MEETING RECORD

NAME OF GROUP:	COUNTY BOARD OF ZONING APPEALS
DATE, TIME AND PLACE OF MEETING:	Friday, March 12, 2010, 2:30 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska
MEMBERS IN ATTENDANCE:	Lynette Nelson, Matthew Warner and Ed Woeppel; (Jim Haberlan and Tom Thurber absent. Dale Stertz and Shawn Johnson of Building and Safety; Doug Cyr of County Attorney's office; Mike DeKalb and Teresa McKinstry of the Planning Dept. and other interested citizens.
STATED PURPOSE OF MEETING:	Regular County Board of Zoning Appeals Meeting

Chair Ed Woeppel called the meeting to order and requested a motion approving the minutes for the regular meeting held November 14, 2008. Motion for approval made by Nelson, seconded by Warner. Motion for approval carried 3-0: Nelson, Warner and Woeppel voting 'yes'; Haberlan and Thurber absent.

COUNTY BOARD OF ZONING APPEALS NO. 10001
REQUESTED BY HOWARD AND MARION STILLINGER, TO CONSTRUCT A SINGLE FAMILY RESIDENCE ON PROPERTY LESS THAN 20 ACRES, GENERALLY LOCATED AT NW 27TH STREET AND DAVEY ROAD
PUBLIC HEARING: March 12, 2010

Members present: Nelson, Warner and Woeppel; Haberlan and Thurber absent.

Mike DeKalb of Planning staff stated that Howard and Marion Stillinger have requested this variance from 20 acres down to 12.54 acres. The previous circumstance is that the road used to be a different configuration. The county went through a process of vacating the old road and realigning the new road. In doing this, the lot owned by David and Sharon Friedeman was split into two lots and separate lot numbers given to each one. The Stillingers purchased the newly numbered Lot 27 on the south side of the road. The applicant inquired with Building and Safety for building permits and was informed that the lot was not grandfathered and not buildable.

Howard Stillinger appeared as applicant. In April of 2008, he and his wife purchased this acreage for sale just north and east of Davey. He knew there were some issues as far as the floodplain and an easement that needed to be moved. It wasn't until he visited with Building and Safety to check on the floodplain issue that he found out it was not a buildable

lot. He would like a waiver so he can eventually build a home. The lot is not good the way it sits. He doesn't farm, he can't build on it and he can't get his money back. In doing some research, he found out the lots were split and assigned different numbers by the County. He is not sure if the people who sold it realized it was not a buildable lot.
Nelson questioned the easement the applicant mentioned. Stillinger stated that there was an easement running through this lot to give access to the people who lived in the back.

Nelson wondered how much of this lot is in the floodplain. Stillinger replied that 1.3 acres are out of the floodplain. He further explained that there is a ridge on the south part of the property and a lot of that is floodplain. The creek runs through the northern part of the lot. The map appears to show the entire lot in the floodplain. He is in the process of having the FEMA floodplain maps updated to show that not all of his property is in the floodplain.

DeKalb stated that the survey map has had the LOMR letter of revision showing what portion is out of the floodplain.

Nelson asked about the lot to the north of this. Stillinger replied that is still owned by the Friedemans. It is not a legal lot either.

DeKalb noted that with the County Board vacation of the road, the county stated the original alignment was done in 1891 and it was redone in 1999. The parcel to the north that remains in the ownership of the Friedemans is in a similar circumstance of being an unbuildable lot. The county zoning codes have an exemption for a farmhouse less than 20 acres. If the lot is more than 10 acres and has been owned by the owner for at least five years, it does not need a subdivision. The lot remaining with the seller would qualify as a farmstead and he believes it would qualify under the exception. The parcel to the south purchased by the Stillingers has no house and would not qualify.

Warner is somewhat confused with the fact that when the property was purchased, the Stillingers were not aware of the 20 acre rule for a buildable lot. Stillinger stated that he was unaware of that rule. He was under the impression that he was purchasing a legal lot and could build on it.

Nelson can see with the road realignment that there was some confusion. She is sorry if it was implied to Mr. Stillinger that this lot was buildable. She wondered about his legal recourse.

Stillinger believes that regardless of whether it was ten years ago that this lot was split off, he only purchased this in 2008. This is a burden on him and his wife. This lot is good only for pasture land if they can't build a house on it. They would be out a considerable sum of money. The realtor should have known the difference between a buildable and unbuildable lot.

Woeppel has concerns about what ability this board has to allow this lot for a building site.

Warner feels really bad for the applicant. The 20 acre rule keeps farm ground from being subdivided. The lot next to it is not 20 acres either.

DeKalb stated that there are a lot of undersized lots around the county. This board advises to the County Board. The applicant is asking for this variance to permit the owners a reasonable use of their land due to a peculiar and unusual circumstance.

Nelson inquired about the possible location of the house the applicant would like to build. Stillinger replied that the house would be built completely out of the floodplain.

Doug Cyr, Deputy County Attorney appeared. This board's power relative to variances was intended to allow the board to make variances when there is something peculiar in regard to that parcel of land. Here a circumstance that has been created. It is not necessarily peculiar to the land, but it happened when the Friedemans sold this parcel to the Stillingers. If the seller informed the buyer that they were purchasing an acreage lot that could be built on, the Stillingers might have a legal issue, but that is separate from this.

Warner stated that he is concerned with the floodplain. He applauded the applicant for getting a survey done and locating the floodplain. He wondered if approval of this variance would set some kind of precedent for anyone who has had a road moved.

Nelson feels bad for the applicant. She believes they have been misguided and she hopes there is some recourse for them.

ACTION:

Nelson moved denial, seconded by Warner.

Woeppel echoes Nelson's remarks that this is an unfortunate situation. The reality is that this lot is too small to be built on. He does not believe there is an unusual circumstance.

Nelson stated that this board is advisory to the County Board.

Motion for denial failed 2-1: Nelson and Woeppel voting 'yes'; Warner voting 'no'; Haberlan and Thurber absent.

Warner moved approval, motion died for lack of a second.

Nelson moved to continue public hearing on April 9, 2010, seconded by Warner.
Motion carried 3-0; Nelson, Warner and Woeppel voting 'yes'; Haberlan and Thurber absent.

There being no further business, the meeting was adjourned at 3:10 p.m.

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