

MINUTES OF BOARD OF ADJUSTMENT  
JUNE 11, 2009  
BUFFALO COUNTY COURTHOUSE BOARDROOM  
4:00 P.M.

Chairperson Ann Bosshamer called the meeting to order at 4:00 o'clock P.M. with a quorum present on June 11, 2009 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: Ann Bosshamer, Marlin Heiden, Larry Fox, Sharon Martin, alternate Barb Pemberton Riege and Lloyd Wilke. Absent: none. Also present were Buffalo County Deputy Attorney Andrew Hoffmeister, Buffalo County Zoning Administrator LeAnn Klein and nine members of the public.

Chairperson Bosshamer announced we do abide by the open meeting act and there is a copy posted in the County Board room and copies are available for anyone wanting to see it.

The public forum was opened at 4:00 P.M. No one was present. The public forum closed at 4:00 P.M.

Chairperson Bosshamer opened the hearing at 4:01 P.M. for the zoning variance filed by Mitch Humphrey for Jim and Lisa Kennedy for a tract of land being part of the North Half of the Northwest Quarter containing 7.435 acres, more or less, and a tract of land being part of the South Half of the Northwest Quarter containing 20.00 acres, more or less, all located in Section 2, Township 9 North, Range 16 West of the 6<sup>th</sup> p.m., Buffalo County, Nebraska. Thereafter, Board heard testimony regarding application of the variance submitted by Jim and Lisa Kennedy concerning property in Buffalo County, Nebraska.

Mitch Humphrey was present to speak on behalf of Jim and Lisa Kennedy, who were also present. Humphrey told the Board his clients own a 7.4 acre piece along 112<sup>th</sup> St off 17<sup>th</sup> Avenue. There are a number of homes in this area that have been split off in the past, dating back to the 70's. They would like to sell off their existing home site with approximately five acres and build a new home on a 20.00 acre piece to the south of their existing home, retaining the 2.215 acre parcel as access to the 20 acre piece. They could do an Administrative Subdivision but 112<sup>th</sup> St. is a private road and is only 48' in width. In order to be able to do an Administrative Subdivision, the parcel has to be located directly off of a county maintained road. Humphrey handed out larger colored copies of this area and he explained where the road is located and also where the subject property is located.

Hoffmeister asked if they intend to build additional homes on the 20 acre parcel. Humphrey replied they do not intend to build additional homes on the 20 acre parcel. There is also a floodplain that runs through part of the 20 acres and is not buildable. Where the proposed home site is located is on higher ground.

Humphrey told the Board they just want to sell off the 5.220 acre parcel and the existing home site and be able to build another home on the remaining 22.215 acres.

Klein asked if the easement to the property is shown on the submitted legal description.

Humphrey replied there is a separate easement filed of record in Roll 87, Page 6069-6076 in the Register of Deeds office.

Heiden asked what type of buildings are shown on the aerial map in the northeastern part of the twenty acre parcel.

Kennedy replied this is a hay storage building.

Wilke questioned how access is obtained.

Patrick Rae, who is an adjacent neighbor to this property, sold these 20 acres to the Kennedy's. He doesn't foresee the Kennedy's adding additional homes since there is a floodplain in this area. He feels it is a legitimate request.

Chairperson Bosshamer closed the public hearing at 4:24 P.M.

