



# MINUTES

Kane County Planning Commission  
& Land Use Authority Meeting  
76 North Main Street, Kanab  
**March 11, 2015**

CHAIRMAN: Tony Chelewski

MEMBERS PRESENT: Tony Chelewski, Dale Clarkson, Wade Heaton, Robert Houston, Byard Kershaw, Que Johnson, Hal Hamblin

MEMBERS ABSENT: n/a

EX-OFFICIO MEMBER: Commissioner Douglas Heaton

STAFF PRESENT: Shannon McBride, Land Use Administrator; Mary Reynolds, Administrative Asst.; Ryan Maddux, Building Official; Kent Burggraaf, Deputy County Attorney;

5:30 PM Work Meeting

6:00 PM Meeting called to order by Tony Chelewski  
Pledge of Allegiance Tony Chelewski  
Prayer Dale Clarkson  
Announcements Tony Chelewski

**Motion** was made by Hal Hamblin to approve the February 11, 2015 minutes. Motion was seconded by Dale Clarkson. The Chair asked for any questions or comments and there were none. Motion passed unanimously.

**Motion** was made by Wade Heaton to go in and out of public hearing at the call of the Chair. Robert Houston seconded the motion. The Chair called for the question and the motion passed unanimously.

Chairman Chelewski called the commission into public hearing.

**Announcements/Updates:**

Tony Chelewski said he called Mike Kempt and was told Rudy only drove on the road once since last month. He hasn't been plowing the road, but he wasn't contracted to do that.

Doug Heaton, Ex-Officio said the [County] Commissioners had a good meeting on Monday. Roger Chamberlain (ex-board member for Planning & Zoning Commission) was given two awards. He has served [approx.] 30-40 years on other boards, too. He was one of the original members of the Long Valley Sewer District. He was also president of the Lion's Club. [He has] given a lot of public service.

Shannon McBride, Land Use Authority Administrator: I found out his mission call is to Nauvoo, Ill.

Tony Chelewski: Shannon gave him an award; he was thrilled with it. (It was a sandstone plaque.)

**Administrative/6:01 pm**  
**Public Hearing**

**Rural Unimproved Subdivision**

**Arthur Manteris, Property Owner, Bryce View Estates II, Submitted by Tom Avant, TC Engineering**

Shannon McBride: Tom Avant could not make it tonight; he had a training he had to go to. We went through this last month, if you recall, we vacated it, but we had not [publicly] noticed it when he [Mr. Manteris] created the Rural Unimproved. We went over the easements and everything is completed with the engineering; we just had to re-notice it. It has to go back to [County] Commission to be approved.

Wade Heaton: The only change is that we added a couple of lots? [yes].

Chairman Chelewski called the commission out of public hearing.

**Motion** was made by Robert Houston to recommend approval to the Commission for the Rural Unimproved Subdivision of Bryce View Estates II for Arthur Manteris,

property owner. Motion was seconded by Hal Hamblin. The Chair asked if there were comments or questions. The Chair called for the question; and the motion passed.

Chairman Chelewski called the Commission into public hearing.

**Administrative/6:02 pm**  
**Public Hearing**

**Lot Joinder**  
**Philip & Cinthani Crenshaw, property owners, Meadow View Heights, Plat F, Lots 333 & 334, New Lot 333A; submitted by Platt & Platt Engineering**

Shannon McBride: This needs to be postponed again. The surveyors cannot get up to the lots [to re-survey] because of the snow.

Chairman Chelewski called the commission out of public hearing.

**Motion** was made by Wade Heaton to postpone the Lot Joinder for Philip & Cinthanie Crenshaw, property owners, Meadow View Heights, Plat F, Lots 333 & 334, new lot 333A, until the April Planning & Zoning meeting. Motion was seconded by Dale Clarkson. The Chair asked if there were comments or questions. The Chair called for the question; and the motion passed.

Chairman Chelewski called the Commission into public hearing.

**Administrative/6:03 pm**  
**Public Hearing**

**Lot Line Adjustment**  
**Brent & Susan Carter, Property Owners, Zion View Mountain Estates, Unit E, Lots 87 & 88, Submitted by Brent Carter**

Brent Carter: You guys have a map of this; those two lots [on the plat map] are long, skinny lots, and we want to turn them so they are more square and [make them] corner lots. They are the same lot number and the same size (because of the CC&R's). They won't let us do any additional lots or smaller lots.

Hal Hamblin: You are just changing the configuration. [Yes.]

Shannon McBride: All is OK with it. We have all the easements for it.

Tony Chelewski: How are you doing the easements; did you get that squared away?

Brent Carter: We are vacating the easements.

Shannon McBride: It has to go to [County] Commission because of the [vacating] easements.

The Chair called the Commission out of public hearing.

**Motion** was made by Robert Houston to recommend approval to the Commission for the Lot Line Adjustment of Brent & Susan Carter, property owners, Zion View Mountain Estate, Unit E, Lots 87 & 88, including the vacating of the utility easements. Motion was seconded by Wade Heaton. The Chair asked if there were comments or questions. The Chair called for the question; and the motion passed.

Chairman Chelewski called the Commission into public hearing.

**Administrative/6:04 pm**  
**Public Hearing**

**Rural Unimproved Subdivision**

**Dalco, LC, Brent & Bruce Williams, Property Owners, Paunsaugunt Ranch, Parcel #8-6-23-6, 8-6-23-7, 8-6-23-8, 8-6-23-11, 8-6-23-12, Submitted by Brent Carter**

Brent Carter: This is property owned by Brent & Bruce Williams, Dalco LC. There is an issue with this property, and it has to do with a cemetery that we found when we did the Title Report. There is quite a large cemetery on there, about 500 plots.

Shannon McBride: We have a map that shows the problem.

Robert Houston: When was it [cemetery] approved?

Shannon McBride: 1981. There isn't anything in State Code about vacating a cemetery, so I have called Kent [for direction.] I have called the Health Department in Washington County, Vital Records and [even] Mosdell's [Mortuary] as a last contact and no one has record of anyone being buried there. Mosdell's said when the property owner sells it - by law - they have to let the new buyers know if anyone is buried there. Two of the people [who signed] on the plat are deceased; the last [one]

contact we are trying right now is Keith Christensen. We'll see if he knows [or remembers] anything.

Brent Carter: There is a Keith Christensen in Cedar [City] but it's the wrong one.

Shannon McBride: In visiting with Kent, we can still recommend this to the [County] Commission but we have to make sure there are no bodies in the ground before we can vacate this.

Brent Carter: There are no deeds recorded.

Shannon McBride: I checked with VerJean [Caruso, County Recorder] and she is not aware of any.

Robert Houston: What is the size of that lot?

Brent Carter: The cemetery falls on a 40-acre tract; they subdivided out of that 10 acre [pieces]. This just showed up in the Title Report and it lays across part of that plat.

Kent Burggraaf: Is the full dedicated cemetery in the plat?

Brent Carter: Yes, but it's partially on Lot one and partially on [Lot] two.

There was a discussion on whether the cemetery was a private or public dedication; Kent Burggraaf said it needed to be vacated and go to the County Commission for final approval. He said technically, the roads would still be there, as well as the plots, [if the Rural Unimproved Subdivision was approved], until it [the cemetery] had been vacated; it had been put there for public use.

Shannon McBride: Then they have to reapply and come [back] in and vacate the cemetery. The same as amending a subdivision plat.

Kent Burggraaf: It's not like vacating a subdivision; it's more like vacating a road or a public easement.

Brent Carter: But it is a subdivision; we want to get rid of the whole thing. It says [on the plat] it is Lone Pine Cemetery, Unit 1 Subdivision. [We want to] get rid of the lots, the roads, the easements, everything.

Kent Burggraaf: Those are technically not lots; they are plots, which [do not make] a subdivision of land.

Brent Carter: But they have a deed to it – to each one of those plots.

Kent Burggraaf: It would be a property right; and it's not the same as ownership.

Doug Heaton: I remember when this actually happened before. The idea is, you take a piece of property you buy for \$10k and divide them into cemetery plots that are sold for \$5k per 4x8-piece. My question is, what assurance do we have that no one has purchased these plots? I am pretty sure when they set this up their intent was to make a fair amount of money off it.

Shannon McBride: That's what the Mosdell's said. It [was owned by the] Lutheran Camp and they actually had a grounding [event]. I am saying the same thing; they were from Vegas and they wanted to bring the bodies up here because it was cheaper and they would make money. The only thing we could think of was Conditional Use Permits [being issued] and we could not find any in the minutes. VerJean doesn't have any deeds [that were recorded] because usually they would have to have [had] something like that.

Robert Houston: Is it possible these people went out and sold plots to people who have not yet died or used them?

Shannon McBride: The Mosdell's said by law, when they sell the property they are suppose to pass that information to the next buyer. Whether the Mosdell's are correct – and they usually know their laws pretty well – that is the only way we have been able to determine [that no plot has been sold]. Even Washington County was clueless on the matter.

