

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1057

Introduced by Lowe, 37.

Read first time January 21, 2020

Committee: Government, Military and Veterans Affairs

- 1 A BILL FOR AN ACT relating to counties; to amend section 23-114.01,
- 2 Reissue Revised Statutes of Nebraska; to change provisions regarding
- 3 appeals of decisions by county planning commissions or county boards
- 4 regarding conditional uses or special exceptions; to harmonize
- 5 provisions; and to repeal the original section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 23-114.01, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 23-114.01 (1) In order to avail itself of the powers conferred by
4 section 23-114, the county board shall appoint a planning commission to
5 be known as the county planning commission. The members of the commission
6 shall be residents of the county to be planned and shall be appointed
7 with due consideration to geographical and population factors. Since the
8 primary focus of concern and control in county planning and land-use
9 regulatory programs is the unincorporated area, a majority of the members
10 of the commission shall be residents of unincorporated areas, except that
11 this requirement shall not apply to joint planning commissions. Members
12 of the commission shall hold no county or municipal office, except that a
13 member may also be a member of a city, village, or other type of planning
14 commission. The term of each member shall be three years, except that
15 approximately one-third of the members of the first commission shall
16 serve for terms of one year, one-third for terms of two years, and one-
17 third for terms of three years. All members shall hold office until their
18 successors are appointed. Members of the commission may be removed by a
19 majority vote of the county board for inefficiency, neglect of duty, or
20 malfeasance in office or other good and sufficient cause upon written
21 charges being filed with the county board and after a public hearing has
22 been held regarding such charges. Vacancies occurring otherwise than
23 through the expiration of terms shall be filled for the unexpired terms
24 by individuals appointed by the county board. Members of the commission
25 shall be compensated for their actual and necessary expenses incurred in
26 connection with their duties in an amount to be fixed by the county
27 board. Reimbursement for mileage shall be made at the rate provided in
28 section 81-1176. Each county board may provide a per diem payment for
29 members of the commission of not to exceed fifteen dollars for each day
30 that each such member attends meetings of the commission or is engaged in
31 matters concerning the commission, but no member shall receive more than

1 one thousand dollars in any one year. Such per diem payments shall be in
2 addition to and separate from compensation for expenses.

3 (2) The commission: (a) Shall prepare and adopt as its policy
4 statement a comprehensive development plan and such implemental means as
5 a capital improvement program, subdivision regulations, building codes,
6 and a zoning resolution; (b) shall consult with and advise public
7 officials and agencies, public utilities, civic organizations,
8 educational institutions, and citizens relating to the promulgation of
9 implemental programs; (c) may delegate authority to any of the groups
10 named in subdivision (b) of this subsection to conduct studies and make
11 surveys for the commission; and (d) shall make preliminary reports on its
12 findings and hold public hearings before submitting its final reports.
13 The county board shall not hold its public meetings or take action on
14 matters relating to the comprehensive development plan, capital
15 improvements, building codes, subdivision development, or zoning until it
16 has received the recommendations of the commission.

17 (3) The commission may, with the consent of the governing body, in
18 its own name: Make and enter into contracts with public or private
19 bodies; receive contributions, bequests, gifts, or grants of funds from
20 public or private sources; expend the funds appropriated to it by the
21 county board; employ agents and employees; and acquire, hold, and dispose
22 of property. The commission may, on its own authority: Make arrangements
23 consistent with its program; conduct or sponsor special studies or
24 planning work for any public body or appropriate agency; receive grants,
25 remuneration, or reimbursement for such studies or work; and at its
26 public hearings, summon witnesses, administer oaths, and compel the
27 giving of testimony.

