

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

**PREMIUM FARMS, a general
partnership,**

Plaintiff,

vs.

HOLT COUNTY, NEBRASKA,

Defendant.

Case No. CI99-94

DECREE

DATE OF HEARING: April 20, 2000.

DATE OF RENDITION: June 22, 2000.

DATE OF ENTRY: Date of filing by court clerk (§ 25-1301(3)).

TYPE OF HEARING: Open court.

APPEARANCES:

For plaintiff: Rodney M. Confer, of Knudsen, Berkheimer, Richardson & Endacott.

For defendant: Thomas P. Herzog, Holt County Attorney, and James G. Kube, of Stratton, Ptak & Kube, P.C.

SUBJECT OF HEARING: (1) plaintiff's motion for summary judgment (filed 3/13/00), and, (2) defendant's motion for summary judgment (filed 3/28/00).

PROCEEDINGS: The court notes that:

The proceedings held on April 20, 2000, were memorialized by a journal entry filed on April 25, 2000. Although that journal entry filed on April 25, 2000, accurately states the proceedings held on April 20, 2000, it fails to recite the date that such proceedings were actually conducted. The court incorporates by reference the journal entry filed on April 25, 2000, to state the proceedings conducted on April 20, 2000.

FINDINGS: The court finds and concludes that:

1. Although the defendant's proper corporate name is The County of Holt, the defendant did not object to the variation in name. NEB. REV. STAT. § 23-101 (Reissue 1997).

2. Both parties submitted motions for summary judgment. The decision in *Derr v. Columbus Convention Center, Inc.*, 258 Neb. 537, ___ N.W.2d ___ (2000), restates the oft-repeated principles that control this decision:

A. Summary judgment is proper only when the pleadings, depositions, admissions, stipulations, and affidavits in the record disclose that there is no genuine issue as to any material fact or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law.

B. The court views the evidence in a light most favorable to the nonmoving party and gives such party the benefit of all reasonable inferences deducible from the evidence.

C. The party moving for summary judgment has the burden to show that no genuine issue of material fact exists and must produce sufficient evidence to demonstrate that the moving party is entitled to judgment as a matter of law.

D. A movant for summary judgment makes a prima facie case by producing enough evidence to demonstrate that the movant is entitled to a judgment if the evidence were uncontroverted at trial. At that point, the burden of producing evidence shifts to the party opposing the motion.

3. The plaintiff's Second Amended Petition initially set forth six causes of action. By its dismissal in writing filed on March 29, 2000, the plaintiff dismissed all causes of action except the second cause. Thus, the court addresses only the second cause of action, which asserts a claim that particular sections of the Holt County zoning regulations exceed the county's statutory zoning powers under § 23-114.03.

4. The zoning regulations were adopted on June 30, 1998. Exhibit 8. Although the statutes concerning county zoning have subsequently been amended, the court considers the statutes in existence at that date. In noncriminal cases, statutes are generally not given retroactive effect unless the Legislature has clearly expressed an intention that the new statute is to be applied retroactively. *Battle Creek State Bank v. Haake*, 255 Neb. 666, 587 N.W.2d 83 (1998). In any event, the 1999 amendments do not diminish the county's statutory authority under the applicable sections and do not address the particular language upon which the parties focus their attention.

5. Before addressing the specific statutory provisions, the court remembers certain fundamental principles:

A. A county does not possess the double governmental and private character that cities do. It is governmental only, and in that capacity acts purely as an agent of the state. *Rock County v. Spire*, 235 Neb. 434, 455 N.W.2d 763 (1990); *State ex rel. City of Omaha v. Board of County Commissioners*, 109 Neb. 35, 189 N.W. 639 (1922),

B. A county has only those powers and duties conferred upon it by the Legislature. *State ex rel. Scherer v. Madison County Comm'rs*, 247 Neb. 384, 527 N.W.2d 615 (1995). A county has only such powers as are expressly conferred upon it by statute and such as are incidentally indispensable to carry into effect those expressly granted it. *State ex rel. Johnson v. County of Gage*, 154 Neb. 822, 49 N.W.2d 672 (1951).

C. A grant of power to a county is strictly construed and any reasonable doubt of the existence of the power is resolved against the county. *State ex rel. Johnson v. County of Gage*, *supra*.

6. NEB. REV. STAT. § 23-114(1)(c) (Cum. Supp. 1998) generally vests the county board with authority to “adopt a zoning resolution, which shall have the force and effect of law.”

