

MINUTES OF BOARD OF ADJUSTMENT
APRIL 14, 2005
BUFFALO COUNTY COURTHOUSE BOARDROOM
4:00 P.M.

Chairperson Bosshamer called the meeting to order at 4:02 o'clock P.M. with a quorum present on April 14, 2005 at the Buffalo County Board of Supervisors room in the Buffalo County Courthouse, Kearney, Nebraska.

Agenda for such meeting was regularly posted as required by law. Present were: Chairperson Ann Bosshamer, Marlin Heiden, Sharon Martin, Lloyd Wilke and Alternate Barb Pemberton Riege. Absent: Dennis Farrell. Also present were Deputy Buffalo County Attorney Andrew Hoffmeister, Mr. & Mrs. Auch Moedy, Craig Peister and Buffalo County Zoning Administrator LeAnn Klein.

The public forum was opened at 4:02 P.M. There was no one present to speak. The public forum closed at 4:02 P.M.

Chairperson Bosshamer opened the hearing at 4:03 P.M. for the variance application for Esther C. Auch Moedy, Trustee submitted by Craig Peister, agent for the Auch Moedy Trust. Thereafter, Board heard testimony regarding application for variance concerning property described as part of Southeast Quarter and Part of the Northeast Quarter South of RR in Section 25, Township 12 North, Range 15 West of the 6th P.M., Buffalo County Nebraska.

Deputy County Attorney Hoffmeister explained the reason why the zoning permit was denied by the Zoning Administrator and the rules from the Buffalo County Zoning regulations that prevent a zoning permit being approved that is not off an improved road. Hoffmeister asked for clarification of the exact location of the property as it pertains to the road and the location from the river and the access to the property.

Auch Moedy stated they have two accesses to their property, one off of the minimum maintenance road off of Keystone Road and the other off the east edge of the Village of Poole through Mr. Zeller's property. Klein stated the County Highway Department said Keystone Road is maintained to Mr. Hongsermeier drive-way located about ½ mile south of the intersection of the blacktop of 340th Road and Keystone Road.

Hoffmeister referred to the Buffalo County Zoning Regulations Section 9.3 #3 "but no such variance shall be authorized unless the Board finds that:

- a. The strict application of the regulation would produce undue hardship;
- b. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
- c. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and

- d. The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice.

Hoffmeister asked if there were any other cabins in this area at this time and how much time they would spend at this location.

Mr. Auch Moedy said he was not aware of any other cabins in the area. He also said this would not be a permanent home but they would still maintain their home in Kearney. They do a lot of work out at this location, watching the cattle and keeping the cedars and noxious weeds under control. They also mend fences and are an extra pair of eyes for Mr. Zeller, who rents their pasture and owns the cattle located in the pasture. They would be spending more time out at this location from April through October, when the cattle are at this site. Mrs. Auch Moedy said they like the seclusion and do not want the road upgraded above minimum maintenance. She said you improve the road and you also increase traffic and they do not want this.

Hoffmeister expressed the concern of the County to hold the County harmless from liability if fire trucks or emergency vehicles are not able to gain access to their property and having to bring a minimum maintenance road up to compliance at the County's cost.

Hoffmeister noted that this variance as presented was for one residence on a real estate parcel of about 318 acres.

Mr. Auch Moedy canvassed the neighbors and the neighbors were not opposed to this. Klein stated all the owners had been notified.

Heiden questioned if this would follow the owners instead of the property. Hoffmeister stated these minutes would be filed of record against the property and would follow the property. Someone in the future could approach the County in bringing this road up to standards.

Martin questioned the concerns of 911 safety.

Auch Moedy's said they are not concerned about the safety issue.

Martin does not see a problem with placing a house at this location.

Bosshamer questioned the distance from the roadway to this location which she was told is approximately 1/2 - 5/8 of a mile.

Martin explained there are no road ditches or fencing getting to the property.

Riege had observed that there had been a house site at one time at the end of this maintenance road. Klein stated that the Highway Department had maintained this minimum maintenance road to this existing house site until his death.

