

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 970**

Introduced by Campbell, 25.

Read first time January 19, 2010

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to county planning commissions; to amend  
2 section 23-114.01, Reissue Revised Statutes of Nebraska;  
3 to change provisions relating to the appeal from a  
4 conditional use or special exception decision; and to  
5 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  
2 Nebraska, is amended to read:

3           23-114.01 (1) In order to avail itself of the powers  
4 conferred by section 23-114, the county board shall appoint a  
5 planning commission to be known as the county planning commission.  
6 The members of the commission shall be residents of the county  
7 to be planned and shall be appointed with due consideration to  
8 geographical and population factors. Since the primary focus of  
9 concern and control in county planning and land-use regulatory  
10 programs is the unincorporated area, a majority of the members  
11 of the commission shall be residents of unincorporated areas,  
12 except that this requirement shall not apply to joint planning  
13 commissions. Members of the commission shall hold no county or  
14 municipal office, except that a member may also be a member of  
15 a city, village, or other type of planning commission. The term  
16 of each member shall be three years, except that approximately  
17 one-third of the members of the first commission shall serve for  
18 terms of one year, one-third for terms of two years, and one-third  
19 for terms of three years. All members shall hold office until their  
20 successors are appointed. Members of the commission may be removed  
21 by a majority vote of the county board for inefficiency, neglect of  
22 duty, or malfeasance in office or other good and sufficient cause  
23 upon written charges being filed with the county board and after  
24 a public hearing has been held regarding such charges. Vacancies  
25 occurring otherwise than through the expiration of terms shall

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

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

1 improvements, building codes, subdivision development, or zoning  
2 until it has received the recommendations of the commission.

3 (3) The commission may, with the consent of the governing  
4 body, in its own name: Make and enter into contracts with public  
5 or private bodies; receive contributions, bequests, gifts, or  
6 grants of funds from public or private sources; expend the  
7 funds appropriated to it by the county board; employ agents  
8 and employees; and acquire, hold, and dispose of property. The  
9 commission may, on its own authority: Make arrangements consistent  
10 with its program; conduct or sponsor special studies or planning  
11 work for any public body or appropriate agency; receive grants,  
12 remuneration, or reimbursement for such studies or work; and at its  
13 public hearings, summon witnesses, administer oaths, and compel the  
14 giving of testimony.

15 (4) In all counties in the state, the county planning  
16 commission may grant conditional uses or special exceptions to  
17 property owners for the use of their property if the county  
18 board of commissioners or supervisors has officially and generally  
19 authorized the commission to exercise such powers and has  
20 approved the standards and procedures the commission adopted for  
21 equitably and judiciously granting such conditional uses or special  
22 exceptions. The granting of a conditional use permit or special  
23 exception shall only allow property owners to put their property to  
24 a special use if it is among those uses specifically identified in  
25 the county zoning regulations as classifications of uses which may

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

1 met, or will meet, the special conditions or requirements imposed  
2 in the determination. For purposes of this section, substantial  
3 change shall include any significant alteration in the original  
4 application including a significant change in the design or  
5 location of buildings or facilities, in waste disposal methods or  
6 facilities, or in capacity.

7 (5) The power to grant conditional uses or special  
8 exceptions as set forth in subsection (4) of this section shall be  
9 the exclusive authority of the commission, except that the county  
10 board of commissioners or supervisors may choose to retain for  
11 itself the power to grant conditional uses or special exceptions  
12 for those classifications of uses specified in the county zoning  
13 regulations. The county board of commissioners or supervisors may  
14 exercise such power if it has formally adopted standards and  
15 procedures for granting such conditional uses or special exceptions  
16 in a manner that is equitable and which will promote the public  
17 interest. An appeal of a decision by the county planning commission  
18 regarding a conditional use or special exception shall be made  
19 to the county board of commissioners or supervisors. An appeal of  
20 a decision by the county planning commission or county board of  
21 commissioners or supervisors regarding a conditional use or special  
22 exception shall be made to the district court.

23 (6) Whenever a county planning commission or county board  
24 is authorized to grant conditional uses or special exceptions  
25 pursuant to subsection (4) or (5) of this section, the planning

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

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