7. NEB. REV. STAT. § 23-114(2) (Cum. Supp. 1998) provides that such zoning regulation may regulate and restrict: (a) The location, height, bulk, number of stories, and size of buildings and other structures, including tents, cabins, house trailers, and automobile trailers; (b) the percentage of lot areas which may be occupied; (c) building setback lines; (d) sizes of yards, courts, and other open spaces; (e) the density of population; (f) the uses of buildings; and (g) the uses of land for agriculture, forestry, recreation, residence, industry, and trade, after considering factors relating to soil conservation, water supply conservation, surface water drainage and removal, or other uses in the unincorporated area of the county.

8. The parties focus on that portion of § 23-114.03 stating:

Within the area of jurisdiction and powers established by section 23-114, the county board may divide the county into districts of such number, shape, and area as may be best suited to carry out the purposes of this section and 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. All such regulations shall be uniform for each class or kind of land or buildings throughout each district, but the regulations in one district may differ from those in other districts. . . .

Nonfarm buildings are all buildings except those buildings utilized for agricultural purposes on a farmstead of twenty acres or more which produces one thousand dollars or more of farm products each year.

NEB. REV. STAT. § 23-114.03 (Reissue 1997) (emphasis supplied). The 1999 amendments did not change this portion of the statute.

9. There is no genuine issue of fact that (1) the contemplated purposes are agricultural, (2) the property involved constitutes a farmstead, (3) the tract consists of more than 20 acres, and, (4) the tract produces more than \$1,000 of farm products each year.

10. The first issue the court considers is whether the word “nonfarm” qualifies only the word “buildings,” or whether it also qualifies the word “structures.” This question requires the court to interpret the meaning of the statute. Numerous legal principles apply to that process.

A. In reading a statute, a court must determine and give effect to the purpose and intent of the Legislature as ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense. *State v. Bottolfson*, 259 Neb. 470, ___ N.W.2d ___ (2000).

B. In the absence of anything to the contrary, statutory language is to be given its plain and ordinary meaning; a court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous. *Boone County Board v. Nebraska Tax Equalization*, 9 Neb. App. 298, ___ N.W.2d ___ (2000).

C. A statute is open for construction to determine its meaning only when the language used requires interpretation or may reasonably be considered ambiguous. *Affiliated Foods Co-op v. State*, 259 Neb. 549, ___ N.W.2d ___ (2000).

D. An ambiguity in a statute capable of producing more than one possible result opens the statute for construction by a court, which must apply the construction that will best achieve the purposes of the legislative enactment. *Groseth v. Groseth*, 257 Neb. 525, ___ N.W.2d ___ (1999).

E. The ordinary rules of grammar will be applied for the purpose of ascertaining the meaning of a statute, but they are not controlling when an intent in conflict is disclosed, and must thereupon be disregarded so as to give effect to the legislative intention. 82 C.J.S. *Statutes* § 324 (1999). A sensible construction will be placed upon a statute to effectuate the object of the legislation rather than a

literal meaning that would have the effect of defeating the legislative intent. *State v. Saltzman*, 194 Neb. 525, 233 N.W.2d 914 (1975).

F. The components of a series or collection of statutes pertaining to a certain subject matter may be conjunctively considered and construed to determine the intent of the Legislature so that different provisions of the act are consistent, harmonious, and sensible. Statutes relating to the same subject matter are to be construed together so as to maintain a consistent and sensible scheme. *Sack v. State*, 259 Neb. 463, ___ N.W.2d ___ (2000).

G. Construction of a statute will not be adopted which has the effect of nullifying or repealing another statute. *Sack v. State, supra*.

H. In construing a statute, a court must attempt to give effect to all of its parts, and if it can be avoided, no word, clause, or sentence will be rejected as superfluous or meaningless; it is not within the province of the court to read anything plain, direct, and unambiguous out of the statute. *State v. Bottolfson, supra*.

I. In construing a statute, a court will, if possible, try to avoid a construction which would lead to absurd, unconscionable, or unjust results. *State v. Alford*, 6 Neb. App. 969, 578 N.W.2d 885 (1998).

J. A court may examine the legislative history of the act in question in order to ascertain the intent of the Legislature. *State ex rel. Stenberg v. Moore*, 258 Neb. 199, ___ N.W.2d ___ (1999). To ascertain the intent of the Legislature, a court may also refer to earlier legislation upon the same subject. *Winter v. Department of Motor Vehicles*, 257 Neb. 28, 594 N.W.2d 642 (1999).

