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11-20-2002

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Cornhusker Economics

Cooperative Extension

Institute of Agriculture & Natural Resources
Department of Agricultural Economics
University of Nebraska – Lincoln

Open Meetings Law Violation Invalidates Dairy Zoning Permit

In Nebraska, as in most other states, most actions by public officials are subject to compliance with state public meeting or open meeting law requirements. Failure to comply with open meeting requirements can lead to a court's declaring the action taken by public officials to be invalid. Such was the case in a zoning decision involving a dairy expansion in Antelope county. *Alderman v County of Antelope*, 11 NebApp 412 (Sep. 24, 2002).

The teVelde brothers filed an application with the Antelope County Board of Supervisors for a zoning permit to expand their dairy. The dairy is located in the watershed of East Verdigre Creek, a cold-water stream that provides 40% of the trout stocked in Nebraska.

On August 10, 1999, before any action was taken on the zoning permit application, the county board approved a \$158,000 loan to the teVelde brothers for their dairy expansion. On August 24, 1999, after the loan for the dairy expansion had been approved, the Antelope County Planning Commission held a public hearing on the proposed zoning permit for the teVelde dairy expansion. (Under Nebraska zoning law, the planning commission makes a recommendation to the county board, which makes the final decision on conditional use zoning permits such as the one requested by the teVeldes). Because the public notice of the planning commission meeting was not legally adequate, the commission continued (i.e. delayed) its meeting to September 7, 1999.

Between these two meetings the planning commission and the teVeldes arranged a tour of the dairy at which a University of Nebraska livestock environmental engineer could address issues concerning the dairy expansion raised in the August 24th hearing. The meeting was held August 31, 1999 and was attended by seven of nine planning commission members, and five of seven county board members. The August 31st meeting was not advertised as a public meeting pursuant to open meeting requirements.

Market Report	Yr Ago	4 Wks Ago	11/15/02
<u>Livestock and Products,</u>			
<u>Average Prices for Week Ending</u>			
Slaughter Steers, Ch. 204, 1100-1300 lb Omaha, cwt	\$62.92	\$65.77	\$68.48
Feeder Steers, Med. Frame, 600-650 lb Dodge City, KS, cwt	81.25	*	83.00
Feeder Steers, Med. Frame 600-650 lb, Nebraska Auction Wght. Avg	89.88	86.57	87.08
Carcass Price, Ch. 1-3, 550-700 lb Cent. US, Equiv. Index Value, cwt	99.87	101.31	105.32
Hogs, US 1-2, 220-230 lb Sioux Falls, SD, cwt	30.00	29.00	27.00
Feeder Pigs, US 1-2, 40-45 lb Sioux Falls, SD, hd	43.50	*	*
Vacuum Packed Pork Loins, Wholesale, 13-19 lb, 1/4" Trim, Cent. US, cwt	*	97.09	82.00
Slaughter Lambs, Ch. & Pr., 115-125 lb Sioux Falls, SD, cwt	*	77.25	81.87
Carcass Lambs, Ch. & Pr., 1-4, 55-65 lb FOB Midwest, cwt	*	156.02	162.17
<u>Crops,</u>			
<u>Cash Truck Prices for Date Shown</u>			
Wheat, No. 1, H.W. Omaha, bu	3.05	4.90	4.41
Corn, No. 2, Yellow Omaha, bu	1.94	2.43	2.31
Soybeans, No. 1, Yellow Omaha, bu	4.29	5.26	5.53
Grain Sorghum, No. 2, Yellow Kansas City, cwt	3.52	4.76	4.77
Oats, No. 2, Heavy Minneapolis, MN, bu	2.39	2.07	2.05
<u>Hay,</u>			
<u>First Day of Week Pile Prices</u>			
Alfalfa, Sm. Square, RFV 150 or better Platte Valley, ton	115.00	150.00	150.00
Alfalfa, Lg. Round, Good Northeast Nebraska, ton	77.50	85.00	80.00
Prairie, Sm. Square, Good Northeast Nebraska, ton	105.00	117.50	122.50
* No market.			



