

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

**PREMIUM FARMS, a general
partnership,**

Plaintiff,

vs.

HOLT COUNTY, NEBRASKA,

Defendant.

Case No. CI99-94

**MODIFICATION AND
RATIFICATION OF DECREE
WITHIN TERM**

DATE OF HEARING: No further hearing held.
DATE OF RENDITION: June 24, 2000.
DATE OF ENTRY: Date of filing by court clerk (§ 25-1301(3)).
SUBJECT OF HEARING: Modification of decree rendered on June 22, 2000, on the court's own motion within term.

FINDINGS: The court finds and concludes that:

1. On its own motion, the court has determined to modify and ratify as modified the decree rendered on June 22, 2000, to avoid any possible construction determining that the decree constitutes a conditional order and does not act *in praesenti*. *Custom Fabricators of Granite & Marble v. Lenarduzzi*, 259 Neb. 453, ___ N.W.2d ___ (2000).

2. The court ratifies and incorporates by reference the findings set forth in paragraphs 1 through 34, inclusive, of the "Findings" section of the decree rendered on June 22, 2000, as if set forth in full herein.

3. Paragraph 35 of the "Findings" section of the decree is vacated and set aside.

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

1. The court ratifies and incorporates by reference paragraphs 1 through 4, inclusive, of the "Order and Decree" section of the decree rendered on June 22, 2000. The provisions thereof are restated and reentered as follows:

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.

2. Paragraph 5 of the "Order and Decree" section of the decree rendered on June 22, 2000, is vacated and set aside.

Signed in chambers at Ainsworth, Nebraska, on June 24, 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 "Modification and Ratification of Decree Within Term" entered.
Done on _____, 20__ by ____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge