routinely approved.

Additional Use Regulations-Article 15

Amend Section 15.001c) to change the definition for employed person for home occupation. This matches the language used for expanded home occupation.

Signs-Article 16

Amend 16.005(b) to change church to places of religious assembly.

Additional Height and Area Regulations-Article 17

Amend 17.001, 17.003 and 17.031 to change church to places of religious assembly.

General Provisions, Legislative Provisions, Penalty-Article 22

Amend 22.005 (b) to change the number of days prior to the public hearing that the notice is published in a newspaper from 8 days to 5 days. There have been situations in the past where the newspaper failed to get the noticed published in time and the application was delayed two weeks. The Planning Department will still have a goal of publishing the notice 8 days prior to the public hearing.

Prepared by:

Tom Cajka
Planner

DATE: April 26, 2017

APPLICANT: Lincoln-Lancaster County Planning Department
555 S. 10th Street, Suite 213
Lincoln, NE 68508

CONTACT: Tom Cajka
Lincoln-Lancaster County Planning Department
555 S. 10th Street, Suite 213
Lincoln, NE 68508
402-441-5662

COUNTY TEXT AMENDMENT NO. 17008

COUNTY TEXT AMENDMENT NO. 17008 AMENDING VARIOUS ARTICLES OF THE LANCASTER COUNTY ZONING REGULATION AND REPEALING APPROPRIATE ARTICLES AS HITHERTO EXISTING: **May 10, 2017**

Members present: Beckius, Corr, Edgerton, Harris, Hove, Scheer and Washington; Finnegan and Weber absent.

Staff recommendation: Approval.

There were no ex parte communications disclosed on this item.

Staff Presentation: Tom Cajka of the Planning Department said Planning Department is the applicant. This is an update to the County Zoning Articles and primarily includes clean-up of items, removal of redundancies, the addition and clarification of definitions, and other zoning revisions.

Some highlights of the amendments include updating of definitions such as replacing terms like “churches” with “places of religious assembly” and “nursing home” with “healthcare facility”. These terms and others were made more consistent with definitions in the City Municipal Codes. Some items were updated at the request of other departments. Under conditional uses in the AG zone, conditions were added to “winery” to make it clearer what a winery is and to eliminate the possibility that locations cannot call themselves a winery when what they really want to be is a social hall. Those changes were sent out to all wineries and the Nebraska Wine Growers Association and no negative response was received. An amusement license can be obtained for a large event once per year. The amendments add that religious places would be exempt from that limit because they often have three to four fundraisers.

Cajka indicated that it came to our attention that problems have come up with frontage regulations being enforced. The zoning codes say that to build a house on a lot, there must be 550 feet of frontage and 20 acres. Prior to 2002, no building permit was needed. In 2002, the permit was required. People created lots with no frontage and in the interim, until 2016, the frontage rule was ignored. Around a year ago, the County Attorney informed departments that the regulation could not be ignored and the frontage must be enforced. This rendered many parcels unable to build, so language has been added to state that if the parcel was created prior to January, 2013, the frontage requirement will not apply.

One of the biggest changes is in Article 13. Previously, it said any special permit could be done in any district. That was not appropriate for every district, such as in a residential area. All the permits issued were reviewed to see which district they apply to. Waivers requested to lot area, setbacks and frontage are routinely asked for and approved, so instead of having to go through that process every time, we recommend that in the AG District, it is allowable to use AG-R standards.

Article 22 requires advertising eight days in advance of the meeting. This will be changed to five days. The goal is to keep the eight days, but there have been occasions where the paper did not get the ad run in time and then the application had to be deferred. There were other items that are being removed because they have not been

applied for in 40 years. This includes things like outdoor theaters, roadside stands in residential districts, government landfills, and parking lots.

Harris asked if removing items will cause any non-conforming special permit holders. Cajka said based on the review of the permits, no. The review led to the determination about which permits had never been applied for. There was one for a parking lot in AG, but it was never built. Cajka indicated that he would have to ask the County Attorney if they could still build that lot if it were removed from the AG District. Harris noted that riding stables has been removed. Cajka said that they were removed to permit the use. Harris asked for confirmation that they will be a permitted use, and not a use that is completely removed. Cajka said that is right.

