

ENGROSSED LEGISLATIVE BILL 663

Introduced by Storer, 43; DeKay, 40; Holdcroft, 36; Ibach, 44; Strommen, 47.

A BILL FOR AN ACT relating to counties; to amend section 23-114.01, Reissue Revised Statutes of Nebraska; to require education for county attorneys, members of county planning commissions, and members of county boards as provided; to change provisions relating to conditional use and special exception zoning determinations and determination appeals; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

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

23-114.01 (1) In order to avail itself of the powers conferred by section 23-114, the county board shall appoint a county planning commission. The members of the commission shall be residents of the county to be planned and shall be appointed with due consideration to geographical and population factors. Since the primary focus of concern and control in county planning and land-use regulatory programs is the unincorporated area, a majority of the members of the commission shall be residents of unincorporated areas, except that this requirement shall not apply to joint planning commissions. Members of the commission shall hold no county or municipal office, except that a member may also be a member of a city, village, or other type of planning commission. The term of each member shall be three years, except that approximately one-third of the members of the first commission shall serve for terms of one year, one-third for terms of two years, and one-third for terms of three years. All members shall hold office until their successors are appointed. Members of the commission may be removed by a majority vote of the county board for inefficiency, neglect of duty, or malfeasance in office or other good and sufficient cause upon written charges being filed with the county board and after a public hearing has been held regarding such charges. Vacancies occurring otherwise than through the expiration of terms shall be filled for

the unexpired terms by individuals appointed by the county board. Members of the commission shall be compensated for their actual and necessary expenses incurred in connection with their duties in an amount to be fixed by the county board. Reimbursement for mileage shall be made at the rate provided in section 81-1176. Each county board may provide a per diem payment for members of the commission of not to exceed fifteen dollars for each day that each such member attends meetings of the commission or is engaged in matters concerning the commission, but no member shall receive more than one thousand dollars in any one year. Such per diem payments shall be in addition to and separate from compensation for expenses.

(2) The county attorney, each member of the commission, and each member of the county board of any county that has enacted county zoning regulations shall undertake two hours of education per term on topics specific to the role of the county attorney, commissioner, or board member when addressing matters subject to this section.

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

(4)(a) The commission may, with the consent of the governing body, in its own name: (i) Make and enter into contracts with public or private bodies; (ii) receive contributions, bequests, gifts, or grants of funds from public or

private sources; (iii) expend the funds appropriated to it by the county board; (iv) employ agents and employees; and (v) acquire, hold, and dispose of property.

(b) The commission may, on its own authority: (i) Make arrangements consistent with its program; (ii) conduct or sponsor special studies or planning work for any public body or appropriate agency; (iii) receive grants, remuneration, or reimbursement for such studies or work; and (iv) at its public hearings, summon witnesses, administer oaths, and compel the giving of testimony.

(5)(a) In all counties in the state, the county planning commission may grant conditional uses or special exceptions to property owners for the use of their property if the county board of commissioners or supervisors has officially and generally authorized the commission to exercise such powers and has approved the standards and procedures the commission adopted for equitably and judiciously granting such conditional uses or special exceptions. The granting of a conditional use permit or special exception shall only allow property owners to put their property to a special use if it is among those uses specifically identified in the county zoning regulations as classifications of uses which may require special conditions or requirements to be met by the owners before a use permit or building permit is authorized.

(b) The applicant for a conditional use permit or special exception for a livestock operation specifically identified in the county zoning regulations as a classification of use which may require special conditions or requirements to be met within an area of a county zoned for agricultural use may request a determination of the special conditions or requirements to be imposed by the county planning commission or by the county board of commissioners or supervisors if the board has not authorized the commission to exercise such authority. Upon request the commission or board shall issue such determination of the special conditions or requirements to be imposed in a timely manner. Such special conditions or requirements to be imposed may include, but are not limited to, the submission of information that may be separately provided to

state or federal agencies in applying to obtain the applicable state and federal permits. Granting a conditional use permit or special exception by the commission or county board shall be based solely on county zoning regulations. Nothing in this section shall be construed to release the applicant from complying with applicable rules and regulations of any local, state, or federal agency or with any applicable state or federal permit requirements. A commission or county board shall not require an applicant for a conditional use permit or special exception to apply for or obtain any other permit from a federal, state, or local agency as a condition for granting such conditional use permit or special exception. The granting of a conditional use permit or special exception by a commission or county board shall not relieve the applicant of any requirement to obtain other necessary permits from any federal, state, or local agency.