11. Sometimes an adjective is deemed to modify all of the following words. *State v. Lauritsen*, 178 Neb. 230, 132 N.W.2d 379 (1965). On other occasions, it does not. *State ex rel. Douglas v. Beermann*, 216 Neb. 849, 347 N.W.2d 297 (1984).

12. The defendant places great emphasis upon quotations from the legislative history of L.B. 463. See exhibit 31.

A. Exhibit 31 does recite that one of the purposes of the legislation was the clarify the counties' powers and procedures in regard to zoning and building restrictions. However, it does not

support the defendant's rather strained argument that the particular language was intended only to prevent farmers from having to obtain building permits.

B. The court should not resort to legislative history to construe a statute whose meaning is clear. *State ex rel. City of Elkhorn v. Haney*, 252 Neb. 788, 566 N.W.2d 771 (1997). Moreover, legislative history cannot ordinarily serve to import an intent into legislation devoid of language fit to express it. *Norden Laboratories, Inc. v. County Board of Equalization*, 189 Neb. 437, 203 N.W.2d 152 (1973).

C. While the meaning of the questioned language may not be absolutely clear, that section never mentions building permits in any fashion. The defendant's attempt to limit the effect of the quoted language conflicts with the plain language of the statute and is untenable. It is not the province of a court to read meaning into a statute that is not there, or to read anything direct and plain out of a statute. *State ex rel. City of Elkhorn v. Haney, supra*.

13. While some inferences may be drawn from the discussion during hearing or floor debate, the court finds the particular statutory language used or not used, and the grammatical structure of the words adopted, to be of much greater significance.

A. The Legislature specifically defined "nonfarm buildings," but did not define "nonfarm structures." 1967 Neb. Laws, ch. 117, § 4, p. 370.

B. The precise language used in the initial adoption of § 23-114.03 states that "the county board may . . . 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." 1967 Neb. Laws, ch. 117, § 4, p. 369 (emphasis supplied). The Legislature used a comma after the words "nonfarm buildings" and before the words "or structures." The Legislature also inserted a comma after the words "or structures" and before the words "and the use of . . ." Particularly in view of the limited definition, the commas before and after the words "or structures" demonstrates the Legislature's intent not to modify the word "structures" with the word "nonfarm." This is also consistent with the statutory history cited by the defendant.

C. The commas before and after the words “or structures” were deleted by L.B. 960 in 1986. 1986 Neb. Laws, L.B. 960, § 18. The court determines that this change does not affect the substantive meaning of the statute.

(1) A mere change in punctuation does not necessarily change the operation or effect of a statute, and will not be deemed to do so unless the intent to make such change is clear and unmistakable. *In re James’ Estate*, 192 Neb. 614, 223 N.W.2d 481 (1974). No presumption arises from changes of this character that the revisers or the Legislature in adopting the revision intended to change existing law; rather, the presumption is to the contrary, unless the intent to change it clearly appears. *Id.*

(2) L.B. 960 dealt with the subject of published notices. It amended numerous statutes relating to publication requirements on otherwise unrelated subjects. Its title was clearly limited to printing and publication requirements.

(3) Clearly, no intention to make substantive changes in law of county zoning can be supported. See NEB. CONST. art. III, § 14 (no bill shall contain more than one subject, and the same shall be clearly expressed in the title). It would not be constitutional to view L.B. 960 as effecting a substantive change in the county zoning law.

(4) When a statute is susceptible of more than one reasonable construction, the court will use the construction that preserves the statute’s validity. *Southeast Rural Volunteer Fire Dept. v. Nebraska Dept. of Revenue*, 251 Neb. 852, 560 N.W.2d 436 (1997). Where a statute is susceptible of two constructions, one of which renders it constitutional and the other unconstitutional, it is the duty of the court to adopt the construction which, without doing violence to the fair meaning of the statute, will render it valid. *State ex rel. Meyer v. Duxbury*, 183 Neb. 302, 160 N.W.2d 88 (1968).

14. Consequently, the court concludes that the word “nonfarm” modifies only the word “buildings” and does not modify the word “structures.” Therefore, the Legislature intended only to limit a county’s authority in order to prevent a county from regulating, restricting, or prohibiting the erection, construction, reconstruction, alteration, or use of farm buildings. The Legislature did not so limit the counties regarding other farm structures. Moreover, the Legislature did not so limit the counties’ power to regulate, restrict, or prohibit the use, conditions of use, or occupancy of land.

