

MINUTES OF BOARD OF ADJUSTMENT
APRIL 15, 2010
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 April 15, 2010, 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, Larry Fox, Marlin Heiden, and Lloyd Wilke. Absent: Sharon Martin and alternate Barb Pemberton Riege. Also present were Buffalo County Deputy Attorney Andrew Hoffmeister, Deputy County Attorney Melodie Bellamy, Buffalo County Zoning Administrator LeAnn Klein and two 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 public hearing at 4:01 P.M. for the two zoning variances filed by Francis "Buss" and Lola Biehl for Country Acres First Subdivision and Country Acres Second Subdivision both being part of the South Half of the Northwest Quarter of Section 13, Township 10 North, Range 16 West of the 6th p.m., Buffalo County, Nebraska. They are asking for a variance of Section 4.11 and Section 4.12 of the Buffalo County Subdivision Regulations. Thereafter, the Board heard testimony regarding application of the variance submitted by Buss and Lola Biehl concerning property in Buffalo County, Nebraska.

Buss Biehl and Surveyor Trenton Snow were present. Snow handed out a copy to the Board of Adjustment of the layout of the subdivisions and also the proposed subdivision to the east of this property, marked as Exhibit #1. He explained Country Acres First and Country Acres Second were platted prior to the County adopting subdivision regulations. The area to the east has not been developed yet. Snow also said Central Ave Place has now been changed to Center Place Road and Avenue B is now Biehl Avenue at the request of the 911 Communications Center.

Riege arrived at 4:04 P.M.

Hoffmeister asked what the contour lines were. Snow replied there is only a difference of 10' contour in this area.

Hoffmeister also asked Biehl if this land was irrigated. Biehl said this land had been leveled prior to them purchasing the property and it was gravity irrigated. Biehl said everything on the west side of "Avenue B" drains west and everything to the east of "Avenue B" drains south.

Hoffmeister also asked Klein what the difference was between Rural Local 2 and Rural Local 3 roads.

Klein said the difference is RL 2 roads have 4' shoulders and RL 3 roads have 3' shoulders. Copies were given to the Board of Adjustment showing the difference of an RL 3 and an RL 2 road.

Snow said at the time these subdivisions were platted, the roads required an RL 3 standard, and they were built in compliance at that time.

Hoffmeister explained the differences of an RL 2 and RL 3 carry different numbers of vehicles each day and the grade is also different.

Hoffmeister said these subdivisions are very flat. We have a provision that the water conveyances are adequate. Now the County requires a water engineer to look at the drainage in a subdivision and state that the water conveyances are adequate. Subdivision provisions relating to floodplain subdivisions state a year frequency requirement, there is no provision other than the word "adequate" for non-floodplain development.

Hoffmeister stated that the professional opinion was placed into the subdivision regulation to protect the County from disputes concerning in size, placement, height and other issues regarding water conveyances. In the two subdivisions before the Board, the culvert that was placed in the southeast portion of Country Acres Second was placed at the present location after consultation with Ronald Sklenar, Buffalo County Highway Department Superintendent. The goal of the County is to have in place needed water conveyances when the dedication occurs. Unlike the past, with surface maintenance, under the new subdivision regulations, after acceptance of dedication, all matters concerning the dedicated subdivision road become a county matter similar to open public section line roads. The land in the subdivisions now before the Board has no defined waterways or drain ways entering or exiting it. Hoffmeister noted that the land was practically flat and that Buffalo County's subdivision regulation does not address a required minimum grade or slope for its roads. When asked what "adequate" would mean, Hoffmeister responded that it would mean in the engineering profession. Issues as to maintenance would always be an issue, but at least if the road and conveyances were turned over to the County at a known standard, that would be a standard point for public take over of the streets.

Biehl asked what year the County adopted Subdivision Regulations.

Hoffmeister said the County Board adopted Subdivision Regulations on February 17, 2009.

Biehl reiterated these Subdivisions met the requirements at the time they were platted.

