



\*W2708802\*

E# 2708802 PG 1 OF 8  
ERNEST D ROWLEY, WEBER COUNTY RECORDER  
30-OCT-14 427 PM FEE \$1.00 DEP SGC  
REC FOR: WEBER COUNTY PLANNING

## NOTICE OF VARIANCE

**TO WHOM IT MAY CONCERN:** The undersigned, does hereby claim and assert that a Notice of Variance for the purpose of density calculation, is executed by

Elroy J. Harris, Trustee of the Melvin Ray Clarke revocable Trust dated September 20<sup>th</sup>, 2012.

**WHEREAS** the Trustee desires to limit the number of square feet used for calculating future residential density on property described in and attached hereto as "Exhibit A"; and

**WHEREAS** the Trustee wishes to clearly set forth the details of this NOTICE and clarify its purpose which is to act as an encumbrance that runs with the land; and

**NOW THEREFORE;** for good and valuable consideration, the Trustee hereby encumbers the property, described in Exhibit A, in a manner that regulates the calculation of future residential density in the following way:

1. Should a subdivision request be made for the parcel described in Exhibit A, it is agreed between the owners and any subsequent owners of this parcel that any developable acreage, related to density calculations, determined by the area requirements under the applicable zoning designation (AV-3 Zone at the time of execution on this NOTICE), will be reduced by 3.619 acres (which was previously a part of the parcel described in Exhibit B pursuant to a special request granted by the Weber County Board of Adjustment during a public meeting held on May 23, 2013, case # BOA2013-4. See Exhibit C for minutes related to the Board of Adjustment meeting.
2. The parcel, described in Exhibit A, would (at the current time) generally allow lots with the minimum of 3 acres as required by the AV-3 Zoning after being reduced by 3.55 acres.
3. Density calculation example: 56.8 acres (Gross Acreage) reduced by 3.55 acres (excluded acreage according to this NOTICE) equals 53.181 ( Adjusted Gross Acreage) divided by 3 (minimum acres required by zone ) results in a total 17 lots allowed. This example serves as an estimate only and does not account for or exclude areas such as street rights-of-way, steep slopes, water ways and/or other lands considered/defined as non-developable by the Weber County Subdivision or Land Use Code.
4. The remaining parcel, may be developed for and occupied by a home(s) and/or other structures, if/when compliant with applicable codes, including the Weber County Subdivision Code

By:



Elroy J. Harris, Trustee of the Melvin Ray Clarke Revocable Trust

STATE OF UTAH ) ss.

County of Weber )

On this 30<sup>th</sup> day of October, 2014, personally appeared before me Elroy J. Harris who, being duly sworn, did say that he is the Trustee of the Melvin Ray Clarke Revocable Trust, and that the instrument was signed on behalf of the Trust.

IN WITNESS WHEREOF, I have hereunto affixed my official seal this 30<sup>th</sup> day of October.

  
Notary Public

My Commission Expires:

Residing at:



**Exhibit "A"****(Revised Parcel # 220460028)**

## REMAINDER COMBINED PARCEL DESCRIPTION

PART OF THE NORTHEAST QUARTER OF SECTION 33, PART OF THE NORTHWEST QUARTER OF SECTION 34, AND PART OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 7 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING 2.84 CHAINS WEST FROM THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER, RUNNING THENCE NORTH  $36^{\circ}$  WEST 11 CHAINS, THENCE NORTHEASTERLY 11 CHAINS TO THE QUARTER SECTION LINE, THENCE NORTH 1397.98 FEET ALONG THE QUARTER SECTION LINE TO THE NORTHWEST CORNER OF KIMBERS SUBDIVISION, THENCE NORTH  $81^{\circ}27'25''$  EAST 212.32 FEET, THENCE NORTH  $1^{\circ}56'51''$  EAST 54.28 FEET; THENCE ALONG THE CENTER OF CANAL THE FOLLOWING SIX (6) COURSES: (1) NORTH  $6^{\circ}04'39''$  EAST 164.53 FEET, (2) NORTH  $7^{\circ}49'00''$  WEST 159.24 FEET, (3) NORTH  $46^{\circ}15'00''$  WEST 100.14 FEET, (4) NORTH  $89^{\circ}31'00''$  WEST 80.80 FEET, (5) NORTH  $53^{\circ}09'00''$  WEST 54.00 FEET, (6) NORTH  $26^{\circ}32'00''$  WEST 8.20 FEET, THENCE NORTH  $26^{\circ}32'00''$  WEST 134.34 FEET, THENCE NORTH  $25^{\circ}07'00''$  EAST 94.13 FEET, THENCE NORTH  $10^{\circ}57'00''$  WEST 79.14 FEET, THENCE NORTH  $40^{\circ}31'00''$  WEST 115.30 FEET, THENCE SOUTH  $0^{\circ}31'13''$  WEST 683.89 FEET TO THE QUARTER SECTION LINE, THENCE SOUTH  $89^{\circ}22'45''$  EAST 110.00 FEET TO THE SOUTHEAST CORNER OF SECTION 28, THENCE SOUTH ALONG THE QUARTER SECTION LINE 33.0 FEET, THENCE WEST 854 FEET, THENCE SOUTH 1287 FEET, THENCE WEST 443 FEET, THENCE SOUTH 106.22 FEET, THENCE NORTH  $89^{\circ}41'01''$  EAST 208.71 FEET, THENCE SOUTH  $0^{\circ}18'59''$  EAST 208.71 FEET, THENCE SOUTH  $89^{\circ}41'01''$  WEST 188.71 FEET, THENCE SOUTH  $0^{\circ}18'59''$  EAST 698.18 FEET, THENCE SOUTH  $69^{\circ}06'31''$  EAST 266.63 FEET, THENCE SOUTH  $00^{\circ}03'10''$  WEST 222.18 FEET, THENCE EAST 863.79 FEET TO THE POINT OF BEGINNING. EXCEPT: PART OF THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 7 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT 722.71 FEET WEST ALONG A SECTION LINE AND 783.11 FEET SOUTH FROM THE NORTHEAST CORNER OF SAID SECTION 33, AND RUNNING THENCE SOUTH  $69^{\circ}49'04''$  EAST 208.71 FEET, THENCE SOUTH  $20^{\circ}10'56''$  WEST 208.71 FEET, THENCE NORTH  $69^{\circ}49'04''$  WEST 208.71 FEET, THENCE NORTH  $20^{\circ}10'56''$  EAST 208.71 FEET TO THE POINT OF BEGINNING.

CONTAINS 56.8 ACRES MORE OR LESS

**Exhibit "B"****(Current Parcel # 220460030)**

PART OF THE SOUTHEAST QUARTER OF SECTION 28, AND THE SOUTHWEST QUARTER OF SECTION 27, AND OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 7 NORTH, RANGE 1 EAST, SALT LAKE MERIDIAN, U.S. SURVEY, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 28, RUNNING THENCE NORTH 89D40'15" WEST 110.00 FEET, THENCE NORTH 689.05 FEET, THENCE SOUTH 40D31' EAST 115.30 FEET, THENCE SOUTH 10D57' EAST 79.14 FEET, THENCE SOUTH 25D07' WEST 94.13 FEET, THENCE SOUTH 26D32' EAST 134.34 FEET TO THE CENTER OF CANAL, THENCE 7 COURSES ALONG THE CENTER OF SAID CANAL AS FOLLOWS: SOUTH 26D32' EAST 8.20 FEET, SOUTH 53D09' EAST 54.00 FEET, SOUTH 89D31' EAST 80.80 FEET, SOUTH 46D15' EAST 100.14 FEET, SOUTH 7D49' EAST 159.24 FEET, SOUTH 6D01'30" WEST 162.62 FEET, SOUTH 41D03' EAST 230.35 FEET, THENCE RUNNING NORTH 65D50' EAST 120.77 FEET, THENCE NORTH 85D52'51" EAST 92.20 FEET, THENCE SOUTH 43D12'09" EAST 206.56 FEET, THENCE SOUTH 8D43'10" EAST 2.45 FEET; THENCE SOUTH 81D16'50" WEST 353.49 FEET THENCE NORTH 0D22'00" WEST 112.18 FEET; THENCE NORTH 43D01'47" WEST 213.84 FEET; THENCE SOUTH 81D27'25" WEST 212.32 FEET; THENCE NORTH 202.52 FEET TO THE POINT OF BEGINNING.