15. The surviving second cause of action in the plaintiff's Second Amended Petition does not challenge the definitions of "building" and "structure" set forth in the zoning regulations. Exhibit 8, at 3-4. Consequently, the court will consider those words in the other regulations as so defined and limited.

16. The plaintiff's brief concedes that the lagoon, including its liner, constitutes a "structure" within the meaning of § 23-114.03.

17. Zoning regulations enjoy a presumption of validity unless the contrary appears on the face of the regulation. *Whitehead Oil Co. v. City of Lincoln*, 245 Neb. 660, 515 N.W.2d 390 (1994).

18. Its appears that, where a zoning regulation is partially valid and partially invalid, the valid portion may be upheld under certain circumstances.

A. If a city ordinance contains valid and void provisions, the valid portion will be upheld if it is a complete law, capable of enforcement, and is not dependent upon that which is invalid. *Dell v. City of Lincoln*, 170 Neb. 176, 102 N.W.2d 62 (1960).

B. An unconstitutional portion of a statute may be severed if (1) absent the unconstitutional portion, a workable statutory scheme remains; (2) the valid portions of the statute can be enforced independently; (3) the invalid portion was not an inducement to the passage of the statute; and (4) severing the invalid portion will not do violence to the intent of the Legislature. *State ex rel. Stenberg v. Murphy*, 247 Neb. 358, 527 N.W.2d 185 (1995).

C. While this court finds no decision expressly addressing the issue of severability to a county zoning regulation, the court perceives no reason why the same principles regarding severability should not apply.

D. Factors for consideration in determining whether an unconstitutional provision is severable from the remainder of a statute include (1) whether, absent the invalid portion, a workable plan remains; (2) whether the valid portions are independently enforceable; (3) whether the invalid portion was such an inducement to the valid parts that the valid parts would not have passed without the invalid part; (4) whether the severance will do violence to the intent of the Legislature; and (5) whether a declaration of separability indicating that the Legislature would have enacted the bill absent the invalid portion is included in the act. *Teters v. Scottsbluff Public Schools*, 256 Neb. 645, 592 N.W.2d 155 (1999).

E. The court determines that the same analysis should be applied in the present content. Thus, the court will determine whether any invalid portion of the zoning regulations is severable by considering (1) whether, absent the invalid portion, a workable plan remains; (2) whether the valid portions are independently enforceable; (3) whether the invalid portion was such an inducement to the valid parts that the valid parts would not have passed without the invalid part; (4) whether a declaration of separability will do violence to the intent of the county board; and, (5) whether a declaration of separability indicating that the county board would have enacted the regulations absent the invalid portion is included in the regulations.

F. In this instance, the county board expressly included a severability clause, stating that “[i]f any section, subsection, sentence, clause, or phrase of this regulation is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this regulation.” Exhibit 8, at 12. The county board thereby expressly declared and indicated that it would have enacted the regulations absent any invalid portion.

19. The court now addresses the specific provisions attacked by the plaintiff.

20. Article 4, Section 2, generally prohibits the use of a “structure” or “land” for any purpose other than specified uses or conditionally permitted uses. Exhibit 8, at 5-6.

A. At first reading, it does not appear to attempt to regulate, restrict, or prohibit the erection, construction, reconstruction, alteration, or use of any farm building.

B. However, paragraph 1.b) purports to include a restriction concerning “agricultural buildings.” The reference to agricultural buildings exceeds the county’s statutory authority and is unenforceable to that extent. Applying the criteria discussed above, the court concludes that the invalid phrase “buildings or” is severable and should be declared invalid.

C. Paragraph 2 does not impose any regulation, restriction, or prohibition, and consequently does not exceed the county’s statutory authority.

D. However, paragraph 3.a) of Article 4, Section 2, authorizes conditional use permits for a “Confined Livestock Operation.” The regulations specifically define that term as “totally roofed buildings . . . wherein animals or poultry are housed” Exhibit 8, at 3. Paragraph 3.a), together with all of the subparts or subparagraphs thereof, premise the contemplated conditionally permitted use upon

a definition (“Confined Livestock Operation”) that exceeds the county’s statutory authority because it clearly and specifically applies to agricultural buildings. Because the definition specifically includes agricultural buildings, it is not possible to separate the potentially valid application of similar regulations to agricultural structures other than buildings or to the use of land apart from the invalid portion. If the first two sentences of paragraph 3.a) (“Confined Livestock Operation for a specific . . . obtain a Conditional Use Permit”) are stricken, the remaining portion of paragraph 3.a) and the subparagraphs which follow leave no workable definition of the conditionally permitted use and are not independently enforceable. Consequently, subparagraph a) of Article 4, Section 2, paragraph 3, together with all of the subparts or subparagraphs following thereafter and which constitute a part of subparagraph a), must be stricken as invalid and in excess of statutory authority.

