

**SARPY COUNTY BOARD OF ADJUSTMENT  
MINUTES OF MEETING  
May 14, 2015**

**I. CALL MEETING TO ORDER**

A meeting of the Board of Adjustment of Sarpy County, Nebraska was convened in open and public session at the call of Chairman Sharon Hansen at 7:15 P.M. at the Courthouse in Papillion, Nebraska. Chairman Hansen stated that a copy of the "Nebraska Open Meetings Act" is posted on the north wall of the Sarpy County Boardroom. Roll call attendance was taken.

Present: Doug Hill, Pat Lichter, Sharon Hansen, Gene Mackey and Harlan Metschke. Absent: Doug Kellner

Notice of the public hearing was given in advance thereto by publication in the Omaha World Herald dba Bellevue Leader, Papillion Times, Gretna Breeze and Springfield Monitor. Proof of Publication is on file in the Planning Department. Notice of the meeting was simultaneously given to all members of the Board of Adjustment of Sarpy County, Nebraska. Availability of the agenda was communicated in the published notice and in the notice to members of the Board of Adjustment of this meeting.

Sarpy County Staff present: Bruce Fountain, Director of Planning & Building Department, Donna Lynam, Assistant Director of Planning & Building Department, Kelly Jeck, Planning & Zoning Assistant, and Nicole O'Keefe, Deputy County Attorney.

Chairman Hansen welcomed Harlan Metschke as a new member of the Board of Adjustment. Mr. Metschke has been appointed to the Sarpy County Board of Adjustment by the County Board, said term commencing on February 24, 2015 and ending on December 31, 2017.

**ELECTION OF OFFICERS**

Election of Officers was held. Chairman Hansen asked for nominations for Chairman. Lichter nominated Sharon Hansen for the position of Chairman. Hill seconded the nomination. With no other nominations, Chairman Hansen declared the nominations closed. By unanimous vote, Sharon Hansen is elected Chairman of the Board of Adjustment.

Chairman Hansen asked for nominations for Vice Chairman. Lichter nominated Doug Hill for the position of Vice Chairman. Hansen seconded the nomination. With no other nominations, Chairman Hansen declared the nominations closed. By unanimous vote, Doug Hill is elected Vice Chairman of the Board of Adjustment.

**II. APPROVAL OF MINUTES**

1. Approval of Minutes from the July 14, 2014 meeting.  
**MOTION:** Hill moved, seconded by Mackey, to approve the Minutes of the July 14, 2014 Board of Adjustment meeting. **Ballot:** Ayes –Hill, Lichter, Hansen, and Mackey. Nays: None. Abstain: Metschke. Absent: Kellner. **Motion carried.**

**III. REGULAR AGENDA**

1. **PUBLIC HEARING AND RECOMMENDATION** – Santa Fe Industrial, Inc. has submitted an application for consideration of a Variance to the Sarpy County Subdivision Regulations Section 10 – Minimum Design Standards, Table 10-1, specifically, "Cul-de-sac streets shall have a maximum length of 600 ft.", for Santa Fe Industrial Park, legally described as Tax Lot 2 in Section 16, Township 14N, Range 11E of the 6<sup>th</sup> P.M. in Sarpy County, NE.

Donna Lynam, Zoning Administrator, presented this request as outlined in the Planning Department's

Staff Report:

The applicant wishes to develop this parcel into an industrial park development with 21 lots ranging from .60 acres up to 13.70 acres. The original preliminary plat was submitted to the Sarpy County Planning Department in June 2014 and, as recommended by staff, the Planning Commission requested that the applicant seek an additional access to the property from the abutting industrial development to the north.

The applicant was able to find a willing seller to sell him a lot that could allow for a connection to the private road in the Lite Limited Condo Park to the north known as Storage Road. When he requested permission to connect to the road from the Property Owners Association, they voted to deny him any connection due to possible deterioration of their road with additional truck traffic.

Without permission to connect to the street to the north, an existing residential subdivision to the east, and railroad and flood plain issues to the south, the only access to this property is from 180<sup>th</sup> Street on the west.

The applicant has filed an application requesting a variance of the regulations to allow for a cul-de-sac length of 1,720 feet. They state that the hardship for the property is no access to the south because of the creek and railroad, no access to the east due to a developed subdivision, rejection to connect to the street to the north and the property is too narrow to allow two accesses to 180<sup>th</sup> Street.