Motion was made by Fox, seconded by Heiden to approve the variance received from Jim and Lisa Kennedy to allow relaxation of the 66' width requirement for the 5.220 acre parcel because 112<sup>th</sup> Road has an insufficient road width of only 48' and to allow the filing of the Administrative Subdivision for the 5.220 acre parcel, more or less. The legal description of the parcel is the easterly 5.220 acres, more or less, in a tract of land being part of the North Half of the Northwest Quarter (N ½ NW 1/4) of Section Two (2), Township Nine (9), Range Sixteen (16) West of the Sixth Principal Meridian, Buffalo County Nebraska, more particularly described as follows: Referring to the Northwest corner of said Section 2; thence southerly on the West line of said Northwest Quarter a distance of 960.19 feet; thence with a deflection angle to the left of 90° 49' a distance of 333.03 feet to the ACTUAL PLACE OF BEGINNING; thence continuing easterly on the afore described course, produced, a distance of 1003.64; thence right 90° 49' and parallel with the West line of said Northwest Quarter a distance of 334.08 feet; thence westerly parallel with the North line of said tract a distance of 935.19 feet; thence Northwesterly a distance of 340.1 feet to the place of beginning. Containing 7.435 acres, more or less, of which 0.553 acres, more or less, are presently being used for road purposes.

- 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.

This would allow the applicant to sell the existing home site along with 5.220 acres, more or less, and to build another home on his remaining 22.215 acres with applicant being allowed access to build a residence or other improvements allowed in the AGR District through the 2.215 acre part retained of the 7-acre tract. The 2.215 acre access lot will ultimately become part of the 22.215 acre tract and is planned to not be subdivided.

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

The Administrative Subdivision will need to be filed to complete this process at which time a detailed legal description will be provided for the easterly 5.220 acres, more or less. This variance allowing this split shall commence, by survey or staking, within 120 days after authorization and shall be completed, i.e. filed of record, two years after commencement. This resolution will be filed in the Register of Deed's office against the property and a copy will be sent to the applicant.

The Administrative Subdivision will be on the July 14, 2009 Board of Supervisors agenda.

Chairperson Bosshamer opened up the next public hearing at 4:29 P.M. for a zoning variance received from Josh & Stephanie Bondegard for Lot 9, Woodland Acres, Part of Lot 6, Linger's Subdivision in the SE ¼ of Section 36, Township 9 North, Range 14 West of the 6<sup>th</sup> p.m., Buffalo County, Nebraska.

Realtor Pat Slack and Surveyor Trenton Snow were present on behalf of the applicants. Slack told the Board that due to recent developments, the owners must sell this property. When the current owners first acquired this property, the father help contribute financially to the purchase of the property. The father is an adjacent land owner to the subject property. The father will be retaining ownership of the 1.4 acre parcel (Tract A) and the 3.0 acre tract (Tract B), will be sold.

The 1.4 acre tract has two 15' utility easements severing the property, making the available building area undesirable and too small for building of a single family residence of any size. The intent is to create a park, garden type of reserve for the Homeowner's Association. This tract has water service provided by the father's well system which is adjacent to this property and serviced by underground water lines. There are no improvements on this Tract.

The 3.0 acre tract had a new septic system installed in March of 2005, which meets current DEQ and Health Department standards. There is an existing home on Tract B. There is a natural barrier of trees between Tract A and Tract B.

Hoffmeister asked what zoning district this is.

Slack responded this is zoned Agricultural.

Klein noted there is Commercial zoned property directly adjacent to the west and Agricultural-Residential property to the east. Woodland Acres is all zoned Agricultural and was subdivided prior to zoning.

Hoffmeister also asked what size lots are located in this subdivision.

Snow responded the smallest is .65 acres and Lot 9 is the largest lot with 4.40 acres.

Klein also said the roads in Woodland Acres are private roads.

Bosshamer asked where the Father's property is located.

Slack replied the Father lives directly across from this lot to the west.

Heiden asked why they are splitting this lot at this spot.

Slack said there is a naturally occurring split because of the row of trees between Tract A and Tract B.

Snow told the Board this area is a drainage way and is not buildable.

Heiden also thanked them for showing where the septic and well are located.

Tom McCarty with Coldwell Banker was present representing the buyer. They are asking for this variance because of the title insurance requirement.

Slack also told the Board the Homeowners Association agreed they would like to see this Tract A as a park or garden.

Chairperson Bosshamer closed the public hearing at 4:45 P.M.

