

MINUTES OF BOARD OF ADJUSTMENT
FEBRUARY 23, 2006
BUFFALO COUNTY COURTHOUSE BOARDROOM
4:00 P.M.

Chairperson Bosshamer called the meeting to order at 4:00 o'clock P.M. with a quorum present on February 23, 2006 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, Dennis Farrell, Marlin Heiden, Sharon Martin and Lloyd Wilke. Absent: Alternate Barb Pemberton Riege. Also present were Deputy Buffalo County Attorney Andrew Hoffmeister, Buffalo County Zoning Administrator LeAnn Klein and 6 members of the public.

The public forum was opened at 4:00 P.M. There was no one present to speak. The public forum closed at 4:00 P.M.

Chairperson Bosshamer opened the hearing at 4:01 P.M. for the notice of appeal from the denial of a zoning permit received from Neil Koster for property described as a tract of land being part of Government Lot 1 located in Section 30, Township 9 North, Range 14 W of the 6th p.m., Buffalo County Nebraska. Thereafter Board heard testimony from Jim Ganz, from the law office of Ganz, Romatzke and Stamm, P.C. representing Neil Koster.

Ganz stated the following:

This hearing is not a court proceeding, no new evidence will be submitted.

Board of Adjustment will review the decision of the Zoning Administrator to reject the building/zoning permit.

Ganz just received a copy of the County's response written by Andrew Hoffmeister and he does object to the response because he feels there are a lot of issues which are not a part of this hearing. He asked that the response not be considered by the Board of Adjustment.

According to Ganz the following has occurred:

1. During the spring/summer of 2003 his client applied and received a special use permit from the County Board for a trailer sales business to be located at the corner of Highway 30 and Highway 10. Ganz felt this was the first of a special use permit that had been granted by the County. This has been a work in progress, and so as changes are needed, they are made by actual experience.
2. He referred to Resolution 2003-21 from the June 24, 2003 Board of Supervisors meeting "special permit of Neil Koster to use real estate for construction of buildings and facilities for trailer sales and service facility" and "2. Main building for sales etc" and "8. Activities within the facility etc". He also said if this should have been worded differently it wasn't.
3. In January, 2006 Koster began construction on another building based on his understanding of the resolution.
4. After a complaint of someone of the construction, Klein requested Koster to stop construction of which he refused based on his understanding of the resolution.

5. The County filed a petition for an injunction for a temporary restraining order which was heard in District Court on January 12 and on January 19 Judge Icenogle issued a journal entry which is attached to these minutes. At the hearing Judge Icenogle, stated a zoning permit is required as per section 10.2.
6. On January 23, 2006 Koster filed a zoning permit with the Zoning Administrator.
7. On January 26, 2006 Klein sent Koster a letter which is attached, denying the permit.
8. Because of this they are appealing this decision to the Board of Adjustment.
9. Ganz stated the use of premises is limited to trailer sales and services. This area has not been rezoned, if it was, it would have been a “use by right”. Hoffmeister does have a concern of the number of buildings that could be placed on this parcel.

Martin asked what area had been zoned commercial. The only part that has been rezoned is the area east of the residence off Highway 30.

Heiden asked what direction the building faces. Koster replied the sales building faces south.

Ganz stated Koster needs to adhere to setbacks as required by zoning.

Koster replied he has 2 buildings on site.

Bosshamer asked where the access of the new building will be located. The access door will be located on the west side of the building. The materials that are currently stored in the van storage will be located in the proposed building and the van storage will be removed. There will be no additional access off Keystone Road.

Heiden asked how many additional buildings Koster is planning. Koster said he hopes this does it. Koster says no, but Ganz reminded him he could if he wanted to.

Martin asked Koster if his intentions only included one building. Koster stated the diagram was not part of the original application.

Ganz stated the 120 days, 2 years completion date was added to zoning regulations October 10, 2003, after the special use permit resolution date.