Kent Burggraaf: The only way to secure their vested property right is if something is recorded, specifically, in the Recorder's Office. And now we are talking a Title search. If it's not recorded, at best, the way some cemeteries do it is by contract. Then they have a contractual right, which [then] they could go after the estate, or the

original person they had the contract with. But they probably don't have much of a contract because of the passage of time. I don't think the city cemetery does it by vested deed. You can do it multiple ways – a deed or a contract. It's different than a deeded lot.

Doug Heaton: My concern here is whether or not we have the ability to discern whether any of the plots have been sold.

Shannon McBride: [We can't determine any] with the Recorder's Office.

Que Johnson: The people who created the cemetery are dead? [Yes].

Kent Burggraaf: The property has been transferred since then.

Brent Carter: It is now owned by Dalco, LC, who are Brent and Bruce Williams [Managing Members]. It was actually bought at a tax sale.

A comment was made about the possibility of stipulations that might have been attached during the tax sale.

Kent Burggraaf: There might have been a restricted covenant that ran with the land. It could have been a public restrictive covenant. That's why they couldn't just get rid of it; it's required to go through a public hearing process. If it's publicly noticed that it is going to be vacated, that should be enough. People could express their right to it if they felt they had one.

Wade Heaton: I doubt any of them sold because none of the improvements have been done that have been outlined on that plat.

Brent Carter: Yes, there's nothing there but trees and sagebrush.

Dale Clarkson: Would a tax sale clear the title?

Kent Burggraaf: No; a tax sale clears potential debts, but the property is bought subject to public right-of-ways and restrictive covenants. They don't become free from them; they might be free of debtors that don't exercise their rights, but not of restrictive covenants [(including public dedications as a cemetery)].

Discussion continued about how many plots might have been sold. Kent Burggraaf stressed they would have had to record it, or done it by contract. By Utah law, if it wasn't recorded they wouldn't have established their property interest against a future property owner. Technically, buying it out of a trustee sale would extinguish contractual right to the new owner.

Shannon McBride: When they do a cemetery plot now, they have to secure a conditional use permit, and then they have to record it immediately. This is for family cemeteries. This [cemetery] is more complex than that.

Byard Kershaw: If it hasn't been recorded, how can we be sure no one has been interred there?

Kent Burggraaf: Could people be buried there? Yes. Did they go through the proper process of notification [if people are buried there]? No. What they are supposed to do and what they can get away with is something else. That doesn't mean you can't go through the proper process for vacating it. It would be the same as vacating any subdivision or public right-of-way; if there is something there that is not known you're not withholding anything.

Shannon McBride: We will go the extra mile to notice it; we will post signs on it so anybody who happens by will see it, even though we don't have to do both [by letter and signage]. We will notice it for three (3) weeks per Utah State Code.

Wade Heaton: I don't think we are treading on thin ice here. This is sagebrush, hills and cedar; and no roads. I doubt any one is buried there.

Robert Houston: How many spaces are there?

Brent Carter: I don't know; I haven't counted them. There's a lot. [2,000-3,000?] I bet there are 300 or 400.

Robert Houston: So what should we do?

Shannon McBride: We can pass the Rural Unimproved [Subdivision], but we will have to come back next month and vacate the cemetery. We will notice it as amending or vacating a cemetery with a public right-of-way. There are 30-days that anyone can come back and appeal it.

Wade Heaton: Who approved this in the beginning? [County] And so you said we couldn't find anywhere we could abandon or vacate cemeteries in state statute? Do we have that in our county [ordinance]?

Shannon McBride: No. That is why we will treat it like vacating a subdivision. It went through the Planning & Zoning Commission and then we got a map from the Recorder's Office. They might not have done it the correct way in the beginning but we can vacate it the way we would normally vacate so we do it right [at this point].

The discussion continued regarding what [would have been] the correct way to do it in the beginning and the correct way to handle it now since there isn't a specific ordinance that speaks to vacating cemeteries.

Kent Burggraaf: One other clarification; this is likely to be done by Resolution so we should notice it for three weeks. That is normally typical of municipalities, but then it is defensible [for us].

Shannon McBride: We'll have to do it as a Rural Unimproved Subdivision, notice it for three weeks, then come back and vacate the cemetery.

Dale Clarkson: Can't we establish it as something new without vacating it?

Kent Burggraaf: Technically, this isn't a subdivision; it's a plan for laying out plots. They are dedicated as such, so, you can subdivide it, but until you vacate it, technically, there are still rights-of-ways for [a] rural unimproved subdivision as well as plots that are planned out, but they are not subdivided plots. Would it be cleaner to vacate this first? Yes it would. [Approving the Rural Unimproved Subdivision first is] not the preferred method, but you [can approve it subject to the publicly dedicated cemetery and roads].