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On September 7, 1999, after the unadvertised meeting at the dairy, the planning commission voted 6-2 to grant the dairy expansion conditional use permit. On September 14, 1999, the county board approved the dairy expansion conditional use permit.

On October 1, 1999, the plaintiffs filed a lawsuit to invalidate the dairy expansion conditional use permit. On November 17, 1999 the district court invalidated the dairy expansion conditional use permit because the unadvertised meeting at the dairy constituted a violation of the open meetings law.

On November 18, 1999 the teVeldes filed a second application for a dairy expansion conditional use zoning permit. On January 24, 2000 the planning commission held a public hearing to consider the second zoning permit application. After plaintiffs pointed out fatal deficiencies in the second application, the hearing was adjourned and no action was taken.

On February 3, 2000 the teVeldes filed a third zoning permit application. On February 15 and 16, 2000, the planning commission held a public hearing to consider the third zoning permit application, and voted 7-2 to grant the third application. On March 7, 2000 the county board approved the third zoning application after a public hearing.

On June 1, 2000 the plaintiffs filed a lawsuit challenging the validity of the granting of the third zoning permit application. At trial, two planning commission members indicated that their votes in favor of the third zoning permit application were influenced by information received at the illegal dairy meeting. Two county board members indicated that their votes in favor of the dairy expansion application were influenced by the vote of the planning commission. Despite this testimony, the district court ruled that the approval of the third zoning permit application was legal.

This determination was overruled by the Nebraska Court of Appeals. The Court of Appeals ruled that the votes on the third zoning permit application were tainted by reliance upon information presented at the illegal dairy meeting, and invalidated the dairy expansion zoning permit.

The Court of Appeals noted that in Nebraska “the public meetings laws are to be broadly interpreted and liberally construed to obtain the objective of openness in favor of the public.” In a sharp rebuke, the court continued “It is unthinkable that after a court has voided a board’s action after determining that a meeting was held in violation of the public meetings law, the law would still allow members of that board to consider information obtained at that illegal meeting. To do so would completely contradict the stated intent of the public meetings law, which is to ensure that the formation of public policy is public business, not conducted in secret, and to allow citizens to exercise their democratic privilege of attending and speaking at meetings of public

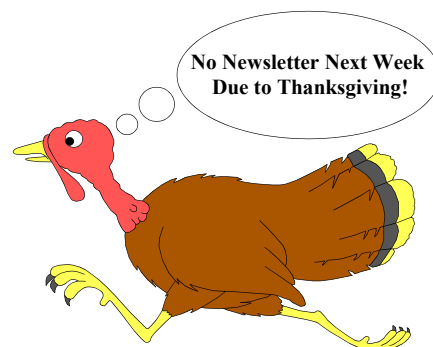
bodies. We simply do not know the content and extent of the information that was presented at the illegal meeting. Furthermore, official reports of closed meetings, even if issued, will seldom furnish a complete summary of the discussion leading to a particular course of action.”

The court concluded: “To allow board members to consider information obtained at a meeting that has been judicially determined to be in violation of the public meetings law would allow those board members to consider information that has not been brought before the public and thus would deprive citizens of both hearing said information and speaking either for or against it. Thus, we hold that once a meeting has been declared void pursuant to Nebraska’s public meetings law, board members are prohibited from considering any information obtained at the illegal meeting.”

Commentary. This decision illustrates the importance of public officials’ complying with open meeting requirements. The fate of the teVelde dairy expansion is unclear. Perhaps there will be sufficient planning commission and county board members who can make a decision on the zoning permit application without relying upon information received at the illegal meeting. Perhaps the information presented at the illegal meeting could be presented in a publicly advertised public hearing regarding a possible fourth dairy expansion zoning permit application.

Another possible legal issue is the fact that the county board had approved a loan for the dairy expansion before county officials had considered the zoning permit application required for the dairy expansion. The loan application approval certainly suggests that the county board had made up its mind to also approve the dairy expansion zoning permit prior to any public proceedings on the zoning permit application, a possible violation of the open meetings law.

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Have A Great Holiday!!!