28 (4) In all counties in the state, the county planning commission may
29 grant conditional uses or special exceptions to property owners for the
30 use of their property if the county board of commissioners or supervisors
31 has officially and generally authorized the commission to exercise such

1 powers and has approved the standards and procedures the commission
2 adopted for equitably and judiciously granting such conditional uses or
3 special exceptions. The granting of a conditional use permit or special
4 exception shall only allow property owners to put their property to a
5 special use if it is among those uses specifically identified in the
6 county zoning regulations as classifications of uses which may require
7 special conditions or requirements to be met by the owners before a use
8 permit or building permit is authorized. The applicant for a conditional
9 use permit or special exception for a livestock operation specifically
10 identified in the county zoning regulations as a classification of use
11 which may require special conditions or requirements to be met within an
12 area of a county zoned for agricultural use may request a determination
13 of the special conditions or requirements to be imposed by the county
14 planning commission or by the county board of commissioners or
15 supervisors if the board has not authorized the commission to exercise
16 such authority. Upon request the commission or board shall issue such
17 determination of the special conditions or requirements to be imposed in
18 a timely manner. Such special conditions or requirements to be imposed
19 may include, but are not limited to, the submission of information that
20 may be separately provided to state or federal agencies in applying to
21 obtain the applicable state and federal permits. The commission or the
22 board may request and review, prior to making a determination of the
23 special conditions or requirements to be imposed, reasonable information
24 relevant to the conditional use or special exception. If a determination
25 of the special conditions or requirements to be imposed has been made,
26 final permit approval may be withheld subject only to a final review by
27 the commission or county board to determine whether there is a
28 substantial change in the applicant's proposed use of the property upon
29 which the determination was based and that the applicant has met, or will
30 meet, the special conditions or requirements imposed in the
31 determination. For purposes of this section, substantial change shall

1 include any significant alteration in the original application including
2 a significant change in the design or location of buildings or
3 facilities, in waste disposal methods or facilities, or in capacity.

4 (5)(a) ~~(5)~~ The power to grant conditional uses or special exceptions
5 as set forth in subsection (4) of this section shall be the exclusive
6 authority of the commission, except that the county board of
7 commissioners or supervisors may choose to retain for itself the power to
8 grant conditional uses or special exceptions for those classifications of
9 uses specified in the county zoning regulations. The county board of
10 commissioners or supervisors may exercise such power if it has formally
11 adopted standards and procedures for granting such conditional uses or
12 special exceptions in a manner that is equitable and which will promote
13 the public interest.

14 (b) In any county ~~other than a county~~ in which there is not located
15 a city of the primary class, a person aggrieved by an appeal of a
16 decision by the county planning commission or county board of
17 commissioners or supervisors regarding a conditional use or special
18 exception shall obtain judicial review of such decision by filing a
19 petition in error in the district court of such county pursuant to
20 sections 25-1901 to 25-1908. shall be made to the district court.

21 (c) In any county in which there is located a city of the primary
22 class:

23 (i) An ~~an~~ appeal of a decision by the county planning commission
24 regarding a conditional use or special exception shall be made to the
25 county board of commissioners or supervisors; ~~and~~

26 (ii) A person aggrieved by an appeal of a decision by the county
27 board of commissioners or supervisors regarding a conditional use or
28 special exception shall obtain judicial review of such decision by filing
29 a petition in error in the district court of such county pursuant to
30 sections 25-1901 to 25-1908. shall be made to the district court.

31 (6) Whenever a county planning commission or county board is

1 authorized to grant conditional uses or special exceptions pursuant to
2 subsection (4) or (5) of this section, the planning commission or county
3 board shall, with its decision to grant or deny a conditional use permit
4 or special exception, issue a statement of factual findings arising from
5 the record of proceedings that support the granting or denial of the
6 conditional use permit or special exception. If a county planning
7 commission's role is advisory to the county board, the county planning
8 commission shall submit such statement with its recommendation to the
9 county board as to whether to approve or deny a conditional use permit or
10 special exception.

11 Sec. 2. Original section 23-114.01, Reissue Revised Statutes of
12 Nebraska, is repealed.