Brent Carter: The public can still use the road until the cemetery is vacated?

Kent Burggraaf: They are publicly dedicated roads.

Discussion continued on possible property right claims.

The chairman called the meeting out of public hearing. Wade Heaton questioned the easements along the roads; Brent Carter showed them on the plat map saying people

had a prescriptive right to use the road that is there. He indicated they were creating easements on the parcels. They are fixing the access problems across the property they control. There are a lot of people who use the road at this time. Doug Heaton said it isn't (always) automatic to have a prescriptive right to use a road.

**Motion** was made by Hal Hamblin to recommend approval to the [County] Commission of the Rural Unimproved Subdivision for Dalco, LC, Brent & Bruce Williams, Property Owners, Paunsaugunt Ranch, Parcel #8-6-23-6, 8-6-23-7, 8-6-23-8, 8-6-23-11, 8-6-23-12, subject to vacating the dedicated cemetery with public rights-of-way and subject to the changes required by the county engineer. Motion was seconded by Wade Heaton. The Chair asked if there were comments or questions. The Chair called for the question; and the motion passed.

Chairman Chelewski called the Commission into public hearing.

**Administrative/6:10 pm**  
**Public Hearing**

**Kane County Resource Management Plan**  
**Section 7 & 8 Revisions; Shannon McBride,**  
**Administrator, Land Use Authority, & Mary**  
**Reynolds, Administrative Assistant**

Shannon McBride: We've had more State Planners call about our Resource Management Plan; we've had the Rural Planner's Association and the State Planner asking me to do training and coordinating with them. A [legislative] Bill was just passed that all counties have to have a Resource Plan; the State has allotted \$2 million for the counties [to get this done]. They actually talked about us getting reimbursed for our cost. They are using our Plan for the template for other counties. Byard [Kershaw] had a meeting with [American Liberty's group] and will have another one soon.

Doug Heaton: Let me tell you how significant this is. You guys have been on the cutting edge of a whole new idea of local resource management. This has never been done before. This Resource Management Plan and General Plan [have] given us new tools to work with as we address the federal government's management of federal lands. It is so impressive that the state of Utah has mandated that all of the other counties do what you just did. In fact, we've been sending out your work to other counties so we can shorten the learning curve for them, but they are lining up to figure out just what you did.

Shannon McBride: I had a meeting with the State Planners and they looked over our Plan with a fine-toothed comb and they haven't found a lot of problems with it, like with the grazing – at least with the Draft part of it. Some of the [other] counties will have to change parts of it. Thanks, again, for all of your hard work. You did a great job. It's paying off and it will help other counties. It is continuing to help in the grazing areas. We are continuing to get updates and coordination is still moving on.

Kent Burggraaf: A key thing is that the state legislature is now requiring that counties have something [for the federal agencies] to coordinate with.

Shannon McBride: [Referring to the projection screen] Most of the changes I will breeze through, but you will have to vote on a few. I researched and found out they [previous authors] used a different law. They hadn't updated it since 1998. The laws were referenced incorrectly. Federal laws didn't coordinate with [the number codes] referenced there. I talked to Kent already about the values and objects (paragraph references); we discussed this with the BLM; he thinks we can keep the values in here.

Kent Burggraaf: This is more about what we consider as values than what they established through the Monument Proclamation.

There was a question on whether the [Resource Development] Committee met annually; a table [in the appendix] was removed. Byard Kershaw said they were inviting all federal land managers and congressional staff people to bi-monthly meetings. The original reference was placed there by Ken Sizemore [in 1998]. There was a discussion on the verbiage *cooperator verses coordinator agency status*; they decided to not change “cooperating” to coordinating”.

The Planning Commission went over the rest of the basic edits and reworded a few paragraphs. They discussed some terms that didn't make sense in Section 7 under vegetation maintenance. The Planning Commission agreed to omit the terms that didn't describe the current circumstances. They also rehashed how to get the AUMs [animal unit months] increased beyond existing numbers. Hal Hamblin mentioned he spoke with the local field office and they told him they could raise his numbers [AUM's] back up to the standard AUM's that are on the books, but they couldn't exceed those. The current [existing] vegetation accounts for other wildlife [for forage] too. He doesn't know if the ranchers will ever see the AUM's exceeded. It would be nice to see the percentage they [BLM] have taken away returned to them.

The discussion continued on what number could conceivably or realistically be achieved. The term 'depredation' verses the term 'poaching' was discussed. Depredation was used in the context of damage done to land by wildlife. Depredation was left in.

The chairman called the meeting out of public hearing.