Klein wanted the record to show Exhibit #2 and Exhibit #3 which are as follows:

Exhibit #2 = Layout of RL 2 and layout of RL 3 received from Hwy Depart.

Exhibit #3 = Letter from Highway Superintendent Ron Sklenar

Snow said the reason we are here is because currently the Subdivision Regulations require RL 2 standards and also require an engineering study for drainage issues. Biehl would have to go in and tear up the roads and re-do any drive ways and also re-do culverts should any changes in design be required.

Riege asked if this is an inconvenience rather than a hardship.

Biehl thought these subdivisions would be grandfathered in since they were built a couple of years ago. He developed the roads as the lots were sold. The County has taken over the surface maintenance of 170th Road.

Riege asked if surface maintenance means putting gravel on and grading the road. Riege also asked if it would be a problem adding 1' to the shoulders.

Biehl responded he would have to tear into the peoples established lawns and the homeowners would not be happy. Also there might be some post office boxes, one of which was a built-in-place type that would need changed. Also some privately placed culverts in homeowners' driveways might be affected.

Fox said these roads were done correctly at the time they were platted.

Hoffmeister said this is a half maintained subdivision. He explained that Buffalo County had agreed to do surface maintenance for 170th Road. When asked what comprised "surface maintenance" Hoffmeister responded that it meant that the County would grade the road about once a month and gravel the road about once a year. Any culvert placement, positioning, replacement, and/or extension are the responsibility of the developer of subdivision association. Also any road re-building for something like washout, shoulder re-grading, or other major work would also be the responsibility of the developer or local association. After adoption of the subdivision regulations, the County wanted to cease its involvement in "surface maintenance" and have any request for County participation in the roads to be the same as when a road is dedicated in the subdividing process in the new regulations. That would mean that the County wanted to take over complete rights and duties of any road dedicated in the future when a subdivision was dedicated, it would be in essence a re-dedication of the roads to the County with the County taking over the roads without any reserve.

Wilke questioned if the taxpayers would have to bring the road up to specifications.

Heiden asked Hoffmeister what happens if they refuse these variances.

Hoffmeister said part of 170th Road is currently being maintained. It would remain an RL 3 Road. The remainder of the roads would have to be brought up to an RL 2 as required. The County is currently doing the surface maintenance on 170th Road.

Biehl said the County is doing all the maintenance on 170th Road.

The traveled width is 10' on both RL 2 and RL 3. The shoulder width is what is different.

Fox questioned if they do grant a variance, would that open a door for future variances.

Snow asked if they could grant a variance on just shoulder width and nothing else, would that eliminate problems in the future?

Hoffmeister questioned how many houses are in these two subdivisions.

Snow replied there are four houses on 170th Road and one home on Center Place Road.

Riege asked if the area is developed to the east, would the traffic increase that it should be an RL 2 road because of the increase in traffic.

Snow said this subdivision hasn't even been platted and that is in the future development.

Bosshamer asked which section county roads were classified RL 2 and RL 3. She also said this area is very flat and the speed limit would only be 25 mph.

Hoffmeister replied this varies from RL 2 and RL 3 standards and the types of grades that the road encounters while going through hills and valleys. Hoffmeister stated that most county roads are typically constructed to RL 3 standards. They are built in anticipation of 1-50 vehicle trips per day. RL 2 anticipates 51-250 vehicle trips per day. RL 3 allows a greater grade or incline than RL 2. Also RL 2 requires a wider fixed obstacle clearance than RL 3. A good illustration of an RL 2 road would be concreted portions of Antelope Road north and east of Kearney where road grade and inclines do not exceed seven percent. Also design speed of the roads differs, RL 2 roads need to have a greater sighting distance at intersections than RL 3 roads.

Biehl said he has been trying to get an answer from the County Board since August of 2009. That is why he is here today asking for this variance. He has done everything the Road Department has asked.

Wilke asked if these Subdivisions had been accepted by the County.

Snow said they had applied for a rezoning from the AG District to the AGR District through the Planning & Zoning Commission and also the County Board which were approved.