Heiden questioned if this area is in the floodplain. Klein responded that part of this area is in the floodplain but where the house is proposed, it is not.

Heiden's concern was for future development of this land. Auch Moedy does not intend to sell off any property for future development. Heiden also questioned the amount of time they would be spending at their vacation home. At this point, they really can't answer this. They would be spending more time during the summer months than during the winter time.

The hearing closed at 4:45 P.M.

Moved by Wilke, seconded by Martin to allow the variance request for one vacation home of a dwelling type based on the following reasons:

- a. The strict application of the regulation would produce undue hardship;
- b. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
- c. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and
- d. The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice and

Per zoning regulation Sec. 9.32 this Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonable practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

With such variance subject to the following conditions:

Applicants and users of this variance shall hold Buffalo County harmless for property, improvements, similar casualty loss, and liability regarding 911 service(s) or fire protection due to fact that road access to the subject property is by road(s) not above minimum maintenance standards and;

Applicants and users of this variance agree to hold Buffalo County harmless and not responsible for upgrading of the minimum maintenance road located on the north side of their property that provides access to their property and;

Copy of these minutes shall be filed of record by Buffalo County against said property as shown in Inst. 2003-16408 as filed in Register of Deeds office in Buffalo County on December 23, 2003 more described as follows:

Property described as the Northeast Quarter of the Southwest Quarter and all of that part of the East Half of the Northwest Quarter that lies South of the Union Pacific Railroad Right-of-Way, all in Section 30, Township 12 North, Range 14 West of the 6th p.m., Buffalo County Nebraska with that portion of the East Half of the Northwest Quarter of said Section 30, being more particularly described as follows:

Beginning at the Southeast corner of the East Half of the Northwest Quarter of said Section; thence westerly on the south line of said northwest quarter a distance of 1292.57 feet to the Southwest corner of the East half of the Northwest Quarter; thence Northerly on the west line of said East half of the Northwest Quarter a distance of 1628.7 feet to a point on the South line of the Union Pacific Railroad right-of-way; thence Northeasterly and on the aforesaid south right-of-way line a distance of 1437.8 feet to a point that intersects on the east line of the Northwest Quarter of said Section 30; thence Southerly on the aforesaid east line a distance of 2228.98 feet to the place of beginning. Containing a total of 96.35 acres, more or less, and a tract of land being part of Government Lot 1, part of Government Lot 2 and all of Government Lot 3 of Section 30, Township 12 North, Range 14 West of the 6th P.M., Buffalo County, Nebraska, with that part of Government Lot 1 and Government Lot 2 being more particularly described as follows:

Beginning at the Southeast corner of Government Lot 2 in said Section 30; thence westerly on the South line of said Government Lot 2 a distance of 1292.58 feet to the Southwest corner of said lot; thence Northerly on the west line of said Government Lot a distance of 1029.9 feet to a point on the South right-of-way line of the Union Pacific Railroad; thence Northeasterly on the aforesaid South right-of-way line a distance of 1436.0 feet to a point on the East line of Government Lot 1; thence Southerly on the aforesaid East line of Government Lot 1 and Government Lot 2 a distance of 1628.7 feet to the place of beginning. Containing a total of 78.54 acres, more or less and,

A tract of land being part of the South Half of the Southeast Quarter of Section 25, Township 12 North, Range 15, West of the 6th P.M., in Buffalo County, Nebraska, more particularly described as being the South 1194.18 feet of the East 1566.77 feet of the Southeast Quarter of said Section 25, containing 42.95 acres, more or less and, a tract of land being part of the South Half of the Northeast Quarter and part of the Southeast Quarter of Section 25, Township 12 North, Range 15, West of the 6th P.M., in Buffalo County, Nebraska, more particularly described as follows:

Referring to the Southeast corner of said Section 25 and assuming the East line of said section as bearing N 00° 01' 10" E and all bearing contained herein are relative thereto; thence N 00° 01' 10" E and on the aforesaid east line a distance of 1194.18 feet to the ACTUAL PLACE OF BEGINNING; thence continuing N 00° 01' 10" E a distance of 2470.96 feet to a point on the South line of the Union Pacific Railroad right-of-way; thence S 64° 39' 34" W and on the aforesaid south line a distance of 1733.8 feet; thence S 00° 01' 10" W a distance of 1740.25 feet; thence N 89° 35' 06" E a distance of 1566.77 feet to the place of beginning. Containing 75.73 acres, more or less, and to include a Beneficial Easement dated 7/3/84 and recorded 7/3/84 in Film Roll 84, Page 5316, more particularly described as follows:

The North 30 feet along the South line of the Union Pacific Railroad right-of-way over the following tract of land: A tract of land being part of the Southwest Quarter of the Northeast Quarter, part of the West Half of the Southeast Quarter and part of the Southwest Quarter all in Section 25, Township 12 North, Range 15 West of the 6th P.M., Buffalo County, Nebraska, and all more particularly described as follows: Referring to the Southeast corner of said Section 25 and assuming the south line of said section as bearing N 89° 35' 06" E and all bearings contained herein are relative thereto; thence S 89° 35' 06" W and on the South line of said Section 25 a distance of 1566.77 feet to the ACTUAL PLACE OF BEGINNING; THENCE N 00° 01' 10" E

and parallel with the east line of said section, a distance of 2934.43 feet to a point that intersects on the south line of the Union Pacific Railroad right-of-way; thence S 64°39'34" W and on the aforesaid south right-of-way line a distance of 2819.62 feet; thence S 25°20'26" E a distance of 1074.0 feet; thence N 78°28'26" W a distance of 375.0 feet; thence N 25°20'26" W a distance of 10.0 feet; thence S 81°07'09" W a distance of 949.47 feet to a point, said point being 330.0 feet east of the west line of the Southwest Quarter of said Section 25; thence S 01° 07' 54" W parallel with and 330.0 feet Easterly from the west line of said Southeast Quarter of said section a distance of 718.65 feet to a point on the South line of the Southwest Quarter of said Section 25; thence N 89° 35' 06" E and on the aforesaid south line a distance of 3411.2 feet to the place of beginning, and,

A strip of land, containing 10.54 acres, more or less, situated in the Northeast Quarter (NE 1/4), the Southeast Quarter (SE 1/4), and the Southwest Quarter (SW 1/4) of Section Twenty-five (25), Township Twelve (12) North, Range Fifteen (15), West of the 6th P.M., Buffalo County, Nebraska, which strip of land was one of the strips heretofore acquired by the Omaha & Republican Valley Railway Company of Nebraska by virtue of that certain instrument dated May 21, 1886 from John Wilson, et al, said instrument having been filed of record in the aforesaid county on May 21, 1886, and recorded at Page 388, of Book Z, EXCEPT that portion of the above described strip containing approximately 6.353 acres, more or less, of land lying immediately north and west and abutting the tract of land described in that certain instrument conveyed by Daniel K. Johnson, a single person to grantor on April 19, 1991, said instrument having been filed of record on June 6, 1991 on Film Roll 91 at Page 6492, in the office of the Register of Deeds, Buffalo County, Nebraska.

Voting yes were Wilke, Martin, Bosshamer, Heiden and Riege. Voting no: none. Absent: Farrell. Motion carried.

Hoffmeister informed them that building must commence within 120 days and completed within two years and inquired whether such a timeframe would cause applicant difficulty. Auch Moedy stated that would not be a problem.

Klein stated relevant portion(s) of the minutes would be filed against the property in the Register of Deed's Office.

Moved by Riege, seconded by Wilke to approve the minutes of November 12, 2004 meeting of the Board of Adjustment as mailed. Voting yes were Riege, Wilke, Bosshamer, Heiden and Martin. Absent: none. Voting no: Farrell: Motion carried.

Moved by Wilke, seconded by Martin to adjourn at 4:55 P.M.