**Motion** was made by Wade Heaton to recommend approval to the [County] Commission for the revisions to Sections 7 & 8 of the Kane County Resource Management Plan with the suggested changes. Motion was seconded by Hal Hamblin. The Chair asked if there were comments or questions. The Chair called for the question; and the motion passed.

Chairman Chelewski called the Commission into public hearing.

**Administrative/6:15 pm**  
**Public Hearing**

**Open & Public Meetings Act Training**  
**Kent Burggraaf, Kane County Attorney**

Kent Burggraaf: Would you like me to do a Q&A or run through it quick? [Q&A]

There are key phrases in the Open & Public Meetings Act - the first one is, one must (actually) have a public body - what does that mean – to have a public body? Answer: We constitute a public body. Question: Why do you constitute a public body? Answer: There are more than two of you, created by rule, ordinance or resolution. Another aspect to it; you expend, disperse, or are supported, in full or in part, by tax revenue; and you also have the authority to do the public's business. That's what makes the public body.

Shannon hit on another point which brings up a quorum – do you know what she's referring to when she says there has to be four of you? Answer (by Planning Commission): [We] have to have four for a quorum – outside of here, say if you're at Sears and you are together and talking, it would be a public meeting, right?

Kent Burggraaf: So, if there is a quorum of you, if you met somewhere else, and there was four or more of you, that is a quorum; but, if you are just talking about the game, it isn't a public meeting. It may appear as such, and you may want to avoid that, but a chance meeting does not constitute a public meeting. But that picnic

becomes a public meeting as soon as you start to incorporate some of the public's business. You [aren't] in violation if you are just meeting and talking general talk.

For a public meeting you are required to have an agenda. How specific does that agenda need to be? Answer: You as a body need to be policing this in case something is not noticed right. The language in the statute says "*reasonable specificity*;" you can talk about things that aren't on the agenda, but you should not make a decision on items that aren't agendized. Technically, it is up to the Chair how far you want to go into these kinds of [unnoticed] discussions. Process wise, if it becomes a habit, [you must remember] there is a time issue and the [Planning Commission] can't act on it.

Kent continued: The intent of the 'Open & Public Meetings Act' is twofold: No. 1- Allow public in when you are discussing the public's business; and No. 2-Deliberate in that public meeting, so they can hear how a decision is reached, essentially making you more accountable for the decision.

[Suggestion:] On the back of the agenda, a disclaimer needs to be placed that says items may be accelerated or taken out of the order they are listed. Items taken out of order must have a motion made at the beginning of the meeting. A caveat on the back of the agenda will put the public on notice of this. Listing times on the agenda is not necessary.

Public Notices need to go out at least 24-hours in advance of the meeting. Where do you need to see these posted? Answer: Newspaper and three public places, including the county and state website.

Minutes – have to be taken for a public meeting; written and audio recording. You don't have to get word for word; just the general substance. If you had a closed meeting, what would it be about? Answer: personnel (not likely in Planning & Zoning); most likely (reasonably imminent) litigation. You might want to have a closed session to discuss strategy; but you cannot take action. You can discuss how to mitigate liability [if a decision may result in reasonably imminent litigation]. You start with an open meeting and then go into closed session. It has to be recorded, but you are not required to take minutes.

How do you document a site visit? Answer: You notice it, and you create a minute entry; where you include time, place, and who is there. You don't take any action.

Discussion continued on closed session meetings and their implications.

Public Comment portion of a meeting: You can take public comment all the way through the meeting, but it is not advisable for administrative items. If you haven't noticed an item as a public hearing, you don't have to accept comments. For example, a Conditional Use Permit is not noticed as a Public Hearing, it is an administrative item. (It is up to the discretion of the Chair and Land Use Administrator to list or not list an item as a public hearing.)

Work meetings have to be noticed because you are discussing the public's business. The 'Open & Public Meetings Act' is to serve a specific purpose. What needs to be provided to the public? Answer: Audio minutes three days after the public meeting, and written minutes within 30 days of the public meeting, (even pending minutes). If an item isn't on the agenda, the public body, at the discretion of the Chair, may discuss it, but they can't act on the item. The 'Open & Public Meetings Act' doesn't cover Robert's Rules of Order or the requirements of Title 17.

The chairman called the meeting out of public hearing.

**Motion** was made by Wade Heaton to adjourn the meeting. The motion was seconded by Robert Houston. The Chair asked if there were comments or questions. The Chair called for the question; and the motion passed.

The meeting adjourned at 8:17 p.m.

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Land Use Authority Chairman,  
Tony Chelewski

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Land Use Administrative Assistant,  
Mary Reynolds