## Exhibit "C"

Minutes of the Board of Adjustment Meeting held May 23, 2013 in the Weber County Commission Chambers, 1<sup>st</sup> Floor, 2380 Washington Blvd, commencing at 4:30 P.M.

*Present:* Deone Smith, Chair; Nathan Buttars; Rex Mumford; Phil Hancock; Bryce Froerer

*Absent:* Doug Dickson; Celeste Canning;

*Staff Present:* Jim Gentry, Asst Planning Director; Sean Wilkinson, Planner; Scott Mendoza, Planner; Chris Allred, Legal Counsel; Chad Meyerhoffer, Engineering Department; Kary Serrano, Secretary

**\*Pledge of Allegiance**

### Regular Agenda Items:

**1. Minutes Approval of the February 22, 2013 and March 14, 2013 meeting minutes**

Chair Smith declared the meeting minutes with the noted correction approved.

**2. BOA 2013-04: Consideration and action on a request to vary the lot area requirement on property located at 4770 East 2650 North in the Eden area in the Agricultural Valley-3 (AV-3) Zone. (Elroy J Harris, Applicant)**

Scott Mendoza said the applicant is requesting a variance to the three acre area requirement for property located at 4740 E and 2650 N in Eden. The request is that the Board of Adjustment consider and approve a reduction in lot area that will allow for an existing home to be sited on a new 1 acre lot, rather than the existing parcel which consists of approximately 3.86 acres. The subject 3.86 parcel was created in July of 1995, a remnant of the previously approved (2 Lot) Kimbers Subdivision. When approved and recorded, the Kimbers Subdivision divided two (1 Acre) lots away from the original 5.95 acre parent parcel. The remaining acreage that makes up the subject parcel today resembles the shape of an "hourglass" in that it has two areas that are reconnected by a narrow stem that measures approximately 30 feet wide by 240 feet long. If the variance is granted, the applicant will divide approximately 2.86 vacant acres from the existing parcel and then add it to an existing agricultural and ranching operation that consists of approximately 53.25 acres. According to the applicant, the 2.86 acres has historically been used as a winter feeding area for the ranch, and has never been able to provide a useable or functional "residential" purpose for the existing home.

Chapter 29 of the Weber County Zoning Ordinance states that the "the Board of Adjustment may grant a variance only if the following five criteria are met. The applicant has submitted a narrative meeting the criteria listed. Granting the variance and allowing the applicant to voluntarily exclude the acreage within the northwesterly area of the existing parcel from future density calculations would be consistent with guidance given by the Ogden Valley General Plan which is to limit residential development to one unit per three acres. The General Plan states that the County should promote agriculture and working farms as an integral part of the Valley's cultural heritage. Granting the requested variance would allow the applicant to add the 2.86 vacant acres to the existing and contiguous agricultural and ranching operation making it a functional part of the farm.

Staff recommends that the Board of Adjustment determine the variance request's level of compliance with the applicable variance criteria presented. If it is found that the criterion has been met, the Board may approve the request. If it cannot be found that the criterion has been met, the Board may deny the request.