Harris asked if the changes made regarding expanded home occupancy will clear up issues that occurred with applications that came forward in the past year. Cajka said the revised language clarifies what an employee is, which was one of the main issues. Corr noted that the language was changed to include any person who participates in the home occupation at an event center. She asked if that means that a caterer or beverage provider would be considered participants, whereas a delivery person would not. Cajka said that is correct. She asked about people setting up events. Cajka said that if they are setting up an event, they will be there, on the property as an element to the event, and they are considered a participant.

David Derbin of the Lancaster County Attorney's Office said the line between the employer and an independent contractor is difficult to enforce so a lot of work went into determining how many employees. The real intent is that it is difficult to differentiate between employees and those people working on the site, so the effort was to get it back to those participating in the event.

Harris asked about whether a use formerly permitted by special permit but removed by this new amendment could still be done. Derbin said he has not looked at any specific permits, but assuming it was originally issued, it could not be revoked without going through that process. Cajka said there are none that create that situation.

Corr noted that a large event such as Froggie Fest can be done in the county, regardless of the zoning, one time per year with the amusement license, unless they are a place of religious assembly. Derbin said the difference is the invitation to the general public. Under roadhouse statutes, counties are allowed amusement places for those types of public uses. There are additional regulations where we limit to one per year, but that is not limited by statute.

Corr asked for clarification that trailer courts and mobile home parks are not allowed in AG zoning. Cajka said that is correct.

Corr debated how a recreational facility differs from a social hall in its effect on neighbors. Cajka said a recreation facility is usually applied to something like an athletic event or outdoor field, whereas a social hall is for social gatherings, receptions or parties. There is some added confusion because the residential district allows "community buildings", but that term is being replaced with "social hall". Corr said social halls cannot be in residential, but it is okay to have recreational facilities. She does not see much difference in the land use since both are gatherings of many people. Cajka said in most cases, the recreational facilities are within areas like parks, which are embedded in residential areas. There are not usually buildings intended for use by 100-plus people for social events in a residential setting.

Proponents:

1. Mike Eckert, Civil Design Group, came forward to say that his firm frequently works with developers in the County. He expressed his thanks to the Planning Department for working on this. It is really helpful on our end and for developers. Some things have become easier as a result, and staff has done a good job of taking these things on, regardless of whether they are busy or not. He reiterated his appreciation for the time and effort spent.

Hove asked if these amendments make things cleaner and more effective. Eckert said yes. In the county, there were several items that were simply not used at all. This is a worthwhile effort.

There was no testimony in opposition.

TEXT AMENDMENT NO. 17008
ACTION BY PLANNING COMMISSION:

May 10, 2017

Corr moved Conditional Approval, as amended by staff; seconded by Beckius.

Washington said that, having worked as a planner, she knows it can be tedious, particular work to go through regulations and proofread them many times over again. She thanked staff for their effort.

Commissioners echoed her thoughts and thanked Staff.

Hove stated he will support this application. It is a good clean-up and he appreciates the work done by Planning and the comments from the public.

Motion carried, 7-0: Beckius, Corr, Edgerton, Harris, Scheer, Washington and Hove voting 'yes'; Finnegan and Weber absent.

