

**IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA**

**PREMIUM FARMS, LLC, a limited liability company,**

Plaintiff,

vs.

**HOLT COUNTY, NEBRASKA,**  
Defendant.

Case No. CI99-94

**TEMPORARY INJUNCTION**

This matter came on for hearing on July 15, 1999, on plaintiff's request for a Temporary Injunction to prevent enforcement against plaintiff of the Holt County Zoning Regulations. Rodney M. Confer and Cheryl R. Zwart appeared as counsel for plaintiff; Thomas P. Herzog, Holt County Attorney, appeared for defendant. Evidence was offered by affidavits, and the arguments of counsel were heard.

Upon consideration of the petition and the evidence adduced by affidavit, the Court being duly advised in the premises, hereby finds:

1. To the extent of the relief granted herein, it appears that the plaintiff is entitled to the relief demanded.
2. To such extent, such relief consists of the restraining of the commission or continuance of some act.
3. To such extent, the plaintiff has shown that the commission or continuance of that act would produce great or irreparable injury to the plaintiff.
4. The statutes authorizing county zoning, specifically § 23-114.03, authorizes a county to "regulate, restrict, or prohibit the erection, construction, reconstruction, alteration, or use of *nonfarm* buildings or structures and the use, conditions of use, or occupancy of land."
  - a. This section clearly defines "nonfarm buildings" in such way that the buildings contemplated by the plaintiff fall outside of the definition of nonfarm buildings, and effectively constitute "buildings used for agricultural purposes . . . ."
  - b. Thus, the first clause from quoted language in § 23-114.03 prevents any county zoning, including Holt County, from regulation of any buildings or structures other than "nonfarm" buildings or structures. To the extent that the Holt County zoning regulations purport to regulate the erection,

construction, reconstruction, alteration, or use of these buildings, the regulations exceed statutory authority and are void. The county has no power to adopt zoning regulations other than that granted by statute.

c. However, the second clause from the quoted language in § 23-114.03 does not contain restriction to nonfarm applications, and the counties are granted authority to regulate “the use, conditions of use, or occupancy of land.” To the extent that the adopted regulations exercise such power as to land, and not buildings, the same would be valid as within the scope of the power granted by the Legislature.

d. The regulations contain a severability clause, and the court finds that the regulations may be severed as to those portions which exceed statutory authority from those that do not.

e. The evidence of actual or threatened enforcement action is extremely limited, and it is not proper for the court to reach enforcement activities not disclosed by evidence but which would otherwise be within the scope of the county’s authority.

f. The evidence shows a verbal direction from the county zoning administrator to “cease and desist” further construction work on a building. That action, being an action purporting to regulate the construction of a “non-nonfarm” building, clearly exceeds the authority permissible by statute. (Exhibit 11.) The evidence further shows a notification to the plaintiff that a conditional use permit is required “before any such use [for a confined livestock operation] can be put to this type of facility.” (Exhibit 13.) This also appears to constitute an attempt to regulate the use of a “non-nonfarm” building, but is more ambiguous on this point.

g. Any injunction should reach only those areas which the reach of county’s regulation exceeds its grasp, i.e. the statutory authority for such regulations. The limit of the injunction today granted is so limited.

h. The court is not satisfied that the plaintiff has met its burden to overcome the presumption of constitutionality of the zoning regulations.

IT IS THEREFORE ORDERED that:

1. The County of Holt, Nebraska, and its officers, agents, servants, employees, and attorneys are restrained and enjoined from enforcing the Holt County Zoning Regulations against the

plaintiff, Premium Farms, LLC, to the extent that such regulations purport to “regulate, restrict, or prohibit the erection, construction, reconstruction, alteration, or use of [the plaintiff’s] buildings or structures.”

2. The temporary injunction does not prohibit enforcement of such zoning regulations that only regulate, restrict, or prohibit “the use, conditions of use, or occupancy of land,” so long as such enforcement does not affect or restrict the erection, construction, reconstruction, alteration, or use of the plaintiff’s buildings or structures.

3. The actions disclosed by the evidence presented at this hearing fall within the scope of the acts prohibited by this injunction. However, other acts in enforcement of the regulations not disclosed by the evidence today may be valid and outside the scope of this injunction.

4. An undertaking in the amount of \$250,000.00 shall be required to be posted by the plaintiff, and this Temporary Injunction shall not be enforceable against the defendant or its officers, agents, servants, employees, and attorneys, until such undertaking shall be approved by the clerk of this court pursuant to NEB. REV. STAT. § 25-1067 (Reissue 1995).

5. Unless a duly certified copy of this order accompanies the summons issued to the defendant and such summons is duly endorsed as required by NEB. REV. STAT. § 25-1068 (Reissue 1995), this order shall not become effective until served upon the defendant or a waiver of such service is duly filed by the proper officer of the defendant. If service is required, the Holt County Sheriff shall forthwith serve the same in the manner prescribed for serving a summons and make due return thereof without delay.

6. The clerk of this court is ordered to file this order in the clerk’s office immediately upon receipt thereof.

Dated and issued on July 15, 1999, at \_\_\_\_\_ p.m.

If checked, the Court Clerk shall:

- : Pursuant to paragraph 5, endorse summons or issue certified copy for service by sheriff, as directed by plaintiff’s counsel.  
Done on \_\_\_\_\_, 19\_\_\_\_ by \_\_\_\_\_.
  - : File this order immediately as required by paragraph 6.  
Done on \_\_\_\_\_, 19\_\_\_\_ by \_\_\_\_\_.
  - : Mail a copy to counsel of record for each party.  
Done on \_\_\_\_\_, 19\_\_\_\_ by \_\_\_\_\_.
- 9 (Trial docket entry dictated in open court.)

BY THE COURT:

\_\_\_\_\_  
William B. Cassel  
District Judge