Melvin Sudbeck, 16255 Woodland Drive, appeared in support of this request. He presented a plat showing what the project would look like under the current zoning regulations with a 600 ft. cul-de-sac. He believes this layout would be limiting and would create a 29.11 acre lot that would be a nightmare for the Planning & Building Department in the future. He also believes the layout would result in a bigger hazard from a safety standpoint than if it was developed as proposed with the longer, wider road.

Mr. Sudbeck noted that if this project is developed with the 600 ft. cul-de-sac, the County will see an estimated \$5-6 million in valuation. If developed as he is proposing, the valuation is estimated in the \$18-20 million range.

Mr. Sudbeck said his proposal with smaller lots provides a better build-out for the property and will be attractive for smaller companies.

Chairman Hansen opened the public hearing on this request at 7:30 p.m. With no one else appearing in regard to this request, Chairman Hansen closed the public hearing at 7:30 p.m.

In response to a question by Hansen, Donna Lynam, Assistant Planning Director, stated that the reason for the 600' maximum cul-de-sac length in the regulations is for safety reasons. Storage Road's cul-de-sac length was approved through a loop hole by the previous administration. They found a way to get around the maximum cul-de-sac length by allowing that development to have an outlot for access. Ms. Lynam said all of the lots abutting Storage Road do not have frontage on a dedicated right-of-way; they have frontage on Outlot A. Consequently, the lots are landlocked because they do not have access to an easement, although there may be an easement across Outlot A.

Bruce Fountain, Planning Director, explained that when this subdivision came before the Planning Commission, the Fire Department of Gretna opposed the proposed cul-de-sac length. The County's subdivision regulations actually let the Planning Commission waive certain regulations, provided they do not create fire or other safety concerns which is why the Planning Commission could not waive the cul-de-sac length and it had to come before the Board of Adjustment.

Ms. Lynam stated that she attended several of the meetings at the site with the applicant and Lite Limited Condo Park to the north. Their concerns were about security and the fear of more vandalism due to more traffic going through their development. Also, they were concerned about the deterioration of their road due to additional truck traffic from the proposed development. Ms. Lynam said from a planning standpoint, the connection to Storage Road would have been a beneficial to both developments, and a better layout for safety and emergency vehicles.

Mr. Sudbeck said his project will have full utilities, including water service by MUD. He offered to bring

water service to Storage Road so that the Lite Limited Condo development, which is on a private water system, could look at making a connection. Mr. Sudbeck noted that the fire department is concerned about fire safety in Storage Road as they have had some issues in the past.

Mr. Sudbeck said he even talked to the fire department about widening the road in his development to 30' wide so that if a lane was blocked there would still be a way to circulate traffic. He said the fire department came up with the worst case scenario with a one in a million chance of happening that would block that road for a couple of hours.

Mr. Sudbeck concluded by saying that this property is landlocked and that he has tried to come up with some middle ground, but has no other options. He said a 600 ft. cul-de-sac is not feasible.

Metschke said it would seem that the fire department would have as much concern about being able to get emergency equipment into a 29 acre lot developed with multiple buildings.

Ms. Lynam the fire department will have to be able to access the property regardless of how the 29 acre parcel is developed.

Hill stated that with the short cul-de-sac, the larger lot could be developed by one owner with multiple buildings that could be leased. Once past the end of the cul-de-sac, access within the lot becomes a private road network and the standards are much different than they are for a public road.

Hill said he feels this is a true hardship because of the way the area has developed around the property. It has created a unique configuration to the piece of ground with the railroad tracks on one side and fully developed areas on the other two sides. Also, the property does not have enough frontage on 180<sup>th</sup> Street to consider a horse shoe type of road configuration in order to maximize the use of the property. Mr. Hill said a public street extended back further than 600 feet is a better plan because it provides a better road system within the development. Mr. Hill said his dilemma is that while he can identify a hardship to satisfy State Statute in Section A., he cannot satisfy all six of the requirements in Section B.

Lichter said he agrees that a 600' cul-de-sac leaves a 29 acre site that could become an albatross for the Planning Department in the future, and it concerns him because the County does not have the regulations in place today to handle it. Mr. Lichter said he would prefer that a connection through Lot 15 to the north be made.

Chairman Hansen said she agrees with the findings of the Staff Report. In her opinion, there does not appear to be a unique situation or hardship in this request that would justify the variance, and she would hate to set a precedent. Ms. Hansen said the property is developable, although maybe not as extensively as the applicant would like it to be.

Mackey said he does not believe this would set a precedent as no two pieces of property have the same characteristics. This is an opportunity to make use of a very unique piece of property and add a great amount of value to the property by its development. Mr. Mackey noted that he is not aware of Storage Road ever creating a problem.