MOTION TO AMEND

**TEXT AMENDMENT NO. 17008
County Zoning Text Amendment
(PUBLIC HEARING/ACTION 5/10/17)**

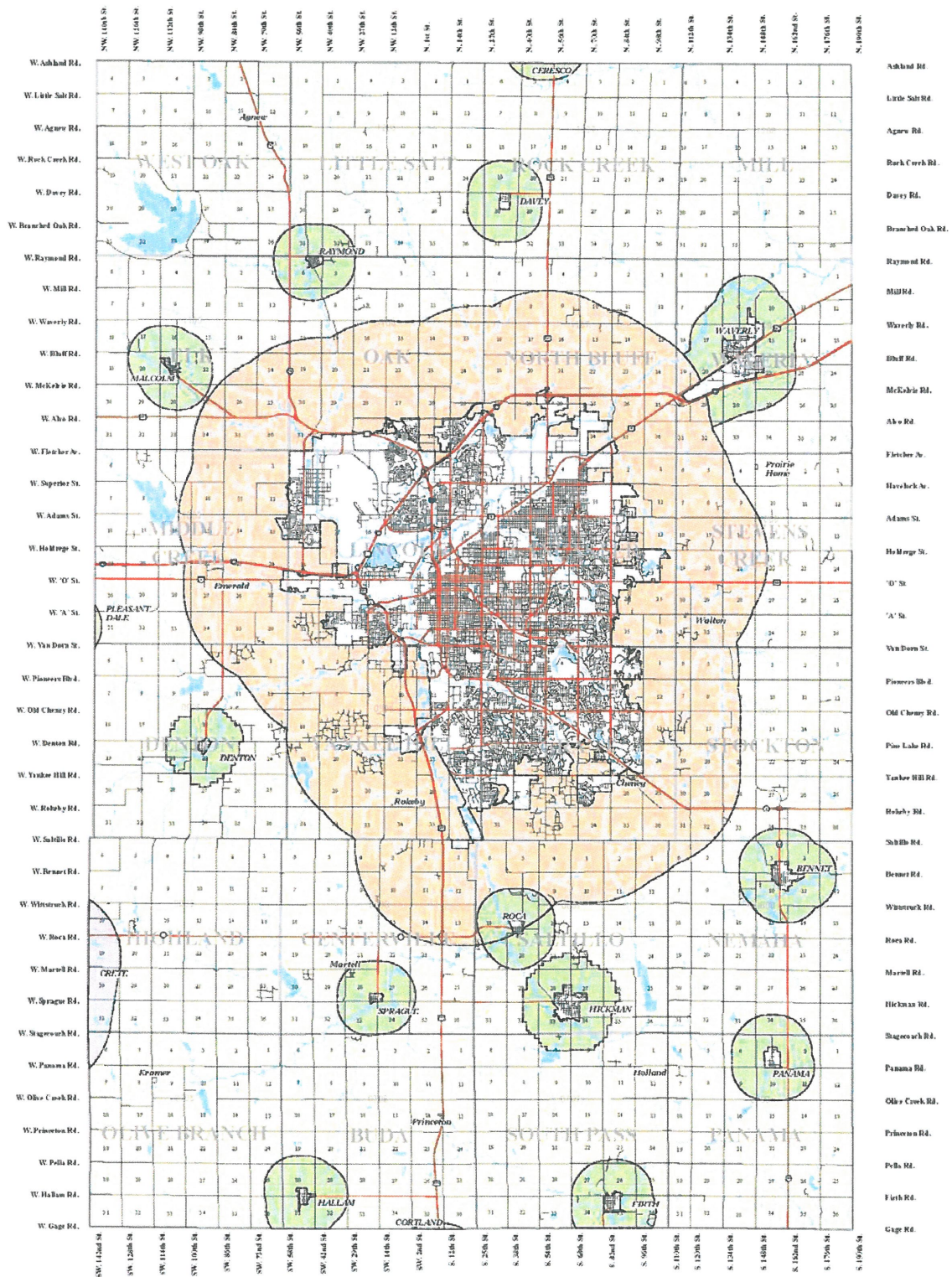
MEMORANDUM

TO: Planning Commissioners
FROM: Tom Cajka, Planning
SUBJECT: TX#17008 County Zoning Amendment
DATE: May 10, 2017

Motion To Amend:

TX#17008 staff report is amended to delete Section 4.005 (d) pertaining to Public Uses on page 83 of the staff report. This is recommended to be deleted because it is already under permitted uses.

COUNTY ZONING REGULATIONS



Lancaster County, Nebraska
 Approved October 9, 1979 - Resolution No. 3404