MEETING RECORD

NAME OF GROUP:	**CITY BOARD OF ZONING APPEALS**
DATE, TIME AND PLACE OF MEETING:	Friday, June 26, 2015, 1:30 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska
MEMBERS IN ATTENDANCE:	Tim Francis, Annette McRoy, Scott Sandquist and Lynn Sunderman (Andrew Budell absent); Tim Sieh of City Attorney; Terry Kathe of Building and Safety; David Cary, Steve Henrichsen, Brian Will and Amy Hana Huffman of the Planning Department.
STATED PURPOSE OF MEETING:	Regular Board of Zoning Appeals meeting

Chair Scott Sandquist opened the meeting and acknowledged the posting of the open meetings act posted at the back of the room.

Sandquist called for a nomination for the position of Chair. McRoy nominated Sandquist. Nomination approved, 4-0; Francis, McRoy, Sandquist and Sunderman voting 'yes'; Budell absent.

Sandquist called for a nomination for the position of Vice Chair. Sandquist nominated Sunderman. Nomination approved 4-0; Francis, McRoy, Sandquist and Sunderman voting 'yes'; Budell absent.

Sandquist called for a motion approving the minutes of the regular meeting held May 29, 2015. Motion for approval made by Francis, seconded by Sunderman and carried 4-0: Francis, McRoy, Sunderman and Sandquist voting 'yes'; Budell absent.

APPEAL NO. 15003
REQUESTED BY GARY AND JUDY LYNNE
FOR A VARIANCE TO THE SIDE YARD SETBACK FROM 15' TO 5'
FOR AN EXISTING ACCESSORY BUILDING
GENERALLY LOCATED AT 9000 SOUTH 55TH STREET.
PUBLIC HEARING: June 26, 2015

Brian Will of the Planning Department stated there was no information from Staff to present.

Gary Lynne, 9000 S. 55th Street, thanked the Board for their time and willingness to hear his appeal. He introduced his neighbor, Dwayne Grosse, who is the adjacent property owner to the north. This case is all about the steel posts that were originally put in place by Kensington estates. His neighbor's are still in place. His history at this property goes back to 1995. They bought the lot in February and trusted the realtor about where the property lines were located. One of his first questions to the realtor was about the property lines, especially on the north, where he was worried about the setback. The steel posts were there, west of a mailbox. The post was removed a long time ago, but an opening is still visible. He always thought that was on his side of the property line, but it turns out it is on Mr. Grosse's side of the line. This was explained in greater detail in a letter.

Mr. Lynne said that this is about the asset value of the existing building. It adds about $30,000 to the property; his family loses that value if the building has to be taken down. It is also a loss in value for the County. If the building comes down, he will have to request that they lower that value. It is a "lose-lose" situation for both parties.

He went on to say that the building cannot be moved. He checked with the builders. It is a substantive farm building built by Pickrell Lumber, and not just a shed. It is an ag-style, pole building which is used to store machinery and an old car. Pickrell said it is better to tear it down and rebuild it.

Sandquist suggested that, in looking at the current building, it likely could not be replaced for $30,000. Lynne agreed. He would not spend that amount as a retiree.

Lynne went on to say that in terms of the stakes marking the property, one was found in the corner. From what he can tell, that was just an honest error made by someone. He knows who did the survey, but not who located the stake. It is a complicated property line, especially in that area where there is a turning lane on 56th street and a number of notches. He had no idea of where the lines actually were until the survey last summer. Now we all know. It was just a series of errors.

Lynne said that the way it happened for him and his neighbor, was that in 1995 when he arrived, he took great care of my his property. When mowing, he went out to the edge of the road, and sited along that steel post and mowed along that, then sited the next post and mowed along that. They have mowed along that line all these years, assuming it was the property line. The tree line and mow line were based on those posts, and then we discovered it was 40-50 feet off. It is just the complexity of the lot line.