21. The use of a farm building, i.e., the interior within the confines of the roof, walls, and flooring, does not constitute the use of land within the meaning of § 23-114.03. However, when the use or consequences of use of the building exit therefrom onto, across, or under the land, whether underneath the building or adjoining thereto, or onto or into some other structure, the use involved is no longer limited to a building and becomes the use of land or another structure. While § 23-114.03 withholds authority to regulate, restrict, or prohibit the use of a farm building, that limitation does not apply to consequences or usages flowing or arising outside the building. However, where the particular regulation applies to both agricultural buildings and to other structures or land and where the invalid portion cannot be severed from the potentially valid portion, the particular regulation must be determined invalid. That does not prevent the county from properly adopting regulations to regulate, restrict, or prohibit the use of land or structures other than agricultural buildings. By defining “Confined Livestock Operation[s]” in terms of agricultural buildings, the county created a foreseeable and needless conflict with § 23-114.03. It is not within the scope of judicial power to remake or modify the zoning regulations so as to be valid and enforceable and within the scope of the county’s statutory authority. That is a legislative function delegated by the Legislature to the county board.

22. Article 4, Section 3 establishes setback regulations in three paragraphs.

A. The first two words (“Buildings or”) of paragraph 1 purport to apply to agricultural buildings. For the same reasons described above, that phrase exceeds the county’s statutory authority. The provision is severable. The remaining portion is valid and enforceable.

B. Because the definition of “Confined Livestock Operation” inherently applies to agricultural buildings, the first sentence of paragraph 2 exceeds the county’s statutory authority. The balance of paragraph 2 may be severed and is valid and enforceable.

C. Paragraph 3 is not facially invalid and may be lawfully applied to the plaintiff’s real estate.

23. Sections 1, 2, and 6 of Article 8 do not exceed the county’s statutory authority. They are valid and enforceable.

24. Sections 3, 4, and 5 of Article 8 purport to apply to “Confined Livestock Operations.” Because the definition of “Confined Livestock Operation” specifically applies to agricultural buildings, these sections exceed the county’s statutory authority, and are invalid.

25. Sections 4 and 5 of Article 10 do not exceed the county’s statutory authority, and are valid and enforceable.

26. The challenge to Article 10, Section 3, paragraph 1, is initially confusing because the adopted regulations do not set forth a paragraph 1 under Section 3. Exhibit 8, at 10.

A. Instead of following the numbering format otherwise consistently used, Section 3 starts with subparagraphs a) and b), followed by paragraph 2. The proposed regulations attached to the plaintiff’s petition show a paragraph 1 consisting only of a heading entitled “Confined Livestock Operations:” and followed by subparagraphs a) and b) with the same format and content that appears in the adopted regulations. It is apparent that in the formal adoption of the regulations, the paragraph 1 heading was inadvertently omitted. It is clear from the petition that the plaintiff challenges the validity of subparagraphs a) and b) with all subparts thereof.

B. However, once understood, the regulations clearly purport to apply to agricultural buildings, in addition to other structures and the use of land. No workable or enforceable provision remains and the provisions cannot be severed. All of the paragraphs following the introductory paragraph of Section 3 to, but not including, paragraph 2, are invalid.

27. Article 12 is valid and enforceable except to the extent of the words “and all subsequent amendments.” Those words are invalid and in excess of statutory authority as an improper delegation of legislative power. Those words are properly severable. The remaining regulation is deemed to incorporate the cited rules and regulations of the Nebraska Department of Environmental Quality as they existed on the date of adoption of the zoning regulations on June 30, 1998.

28. The second unnumbered paragraph of Article 13, Section 2, of the regulations (beginning “The owner shall be required” and ending “these zoning regulations”) exceeds the county’s statutory authority because it expressly applies to a “Confined Livestock Operation,” which by definition comprises an agricultural building. That unnumbered paragraph is invalid and unenforceable.

29. The remainder of Article 13 imposes no substantive requirements upon agricultural buildings, and is valid and enforceable as to non farm buildings, structures other than buildings, and to the use of land.