Rex Mumford asked if the smaller parcel is owned by the same owner as the 53.25 acres. In this 30 foot strip, does it have an open area ditch or is it just the pressure pipe. Scott Mendoza replied that it recently became the same owner. Besides the topography, there is the surface ditch, the open irrigation canal, and the pressurized irrigations system underneath the ground.

Rex Mumford asked when this subdivision was originally created, was it part of that 53.25 acre. Scott Mendoza replied that originally all of this belonged to the same owner. The first division of the larger parcel

was for the Junior High; leaving approximately six acres, and then the subdivision in 1995 was recorded, and it pulled approximately two acres out of that six leaving almost four.

Chair Smith asked what is the motivation in taking that piece and joining it with a larger piece? Scott Mendoza replied the motivation would be for the future. There is a parcel that consists of nearly four acres, and the rear acreage isn't useable as far as developing because the access is limited.

Phil Hancock asked if this irrigation canal or ditch has a recorded easement and are there recorded easements in the stem that goes into this property. Scott Mendoza replied that there's a 20 foot right-of-way and a 60 foot right-of-way shown on this ownership plat that are not part of the request today.

Phil Hancock asked if the density for that remaining property would be recorded with that restriction, so that it could not be used in the future for density calculations. Scott Mendoza replied that those details have not been worked out; but if this Board could approve this in a way that would satisfy the County Surveyor and the Planning Division, that would accomplish what staff is trying to do. If approved on the dedication plat, a note would be made describing all those matters of fact, and a notice could be recorded on the title that could reference the board case.

Chair Smith asked on the Kimber Subdivision which was two one-acre lots, did they receive a variance or were they in a different zone? Scott Mendoza replied yes, it was a different zoning requirement at that time in 1995, and the zoning changed in 1998 to three acres.

Rex Mumford said Exhibit B.3.6 states, "*granting the variance is essential to the enjoyment of substantial property rights possessed by other properties in the same zone,*" and on the third bullet, "*while the land provides no value for the owner of the home, it would provide substantial value to the family.*" If the property sold with the home, it would lose the Green Belt status and would be taxed as residential property which is the same as every other 3.86 parcel in the county. You can't get a Green Belt unless you have a 5.25 acres and the only reason they have Green Belt is because the adjacent property is the same ownership.

Elroy J Harris, Executor for Melvin R Clark Trust and a resident of Huntsville, said he wanted to clarify some the questions with some background information. The estate of Melvin Clark's father was divided into three parcels; one for his sister, one for his father, and the school decided not to build on all of it because of the canal and it was not feasible for them to own both sides of the canal property and they ended up with a 5.86 property. Later that property was divided into two other lots which were for the children of Kimber Subdivision. It was always considered that the farm was 57 acres with a house on it. For tax purposes the county obviously recognizes that it's a farm and that's the reason it gets Green Belt on the 3.86 because it's not considered part of the house, but part of the greater farm. When the laws changed in 2005, it's the only parcel of ground that is to the east side of the river and that's where it becomes critical for feeding in the winter time. Typically when you buy property with three acres, there would be some feasible access to build an out building or be able to drive back and forth. This would not have the same rights that another person would enjoy because it doesn't have the same access that another person would have connected to the property. It was never intended to be with that property, it was intended to be part of the farm. Part of the estate has a loan going under foreclosure, so they need to sell it. The potential buyers want to buy the house but not the land because the value of the land is more than the house.

The house that is connected to the property is also used as a barn and farm operation and it is essential to the family that this be retained by the family. While this is currently owned by the trust, the house would be sold to a different individual, and the rest would be connected to the farm. The proposal is a win/win for both the future land owners and current landowners of the farm. Let's do the right thing and adjoin it to the farm where it will remain in Green Belt, in agriculture, and if it was ever developed, it wouldn't go into the calculations.

Bryce Froerer asked how they would access the 52 acres. Elroy Harris replied on the west side of the

subdivision there is about 66 feet of property on the south side of the river. If this property line was truly separated with the house, that would leave a 60 foot strip going all the way back, and that would be too narrow to use in any functional way. That gives access for the farm to the property back there, and when it is combined together it is connected to the bigger part where it's separated, and becomes an odd shaped unusable property. There is a 66 foot right-of-way that was given to him to access his property which adjoins the Melvin R Clark farm.