Last summer, a surveyor put a post in the middle of his garden, because that was also along that same line, along with the sprinkler system and everything else. He showed the surveyor the assumed lot marker, who took his metal detector and ran it and found metal, but it is not a survey marker. Both he and his neighbor have farmed, gardened and mowed along there for the last twenty years. His theory is that the guy who did it twenty years ago probably found that same piece of metal that is not the marker, and marked the post there. The tree line, an old fence line and the hill all create the illusion.

Lynne said this all got reinforced by the City when he applied for the building permit to add the building in 2003. The inspector came out and found the property line and accepted that. Mr. Lynne said he even was conservative, knowing that setback was 15 feet, he still set the building farther back at 30 feet. The reason the building is so far north in the first place is because the hill is so steep and he had to bring in a lot of fill. The building is also better oriented to the house. It turns out it is only 5.4 feet from the property line.

He looked at the chapter 27.75 for me to review. This will negatively impair property value if the building has to come down. He and his neighbor get along very well and his neighbor supports this. It aesthetically looks right.

Sandquist asked when the property was annexed. Lynne said it has not been annexed but is withing the City 3-mile limit.

Sandquist asked the neighbor to make a statement, since he is present.

Duane Grosse, 8900 S. 55th Street, came forward to state he supported this. Any other option would probably also hurt him more, rather than just letting the building remain where it is, near the line. What happens 50 years from now when the building may need to be replaced is a concern for the future. They have been practicing mowing along these lines and it has not been an issue. He did not mean for all of this to happen when he commissioned the survey.

Tim Sieh, Law Department, came forward to clarify that this body must make a finding of fact that there is some unique characteristic going on with this property that justifies the granting of a variance and that there is a unique set of circumstances that doesn't apply within the rest of the neighborhood. That would give the authority to grant the variance.

Brian Will of Planning came forward to clarify that he was trying to describe in the Staff Report the unique characteristics. Some of the lots are rectangular with four simple lot corners. Here, on S. 56th Street, additional right-of-way is dedicated so the result is that there are additional lot corners. Through today's testimony, it is clear that the mistaken lot line has occurred over time. These characteristics and lots are unique.

Sandquist asked if the setback would need to be changed from 15 feet to 5 feet in order for the owner to be in compliance. Will said either a variance is granted to allow the building to remain where it is, from 15 to 5 feet, or if it is denied, the building has to be moved ten feet to be in compliance, which essentially means it gets removed entirely.

Sunderman said that the unique characteristic is that visually, it looks like line is in the correct location. When they came in and did the survey, it was an error. We have had several different observations and findings that show it that way. Will agreed that this error has been compounded over time.

Sandquist said that a surveying error that wasn't caught year after year qualifies as unique. It is certainly not routine.

Brian said that is one thing we are suggesting is that the unique shape of these lots lends itself to some misinterpretation and misidentification of lot corners.

Sandquist added that the large lot size also makes it easier to overlook the error. Small city lots would be more obvious, but with 30acre lots, it's a different set of circumstances.

Lynne added that you can't see that the property goes over a hill, so from the front, you cannot see the back.

ACTION:

Sandquist called for a motion.

Francis moved approval of the variance; seconded by McRoy

Tim Sieh came forward to say that part of the motion should include the factual finding of the unique circumstance that justifies it.

Sunderman said the lay of the land makes it appear that the lot line was where the owner thought. They went so far as to get a surveyor and got that confirmation. Years later, after a second survey, the lot line was discovered to be incorrect. Seeing as how the building is on the correct property, just ten feet farther over, removing the building would not be appropriate at this time.

Sandquist added those factors qualify this as unique. This large 3-acre lot is something where you would not detect this error. The fact that it wasn't detected by a surveyor qualifies it as unique and not a typical occurrence.

Motion carried 4-0; Francis, McRoy, Sunderman and Sanquist voting 'yes'; Budell absent.

There being no further business, the meeting was adjourned at 1:58 p.m.

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