Hoffmeister referred to Section 4 of the Buffalo County Comprehensive Plan which states “commercial and industrial land uses throughout Buffalo County are generally located in close proximity to communities or the Kearney Municipal Airport and also include highway and interstate oriented services. The fear of the County is unlimited buildings. If this would have been zoned commercial, there would be a limit to the number of buildings which may be built on commercial property. The County’s concern is also to setbacks. One factor of a variance is this detrimental to adjacent properties and will it change the character of the neighborhood.

Ganz stated they are not asking for a variance, just to hear the appeal of the denial of the zoning permit.

Wilke asked if Koster's error was not getting a zoning permit. Ganz stated Koster should have gotten a zoning permit but Koster was not aware he needed a permit. Koster still needs to adhere to the setback requirements. Ganz said any additional buildings must be tied to the trailer sales and service facility.

Cindy Shultz, an adjoining neighbor, was present to voice her concerns. She stated this has been a learning experience. At the time the special use permit was granted, the plan only showed one building. The Board of Adjustment should take careful consideration because if there are any loose ends, it will be found.

Heiden asked if they could modify the order.

Hoffmeister referred to Section 9.33 of the Buffalo County Regulations which state "such Board may, in conformity with the provisions of said sections, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from etc". Hoffmeister stated this resolution was modified October 10, 2003 with time limitations.

Martin asked if any time frame was included in the original resolution which Hoffmeister replied there was no time frame.

Klein wanted the record to reflect her reasons for denying the permit. She felt she did not have the authority to amend a special use permit which the County Board had granted. If she would have, the County Board would have questioned her authority in granting an additional building.

Hoffmeister answered Farrell's question what determined special use versus use by right.

Heiden questioned if Koster would have to adhere to time limitations. Hoffmeister replied any new zoning permits would need to be completed within 120 days. The application which Koster signed clearly states that construction must begin within 120 days and be completed within 2 years.

Farrell understands where Klein is coming from. She has to answer to all the Boards. If one letter would have been omitted on the County Board resolution to read "building" we wouldn't be here today.

Wilke expressed concern to the County Board to watch resolutions in the future.

The hearing closed at 4:53 P.M.

Moved by Martin, seconded by Farrell to approve zoning permit #2006-008 for a metal building 50' x 125' to be located on property described as a tract of land being part of Government Lot 1 located in Section 30, Township 9 North, Range 14 West of the Sixth Principal Meridian, Buffalo County Nebraska more particularly described as follows: Referring to the Northwest corner of Government Lot 1 in Section 30 and assuming the West line of said Government Lot 1 as bearing S 00°09'34"W and all bearing contained herein are relative thereto; thence S 00°09'34" W and on the West line of said Government Lot 1 a distance of 438.85 feet to the ACTUAL PLACE OF BEGINNING; thence continuing S 00°09'34" W and on the West line of

said Government Lot 1 a distance of 550.63 feet to a point being the most Northerly corner of a tract of land deeded to the State of Nebraska Department of Roads as described on Microfilm Roll 94, Pages 18992 thru 18993, filed December 30, 1994 in the Buffalo County Register of Deeds office; thence S 59°38' E and on the Northerly line of the aforesaid tract of land deeded to the State of Nebraska Department of Roads a distance of 150.66 feet to the Southeasterly Corner of said tract of land, said point also being on the North line of the Union Pacific Railroad Company's Right-of-Way; thence N 73°30' E and on the North line of the Union Pacific Railroad Company's Right-of-Way a distance of 948.50 feet; thence leaving said Right-of-Way line N 04°30'34" W a distance of 349.55 feet; thence S 89°29'20" E and parallel with the North line of said Government Lot 1 a distance of 1010.54 feet to the place of beginning. Containing 11.80 acres, more or less of which 0.42 acres, more or less, are presently being used for road purposes on the West side.

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

Moved by Farrell, seconded by Heiden to approve the minutes of October 6, 2005 meeting of the Board of Adjustment as mailed. Voting yes were Farrell, Heiden, Bosshamer, Martin and Wilke. Absent: none. Motion carried.

Moved to adjourn at 4:55 P.M.