A motion was made by Heiden, seconded by Martin to grant this variance filed by Josh and Stephanie Bondegard of the lot split of Lot 9 for Tract A and also Tract B thereby relaxing minimum lot size requirements for Tracts A and B proposed to be located in Lot 9.

More discussion followed regarding the requirement of the filing of either an Administrative Subdivision or Minor Subdivision for this proposed land development.

Heiden amended his motion to grant this variance of the lot split of Lot 9 for Tract A and also Tract B and to relax the street requirement of the 66' foot right-of-way if a minor subdivision is chosen provided however, with the following condition being placed on Tract A for either plan of development:

1. That Tract A is a non-buildable lot and that no residence is allowed on Tract A.

The legal description for "Tract A" is part of Lot Nine (9), Woodland Acres, a subdivision being part of Lot 6, Linger's Subdivision located in the Southeast Quarter of Section Thirty-Six (36), Township Nine (9) North, Range Fourteen (14) West of the Sixth Principal Meridian, Buffalo County, Nebraska, with that part of said Lot 9 being more particularly described as follows: Beginning at the Northeast corner of Lot 9 of said Woodland Acres and assuming the East line of said Lot 9 as bearing S 00° 02' 03" W and all bearings contained herein are relative thereto; thence S 00° 02' 03" W on the aforesaid East line a distance of 130.00 feet; thence S 83° 10' 02" W a distance of 124.08 feet; thence S 63° 11' 28" W a distance of 83.16 feet; thence S 64° 12' W a distance of 176.0 feet to the West line of said Lot 9; thence N 00° 20' 01" E on the aforesaid West line a distance of 210.0 feet; thence N 27° 25' 36" E continuing on the aforesaid West line a distance of 84.73 feet to the Northwest corner of said Lot 9; thence S 89° 58' 46" E on the North line of said Lot 9 a distance of 300.0 feet to the place of beginning.

The legal description for "Tract B" is Lot Nine (9), Woodland Acres, a subdivision being part of Lot 6, Linger's Subdivision located in the Southeast Quarter of Section Thirty-Six (36), Township Nine (9) North, Range Fourteen (14) West of the Sixth Principal Meridian, Buffalo County, Nebraska, EXCEPTING HOWEVER that part of said Lot 9 being more particularly described as follows: Beginning at the Northeast corner of Lot 9 of said Woodland Acres and assuming the East line of said Lot 9 as bearing S 00° 02' 03" W and all bearings contained herein are relative thereto; thence S 00° 02' 03" W on the aforesaid East line a distance of 130.00 feet; thence S 83° 10' 02" W a distance of 124.08 feet; thence S 63° 11' 28" W a distance of 83.16 feet; thence S 64° 12' W a distance of 176.0 feet to the West line of said Lot 9; thence N 00° 20' 01" E on the aforesaid West line a distance of 210.0 feet; thence N 27° 25' 36" E continuing on the aforesaid West line a distance of 84.73 feet to the Northwest corner of said Lot 9; thence S 89° 58' 46" E on the North line of said Lot 9 a distance of 300.0 feet to the place of beginning.

This decision is based on Section 9.3 of the Buffalo County Zoning Regulations with review of Buffalo County's Subdivision regulations.

A minor subdivision change will need to be filed to complete this process. This variance allowing transfer of land between two nonconforming lots of record shall commence, by survey or staking, within 120 days after authorization and shall be completed, i.e. filed of record, two years after commencement.

A copy of this motion shall be filed with application for minor subdivision change.

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

This resolution will be filed in the Register of Deed's office against the property.

Moved by Martin, seconded by Wilke to approve the minutes of May 14, 2009 meeting of the Board of Adjustment as mailed. Voting yes were Martin, Wilke, Bosshamer, Fox, and Heiden. Voting no: none. Absent: none. Motion carried.

Chairperson Bosshamer adjourned the meeting at 4:56 P.M. until which time the Board of Adjustment is called into session again.