Chair Smith asked who currently lives in the home and is it over encumbered with payments that have not been made. Elroy Harris replied no one lives at the home, which was the home of Melvin R Clark. The payments are current and will go in foreclosure when the bank runs out of funds at the end of June.

Chair Smith asked if the 52 acres are currently encumbered. Elroy Harris replied that currently all of the property is encumbered and that he couldn't do anything with the property until the debt has been satisfied. The only clear way to satisfy the debt would be to sell the house; he can't sell the house if it's connected to the acreage, and it's not economically feasible for the buyer because the land is worth more than the house. Right now it's held up in a trust that can't be transferred until the debt is satisfied.

Chair Smith said that this is purely an economic decision, and this makes the all the other requirements null and void. Phil Hancock said he takes a different view; there is a reasonable solution that does not in any negative way affect the general plan, and helps the citizens of the county in making this change. He is in favor of this as a solution and would like to see staff be willing to work with the homeowners to resolve issues and problems. He understands the economic situation, but he doesn't believe the economic considerations here are large enough to merit consideration of this application.

**MOTION:** Phil Hancock moved to approve BOA2013-04 based on the findings that it does not degrade the general plan, that there be some sort of covenant or recording with the land that the density requirements be met, and that the additional ground cannot be used as density for any other surrounding property, whether it's joined into it or not to increase the density of the application. The unusual topography, irrigation canal, easements, and the shape of the property all are negative; and that the owner's response to the criteria items of 1-5 are justified. Nathan Buttars seconded.

**DISCUSSION:** Rex Mumford said the key to this is that restrictive note as part of your motion is an essential part of this so that they don't change the intent of the density. Phil Hancock said its right next to an approved two acre lot. Rex Mumford said that recently the county adopted an ordinance that boundaries within a subdivision could change as long as it didn't change what the zoning would have been at the time the subdivision was created and this goes along the same lines and he asked Mr. Mendoza if he had checked into that. Scott Mendoza replied they did look at that and the subject property is not within the subdivision. They interpreted this situation to be the subject parcel to be outside the subdivision so it wouldn't qualify. Chair Smith said that she agreed with a lot of things that were said and agrees that she would want our County and our Board to work with people and help them get through any of their issues that they might have. However, there is a three acre minimum zoning here, and the applicant stated that this is an economic matter that has to do with money. This sets a precedence giving an out for anybody else that wants to claim they are having a hard time. Here is an example of when this Board allowed this person to take this amount of property off, and they now want the same thing. This could lead to some lawsuits with this property that has been used for years, and now it's an economic hardship. Phil Hancock said that this Board was told on two occasions that the Board of Adjustment decisions do not set precedence. Chris Allred said that it doesn't in itself set a precedence meaning if you make a bad decision, it doesn't mean that you are required to continue to perpetuate an incorrect decision so no it's not like a court case where you establish precedence. Phil Hancock said every decision has an economic side to it just because it's not at the forefront; there is not a decision made by this Board that does not affect someone or property economically. Chair Smith replied that typically that is not the main objective and clearly here, that is a main objective. Nathan Buttars said one thing that helps the applicant is the topography with the river, the canal, the ditch, the pipeline, and using those things could show that this isn't just economic, there are

other hardships.

**VOTE:** A vote was taken with Bryce Froerer, Phil Hancock, Rex Mumford, and Nathan Buttars voting aye. Chair Smith voted nay. Motion Carried (4-1)

**5. Training: Making Motions:**

Sean Wilkinson said that there was no training at this time.

**6. Adjourn:** The meeting was adjourned at 6:45 p.m.

Respectfully Submitted,



Kary Serrano, Secretary,  
Weber County Planning Commission