Metschke said from a safety perspective he thinks the longer cul-de-sac is the better situation. Having the big lot in the back with the short cul-de-sac may not resolve the safety concern.

Lichter agreed adding that development on that back lot could present as much or greater danger to public safety.

Hill said he does not think the short cul-de-sac is good development of the property, however, the property can still be developed albeit maybe not to its highest and best use. He said this is a tough one,

because he is not certain what the hardship is for the owner if it is not financial.

In response to a question by Hill, Nicole O'Keefe, Deputy County Attorney, said if there is a motion to approve the variance but it leaves out one of the requirements then the County would evaluate whether it would appeal this board's judgement because it is not conforming to the statutory requirements.

**MOTION:** Hansen moved to DENY the variance request by Santa Fe Industrial, LLC as proposed and presented to the Sarpy County Board of Adjustment on the basis that it would not meet any of the requirements as required by state statute. Motion failed for lack of a second.

**MOTION:** Hill moved, seconded by Metschke, to DENY the variance request by Santa Fe Industrial, LLC as proposed and presented to the Sarpy County Board of Adjustment, based on the following findings of fact:

A. The strict application of any applicable provision of the applicable County Subdivision regulation would, in each specific variance petition, result in **at least one** of the following:

1. *Peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to exceptional narrowness, shallowness or shape of the piece of property in question;*

**Analysis:** This parcel does have exceptional narrowness, shallowness or shape and is landlocked by surrounding properties. It is a unique piece of ground with limitations on three sides.

**Resulting Hardship: Yes**

2. *Peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to exceptional topographic conditions on the piece of property in question;*

**Analysis:** There are not exceptional topographic conditions on the piece of property that make it difficult to develop.

**Resulting Hardship: No**

3. *Peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to other extraordinary and exceptional situation or condition of the piece of property in question.*

**Analysis:** The surrounding development contributes to the restrictions on this property. It is a unique piece of ground with limitations on three sides.

**Resulting Hardship: Yes**

B. In authorizing any variance the Board shall also make findings, which shall be recorded in the minutes of the Board, that **EACH** of the following requirements for authorizing a variance can be met:

1. *Such variance may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the applicable County Subdivision regulations;*

**Analysis:** It would be in the public interest to grant the variance and have a public street into the back of the development.

**Specific requirement: satisfied**

2. *The strict application of the requirements of the applicable County Subdivision regulations would produce an undue hardship upon the owner of the property included in the petition;*

**Analysis:** Does not produce an undue hardship upon the owner of the property as the property can still be developed.

**Specific requirement:** not satisfied

3. *Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;*

**Analysis:** The surrounding development contributes to the restrictions on this property. It is a unique piece of ground with limitations on three sides.

**Specific requirement:** satisfied

4. *The authorization of such variance will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the variance;*

**Analysis:** It is not believed that this request would be a substantial detriment to adjacent properties or that the character of the IL zoning district will be changed.

**Specific requirement:** satisfied

5. *The granting of such variance is based upon reasons of demonstrable and exceptional hardship stemming from characteristics of the property involved in the petition and not for reasons of convenience, profit or desire of the property owner;*

**Analysis:** The surrounding development contributes to the restrictions on this property. It is a unique piece of ground with limitations on three sides.

**Specific requirement:** satisfied

6. *The condition or situation of the property included in such petition or the intended use of such property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the applicable County subdivision regulations.*

**Staff Analysis:** The surrounding development contributes to the restrictions on this property. It is a unique piece of ground with limitations on three sides.

**Specific requirement:** satisfied

**Ballot:** Ayes – Hill, Hansen, and Metschke. Nays: None. Abstain: Lichter and Mackey. Absent: Kellner.

Nicole O’Keefe, Deputy County Attorney asked that both Lichter and Mackey state their reason(s) for abstention.

Lichter said he does not have a conflict of interest. His reason for abstaining from the vote is that he feels there are some other extenuating circumstances in this case and he does not agree with the

requirements dictated by the State.

Mackey said he does not have a conflict of interest. He does not want to vote because he feel it is not a clear motion. He said it seems like the board is splitting hairs on a project that could add a substantial tax base and would make good use of this property.

O'Keefe said the rules for the Board of Adjustment state that four positive votes are needed in order to approve a variance. In this case, the variance has been denied.

**Motion to Deny carried 3-0-2.**

## **V. ADJOURNMENT**

Being no further discussion, Hill moved, seconded by Lichter, to adjourn the meeting. With the unanimous consent of the Board of Adjustment, the meeting adjourned at 7:35 p.m.

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Sharon Hansen, Chairman

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Kelly Jeck, Recording Secretary