Hoffmeister stated all the subdivisions the County has had since Subdivision Regulations were adopted have been Administrative Subdivisions. Also this was the first request of a variance on a subdivision matter.

Heiden asked if the shoulder width is changed from 3' to 4', would that also change the slope.

Hoffmeister does agree that 168th Road does have the potential for more traffic, but then any road that connects to additional land that was not platted could likewise have the same potential.

Heiden said the proposed expansion of future subdivisions in this area is not the question today. The question before them is only the two subdivisions that have been platted.

The Board discussed private roads versus public roads.

Biehl said the roads were put in in good faith at the time the subdivisions were platted.

Chairperson Bosshamer closed the public hearing at 5:10 P.M.

Motion was made by Heiden, seconded by Fox to grant the relaxation of the shoulder width from 4' to 3' as required in Section 4.11 of the Buffalo County Subdivision Regulations based on the hardship that Biehl worked with the County at the time these subdivisions were developed and the roads were build to the RL 3 standards required at that time. This would be for all streets as laid out in Country Acres First, a subdivision being part of the South Half of the Northwest Quarter of Section Thirteen (13), Township Ten (10) North, Range Sixteen (16) West of the Sixth P.M., Buffalo County, Nebraska AND Country Acres Second, a subdivision being part of the South Half of the Northwest Quarter of Section Thirteen (13), Township Ten (10) North, Range Sixteen (16) West of the Sixth P.M., Buffalo County, Nebraska. The strict application of the regulations will produce undue hardship if required because it will damage an existing travelable road for the gain of one foot of shoulder. Any reconstruction would cause lawn and driveway damages to the residences now in place. The allowance of this variance will not cause a substantial detriment to adjacent property. The variance if allowed will not change the character of the district. Overall, the private cost for the public benefit would be a hardship for the owners of the properties, with the public benefit being minimal because given time, with the flatness of the area and some regularity of road surface grading, the shoulder area will probably flatten out to the necessary width.

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

Motion was made by Wilke, seconded by Fox to relax the requirement of hiring a professional engineer as required in Section 4.12 of the Buffalo County Subdivision Regulations. The terrain of the land is flat and the culvert was placed there upon the direction of the Highway Superintendent. This would be for Country Acres First, a subdivision being part of the South Half of the Northwest Quarter of Section Thirteen (13), Township Ten (10) North, Range Sixteen (16) West of the Sixth P.M., Buffalo County, Nebraska AND Country Acres Second, a subdivision being part of the South Half of the Northwest Quarter of Section Thirteen (13), Township Ten (10) North, Range Sixteen (16) West of the Sixth P.M., Buffalo County, Nebraska. In this instance, the strict application of the regulation will produce undue hardship, because if an engineer concludes there is no need of placement of any water conveyance, what is the developer to do with the culvert that he placed in the road after consultation with the county highway superintendent? If the culvert is required to be removed it will damage an existing travelable road. It was placed there after consultation with a person knowledgeable about these devices. The allowance of this variance will not be a substantial detriment to adjacent property. The variance if allowed will not change the character of the district. The hardship for allowance of this variance, should it not be relaxed for this standard of adequate conveyances, is that this land has been leveled for gravity surface irrigation and the plan of development and road lay out

is consistent with prior construction work performed on the property years ago. Although there is a floodplain standard for adequate conveyances to a year frequency, there is no stated standard for subdivisions developed in lands that are not in floodplains other than a professional opinion of adequate. This land is unique in that it has no defined waterways or drain ways entering or exiting it, the topography map received by the Board indicates little, if any, slope.

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

This resolution will be filed in the Register of Deed's office against the property and a copy will be sent to the applicant.

Moved by Wilke, seconded by Heiden to approve the minutes of the December 3, 2009 and April 8, 2010 meeting of the Board of Adjustment as mailed. Voting yes were Wilke, Heiden, Bosshamer, Fox and Riege. Voting no: none. Absent: Martin. Motion carried.

Chairperson Bosshamer adjourned the meeting at 5:25 P.M. until which time the Board of Adjustment is called into session again.