30. To the extent that the regulations are invalid because they exceed the county’s statutory authority, the plaintiff has met its burden to show a clear right to relief, that there has been or will be actual, substantial, and irreparable harm, and that the plaintiff’s remedy at law is inadequate. The plaintiff is entitled to injunctive relief to restrain and enjoin the defendant from enforcing those portions of the Holt County Zoning Regulations, i.e. Resolution #98-11, adopted on June 30, 1998, which are declared invalid by this court.

31. To the extent that the plaintiff is granted relief upon the plaintiff’s second cause of action of the operative petition or the defendant is denied relief upon the defendant’s answer, the plaintiff has met its burden to show that there is no genuine issue as to any material fact or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law on the plaintiff’s motion for summary judgment.

32. To the extent that the defendant is granted relief upon the defendant’s answer or the plaintiff is denied relief upon the plaintiff’s second cause of action of the operative petition, the defendant has met its burden to show that there is no genuine issue as to any material fact or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law on the defendant’s motion for summary judgment.

33. All requests for attorneys' fees should be denied. The court notes that the plaintiff's cause of action under 42 U.S.C. § 1983 (sixth cause of action) was voluntarily dismissed by the plaintiff. Consequently, the request for attorney's fees under 42 U.S.C. § 1988 does not apply to this case. Neither party has cited any statute or uniform course of procedure which would otherwise entitle either party to any attorneys' fees.

34. Because the plaintiff has substantially prevailed upon the plaintiff's operative petition, costs of the action should be taxed to the defendant.

35. The plaintiff's bond given to obtain injunctive relief should be discharged and the liability of any surety thereon exonerated, effective upon the expiration of 30 days from the date of entry of this decree, i.e., upon the expiration of time for appeal.

ORDER AND DECREE: IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1. The plaintiff's motion for summary judgment is granted to the extent of the relief granted to the plaintiff and denied to the defendant herein.

2. The defendant's motion for summary judgment is granted to the extent of the relief denied to the plaintiff and granted to the defendant herein.

3. SUMMARY JUDGMENT is hereby entered:

A. Declaring the following portions of the Holt County Zoning Regulations (Resolution #98-11) adopted on June 30, 1998, to be invalid and unenforceable:

(1) In Article 4, Section 2, paragraph 1, subparagraph b), the words "buildings or";

(2) In Article 4, Section 2, paragraph 3, all of subparagraph a) together with all subsections or subparagraphs of said subparagraph a);

(3) In Article 4, Section 3, paragraph 1, the first two words thereof ("Buildings or");

(4) In Article 3, Section 3, paragraph 2, the first sentence thereof;

(5) All of Sections 3, 4, and 5 of Article 8;

(6) All of the subparagraphs of Article 10, Section 3, following the Section 3 introductory paragraph to, but not including, paragraph 2;

(7) In Article 12, the words “and all subsequent amendments”; and,

(8) The second unnumbered paragraph of Article 13, Section 2, beginning with the words “The owner shall be required” and ending with the words “these zoning regulations.”

B. Permanently restraining and enjoining the defendant, and its officers, employees, agents, and attorneys, from enforcing against the plaintiff, and its officers, employees, agents, and attorneys, those portions of the Holt County Zoning Regulations (Resolution #98-11), adopted on June 30, 1998, above declared to be invalid and unenforceable. This injunction extends only to those regulations adopted on June 30, 1998, to the extent declared invalid herein.

C. Taxing the costs incurred by the plaintiff in the amount of \$89.00 to the defendant, and entering judgment against the defendant for such costs, together with interest thereon from the date of entry at the rate of 7.375% per annum.

D. Except to the extent of the foregoing relief and to the extent previously dismissed by the plaintiff without prejudice, dismissing the plaintiff’s Second Amended Petition with prejudice to future action.

4. Any and all requests for attorneys’ fees are denied.

5. The plaintiff’s bond given to obtain injunctive relief is released and discharged and the liability of any surety thereon exonerated, effective upon the expiration of 30 days from the date of entry of this decree, i.e., upon the expiration of time for appeal.

Signed in chambers at Ainsworth, Nebraska, on June 22, 2000.
DEEMED ENTERED upon filing by court clerk.

If checked, the Court Clerk shall:

- Mail a copy of this order to all counsel of record and to any pro se parties.
Done on _____, 20__ by ____.
- Enter judgment on the judgment record.
Done on _____, 20__ by ____.
- Mail postcard/notice required by § 25-1301.01 within 3 days.
Done on _____, 20__ by ____.
- Note the decision on the trial docket as: [date of filing] Signed
“Decree” entered.
Done on _____, 20__ by ____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge