

**LAKE COUNTY BOARD of ADJUSTMENT**  
**July 12, 2006**

**Meeting Minutes**

**MEMBERS PRESENT:** Jerry Winkley, Lucille Buchmann, Clarence Brazil, James McKee

**STAFF PRESENT:** Sue Shannon, Joel Nelson, Alex Hogle, Lita Fonda

Jerry Winkley called the meeting to order at 4:05.

**Motion by James McKee and seconded by Clarence Brazil to approve the June 2006 meeting minutes. Motion carried, all in favor.**

**FAST ESTATE DENSITY VARIANCE**

Joel Nelson presented the staff report. He corrected the year given in #6 on pg. 7. On pg. 6, section d, tracts 2 and 3 were reversed.

John Mercer spoke on behalf of the applicants. He introduced the 3 daughters of Vern Fast, who commented also.

He clarified that the court order said that the estate informed the court that they voluntarily wanted to come before the Board to make this variance request, since there's some question as to the clash of authority between district courts and county planners. They felt they were trying to set a positive precedent for Lake County where if properties were to be divided in court through estates, that if they did run afoul of the density requirements, they would bring them to the Board of Adjustment.

A portion of the property is split by Rocky Point Road. Their point was that it makes more sense for safety, for everyone to be on their side of the road. For financial hardship, a case can be made when there are not reasonable alternatives to development. The family, in conjunction with the district court, came up with the plan presented. It's not a new development. It's an existing family property that they want to preserve. He highlighted that in addition to voluntarily coming to the Board, one of the daughters, Linda, currently has a 5.13-acre tract, and intends to accumulate some of this property onto hers, to make her tract larger. They felt this was also a positive thing.

Last time the Board met, he asked the Board for a continuance so the applicants could discuss a land exchange with the neighbor; that didn't work out. He reiterated that the Board has the authority for this decision, if they feel it's in the best interest. As far as precedence, this is an estate proceeding, where a district court has made a determination. He turned over the floor to the family applicants.

Bett Jean Gull Simpson spoke first, as the family representative. The land was purchased in the 1930's. The intent was to keep the land in the family. There's been the first generation with 3 children instead of one. Right of survivorship has become important, as they have 30-some plus

grandchildren, kids, families and married adults between them. In the proposal to break up the property, they thought they were doing this the easiest way possible. Linda's piece was added on to, for 10 acres, and the rest gave the other two 10 each. It left 10 acres for the 3 houses in joint ownership. That piece of property is what pays the property taxes and maintenance taxes, and helps them keep the piece of property. The piece across Rocky Point Road is a pie-shape, and is not useful to them, as crossing the road is not an option and is not good for them as a family.

Linda Mark spoke next. White Swan Road crosses her property and is becoming quite busy in the summer. She repeated that the piece with the houses is the only income for them to keep the property.

Judy Fast explained that the road split off that piece. The hardship that she sees if they can't break that piece off, a house can't be on it and it can't be sold as a usable piece of property. Then there's no value to that piece. In this county, land is very valuable. Down the road are 50' wide lots. She respects the density effort, but felt this is where the Board comes into place. They would not ask for this split, were it not split by the road. Of the three houses already there of 7 potential requested, one was built in 1936, and the other two have been there for 35 years.

James McKee checked in as to their intentions with the lots and dwellings. One of the other 3 lots, tract 1, has a house currently, built in 1980. Currently there are 4 houses on the 40 acres. Eventually, the applicants may intend to build homes on the other two proposed pieces, for 6 dwellings on 35.94 acres.

The applicants didn't understand why the existing houses would get such recognition when they've been there for a long time.

Given that the applicants have said they need the rental houses to pay the taxes and maintain the property, and that the rentals are old, Clarence asked if they would consider removing a couple of them if they later decide to build on these other properties. Judy replied that they've discussed this. The rentals are deteriorating.

James mentioned that even if the 3 homes on that tract were considered one unit, it would add to 4 units, plus the one on the split piece across the road. This is still outside the density requirements. Judy replied that they are asking to a variance to the density regulations because a 40-foot road goes between them. James pointed out that even without considering that piece, the density requirements are still not met on the rest of the property. The applicants are talking about new development. John M said that they have examined options, and they are here to seek a variance to the density requirements. This is a unique situation, and involves a court order. The family is willing to look at Clarence's concept to commit to remove some of these buildings when they reach the end of their usefulness. Clarence explained that if they removed a couple of houses, it would be closer to being what it's supposed to be, to commit to that in a time period. This would carry weight with him. John M asked what the useful lives of those dwelling might be. Judy suggested less than 20 years, for a working figure.

Clarence pointed out that 20 years from now, these pieces can't be divided into 40 pieces or so for the rest of the family. The applicants responded that they already know and agree about that.

James said that he sees the road as a unique situation to this lot, and something the Board can cope with. That doesn't solve the problem of the density on the other side of the road. John M pointed out that a variance will not be in compliance by its very nature. Jerry explained that for a variance to be granted, certain conditions have to be met, and the Board needs to discuss these.

Jerry closed the meeting to comment, to go to Board discussion.

James felt the Board could do something about the portion split by the road.

Jerry thought there could be three 10-acre parcels, and tracts 2 and 3 could remain as one tract, with the income split. Lucille asked whether vacant tract 3 could be sold, possibly to the property owner to the east. Joel said that it's not uncommon for a parcel to be undeveloped so other parcels comply with the density map regulations, like set-asides, or transfer of development rights.

Clarence and James commented that if the applicants were willing to commit to removing a couple of the houses in a period of time, that would free up density for lots 4 and 5.

Joel clarified that pre-existing houses are grandfathered as the tracts exist now, but as the tracts are made smaller, it's subject to the zoning. A guesthouse cannot be used as a rental, so these would not qualify as such. Lucille understood why people would want to keep land in the family. If a variance is granted, she asked what the result would be, since the court already ordered it. Jerry didn't know. Lucille continued that if they don't grant a variance, the decision can be taken to court, but this has already been to court. Joel felt their job was to stay on track with the criteria for a variance and to look at the purpose of the regulations and growth policy. Jerry said they can make the decision either way but they may be overruled.

Clarence was inclined to grant the variance with the removal of the 2 old houses within 10 years, without rebuilding them. James said that this would naturally take care of itself, since they would be unable to develop the other 2 tracts without the removal of those two houses.

James referred the Board to the variance criteria on page 4, and discussed these. Neither James nor Clarence was comfortable with 7 units on 40 acres. With tracts 1, 2, 4 and 5, the road doesn't impact those. Looking at these there would be 6 units on 36 acres, for 6 acres per unit. If the applicants agree to remove the 2 older units, the density would be at 9 acres per unit. Joel clarified that if land disappears through road easements [inaudible], that there's a 10% allowance.

James expressed a preference to let the density ride, such that one of the rental homes would need to be removed prior to building a new one on tract 4 or tract 5, rather than setting a time limit for removal that would have to be kept track of and enforces. Then the applicants could manage that as they see fit.

Joel said that density would be checked for a lot when they come in for sewage disposal system. It would have to be specified on a document on file with the Clerk and Recorder, something that goes with the property, to know that the density was borrowed from somewhere else.

James said he would support splitting off lot 3 and allowing one unit on that, and leaving the other 4 tracts so the 35.94 acres would be allowed 4 units. You'd end up with 5 units on 40 acres, at 8 acres density. Deed restrictions would need to be filed to keep the density straight, since the density would be borrowed from tracts 4 and 5 for the density on tract 2, and they would have to get rid of 1 of the units on tract 2 to build on tract 4 and they'd need to get rid of another of the units on tract 2 to build on tract 5. This could happen when it was comfortable and appropriate for the owners. Board members and staff clarified their understanding of this. Lucille summarized. They'd end up with one house for each piece.

James wanted to make sure the applicants were okay with this. John M spoke for the applicants and expressed that this seems like an ingenious idea towards what they want to do. They could always appeal this to a district court, but what's being talked about makes a lot of sense. They don't seem to be in a hurry to develop the other tracts, and the natural forces talked about are going to swallow those other houses anyway. He felt it was a very good suggestion.

**Motion by James McKee and seconded by Lucille Buchmann to grant the applicants a variance to allow one unit to be developed on tract 3, and that the rest of the property be divided as shown, and that tracts 1, 2, 4 and 5 be limited to 4 units, so before new development takes place on lots 4 or 5, existing units shall be removed from tract 2. Motion passes, all in favor.**

### **CLAIRMONT DENSITY VARIANCE**

Alex Hogle presented the staff report.

Corwin Clairmont spoke on behalf of his application. His main reason for replacing the dwelling is that he has concerns that the older trailer is becoming a firetrap. The wiring systems in older trailers tend to go up quite quickly. An elderly, deaf person lives in the trailer, so for safety reasons and also to add to the community, he requests this variance. He has no problems with the conditions. He's a Tribal member on fee land, so he also works closely with the Tribe on environmental concerns. He doesn't have a clear understanding of the jurisdictional aspects when a Tribal member owns fee land. He does pay his taxes in protest, as a Tribal member on fee land. The definitions are a little questionable. He respectfully comes to this Board because it is still fee land.

Janet Camel commented as a private citizen. Because it's a civil jurisdiction issue, he can voluntarily comply with the Board's requests and sign the affidavit. That's not acknowledging that you have jurisdiction over him as a Tribal member because it is a civil issue. Jurisdiction over civil matters on the reservation is Tribal. He is voluntarily coming to you and submitting to what recommendations you would give. That's his right as an individual citizen of the County as well as the reservation. She'd like something added to the affidavit saying that this in no way implies that you have full jurisdiction over him as a Tribal member—he is voluntarily agreeing to comply. Her comments are given as a private citizen, based on her experience as a planner

and as a citizen. They are trying, in the Tribal system, to come up with rules and regulations that are very similar to what the County has. Their intent and purpose is to protect the environment. She further suggested that if it would be possible, maybe the Tribal attorneys could look over the affidavit before he signs it. Alex reiterated that the affidavit included is an example.

Jerry checked for further comment, and then closed comment to open for Board discussion and action.

**Motion by James McKee and seconded by Lucille Buchmann to approve the variance request as written with the staff recommendations. Motion carried, all in favor.**

Janet asked Alex to email her the affidavit.

### **LONG DENSITY VARIANCE**

Alex explained that the applicants called yesterday with a request to postpone the item until next month's meeting.

### **OTHER BUSINESS**

Clarence mentioned that he will unable to attend next month.

**Motion by James McKee and seconded by Lucille Buchmann to adjourn. Motion carried, all in favor.**