(c) The commission or the board may request and review, prior to making a determination of the special conditions or requirements to be imposed, reasonable information relevant to the conditional use or special exception. If a determination of the special conditions or requirements to be imposed has been made, final permit approval may be withheld subject only to a final review by the commission or county board to determine whether there is a substantial change in the applicant's proposed use of the property upon which the determination was based and that the applicant has met, or will meet, the special conditions or requirements imposed in the determination. When making the determination as to whether the application for a conditional use permit or special exception should be approved or denied, the commission and board shall presume that the applicant for the permit will comply with all local, state, and federal requirements. The burden of proof to the contrary shall rest on the party challenging said presumption. Without factual evidence contrary to the application, the commission or board shall approve the application.

(d) For purposes of this section, substantial change shall include any significant alteration in the original application including a significant change in the design or location of buildings or facilities, in waste disposal

methods or facilities, or in capacity.

(6) The power to grant conditional uses or special exceptions as set forth in subsection (5) of this section shall be the exclusive authority of the commission, except that the county board of commissioners or supervisors may choose to retain for itself the power to grant conditional uses or special exceptions for those classifications of uses specified in the county zoning regulations. The county board of commissioners or supervisors may exercise such power if it has formally adopted standards and procedures for granting such conditional uses or special exceptions in a manner that is equitable and which will promote the public interest. In an appeal of a decision by the county planning commission or county board of commissioners or supervisors regarding a conditional use or special exception, the appealing party shall have the burden of proving by clear and convincing evidence that such decision (i) was arbitrary, capricious, or illegal or (ii) did not adhere to the county's zoning regulations. In any county other than a county in which is located a city of the primary class, an appeal of a decision by the county planning commission or county board of commissioners or supervisors regarding a conditional use or special exception shall be made to the district court. In any county in which is located a city of the primary class, an appeal of a decision by the county planning commission regarding a conditional use or special exception shall be made to the county board of commissioners or supervisors, and an appeal of a decision by the county board of commissioners or supervisors regarding a conditional use or special exception shall be made to the district court.

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

recommendation to the county board as to whether to approve or deny a conditional use permit or special exception.

(b) Upon receipt by the planning commission of an application, the county zoning administrator or commission shall have thirty days to determine if the application is complete. If the administrator or commission determines the application is incomplete, within ten days following such determination, the administrator or commission shall notify the applicant in writing as to what information is required to make the application complete. The administrator or commission shall have thirty days after receipt of any additional information provided by the applicant to redetermine if the application is complete. Within ninety days after the commission receives a complete application, the commission shall:

(i) If the commission has the authority to grant or deny a conditional use permit or special exception, grant or deny such application; or

(ii) If the commission does not have the authority to grant or deny a conditional use permit or special exception, make a recommendation to the board that such application be granted or denied.

(c) Once the board has received the recommendation of the commission, the board shall have thirty days to make its own determination if the application is complete. If the board determines the application is incomplete, within ten days following such determination, the board shall notify the applicant in writing as to what information is required to make the application complete. The board shall have thirty days after receipt of any additional information provided by the applicant to redetermine if the application is complete. The board shall have ninety days after receiving a complete application as determined by the board to decide whether to grant or deny a conditional use permit or special exception. If the board has not granted or denied a conditional use permit or special exception by the end of such ninety-day period, the conditional use permit or special exemption shall be deemed granted.

(d) If, at any time after the board has received the recommendation of the

commission and before the expiration of the ninety-day period described in subdivision (7)(b) of this section, the board comes into possession of information which materially affects an application, the board may take action during an open meeting of the board to require the submission of a new application to the board or the presentation of information deemed necessary by the board to the board at a hearing not less than ninety days after the board takes such action. The board shall have ninety days after the submission of the new application or the presentation of information to decide whether to grant or deny the conditional use permit or special exception. If the board has not granted or denied the conditional use permit or special exception by the end of such ninety-day period, the conditional use permit or special exemption shall be deemed granted.

(e) For purposes of this subsection, materially affect means having a significant or substantial impact relating to state law, compliance with county zoning regulations, or the rights of any affected party.

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

PRESIDENT OF THE LEGISLATURE

THIS IS TO CERTIFY that the within LB 663 was passed by the One Hundred Ninth Legislature of Nebraska at its Second Session on the day of 20.....

CLERK OF THE LEGISLATURE

Approved:

..... 20....., o'clockM.

GOVERNOR