



# MINUTES

Kane County Planning Commission  
& Land Use Authority Meeting  
76 North Main Street, Kanab  
**July 8, 2015**

CHAIRMAN: Tony Chelewski

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

MEMBERS ABSENT: Wade Heaton

EX-OFFICIO MEMBER: Commissioner Douglas Heaton (absent)

STAFF PRESENT: Shannon McBride, Land Use Administrator; Mary  
Reynolds, Administrative Asst.; Ryan Maddux,  
Building Official; Rob Van Dyke, 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 Byard Kershaw to approve the **June 10, 2015** minutes. Motion was seconded by Dale Clarkson. The Chair asked for any questions or comments and there were none. Motion passed unanimously.

## **Announcements/Updates:**

Tony Chelewski, Chairman: Called Mike Kemp; he hasn't seen Rudy this week. Last month it was a nightmare. He thought Rudy was only going to use Nance Rd. when he had jobs.

Shannon McBride, Land Use Administrator: I addressed that issue already; it was regarding the safety of moving equipment. I mailed him a copy of the conditional use permit so he could see what language is there.

Tony asked Shannon to call Mike Kemp regarding Mr. Esplin's cows which are being grazed in the area; they are bothering him. Shannon will make the call.

**Motion** was made by Hal Hamblin to go in and out of public hearing at the call of the Chair. Motion was seconded by Dale Clarkson. The Chair called for the question and the motion passed unanimously.

Chairman Chelewski called the commission into public hearing.

The chairman changed order of Item #2 to first due to conference call: Pineda, RUS.

**Administrative**                      **(1) Rural Unimproved Subdivision**  
**Sayda Quinonez de Pineda, Edwin D. Pineda, and Catherine Hutchison, Clear Creek Heights, parcel # 1-9-3-2 (Mount Carmel); Submitted by Brown Consulting Engineers, P.C.**

Shannon McBride addressed Dan (unknown last name), Edwin and Sayda Pineda on a conference call.

Shannon McBride: The Planning Commission has the plat before them with the staff report/recommendations. All is in order. Are there any questions?

Sayda Quinonez de Pineda: We don't have any questions.

A question came from a public member, John and Jolynn Lee; they wanted the definition of a Rural Unimproved Subdivision explained to them. They live on the road that runs along Clear Creek Heights and are questioning the creation of the Rural Unimproved Subdivision. They are specifically interested in the road; will it be changed? [The answer was no.]

Tony Chelewski questioned the land above parcel two. What has happened to those parcels?

Shannon McBride explained there will only be three parcels. The other parcels stay the same. [The other parcels] do not belong to the Pineda's. There is also a prescriptive easement on the road.

Rob Van Dyke, County Attorney: Is this correcting a previous improper split? [There answer was no.] Why are the numbers the way they are? [Shannon explained VerJean said it had to do with surveying.] The shapes of the proposed parcels are weird.

Tony Chelewski: It looks like it's because of access; to have access to the road.

Sayda Quinonez de Pineda: We are here if you have any questions.

Tony Chelewski: I see roads – any right-of-ways? [The answer was no; that is not a requirement at this time.]

Dale Clarkson: These three roads are by prescription only? [The answer was yes; they have put the access through their property. They were using their neighbor's.]

John Lee: Is their intent to build a house?

Rob Van Dyke: They aren't under any obligation to answer.

John Lee: There is a business plan that is circulating [amongst the neighbors] about a Mayan Temple with rental units.

Shannon McBride, addressing the Pineda's: Property owners who live near [the property] want to know if you have plans to build or rent out facilities. Do you wish to address this?

Sayda Quinonez de Pineda: We have no plans right now; maybe for the future. No plans for this year.

Shannon McBride: With that being said, they would have to come back and have water, utilities (infrastructure) in order to develop it. Their hardship would be to obtain water. I haven't seen any plans on a temple; I would have to see the plans, first. We would have to have a development meeting for something like that.

John Lee provided copies of plans to build a Mayan Temple and other facilities on this subdivision. Each member received a copy and read it. [Copy of plan is attached.]

Shannon McBride: They [The Lee's] have provided a letter dated March 14, 2014; for Zion Mountain Adventure.

Sayda Quinonez de Pineda: Those are [old] plans for when we first looked at the property. We don't have the money to launch it; maybe not for five years. When we can afford it, we will come back and address it.

Shannon McBride: That is the procedure you would need to go by; thank you.

The Chair called the Commission out of public hearing.

**Motion** was made by Hal Hamblin to recommend approval to the County Commission the application for a Rural Unimproved Subdivision for Sayda Quinonez de Pineda, Edwin D. Pineda, & Catherine Hutchison, Clear Creek Heights, parcel #1-9-3-2. 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 unanimously.

There was a question on the procedure of how and why it had to go to the County Commissioners. Shannon told them it would take about a month.

There was a short discussion regarding what would occur if the Pineda's went forward with a plan to build facilities and Shannon explained how a development meeting would need to occur, with establishing water rights, utilities, etc. Until the Land Use Authority receives an application, it's just talk. A lot of development and improvements would be needed.

Rob Van Dyke said with the prescriptive easements, the neighbors would have to be notified.

Dale Clarkson wanted to know if the county required them to show financial capability. Shannon said no, but the area would need [a lot of] development.

Chairman Chelewski called the Commission into public hearing.

**Administrative**  
**Public Hearing**

**(2) Lot Joinder**

**Christopher R. Reynolds & Tricia A. Tylman, Trustees of the “Christopher R. Reynolds & Tricia A. Tylman Living Trust”, Ponderosa Villa, Plat C, Lots 24 & 25, New Lot 24; Submitted by Brent Carter**

Shannon McBride: I didn't require Brent [Carter] to come over [from Cedar City] for one item. It doesn't have to go to Commission because there are no easements to be vacated. The staff report is in your packets along with Tom's [county engineer] recommendation. All is in order.

Chairman Chelewski called the commission out of public hearing.

**Motion** was made by Dale Clarkson to approve the Lot Joinder of Christopher R. Reynolds & Tricia A. Tylman, Trustees of the “Christopher R. Reynolds & Tricia A. Tylman Living Trust”, Ponderosa Villa, Plat C, Lots 24 & 25, new lot 24. 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 unanimously.

Chairman Chelewski called the Commission into public hearing.

**Administrative**  
**Public Hearing**

**(3) Rev. Kane County Resource Management Plan**  
**Add Appendix “I”-“Conservation Plan for Greater Sage-grouse in Utah”; Submitted by Shannon McBride**

Shannon McBride: The reason this item is on the agenda is because I was invited to a [Commissioner's] conference in Logan addressing the Sage-grouse [issue] in hopes it wouldn't be listed [on the endangered species list]. At that time, the comment period was open and the Commissioner's were combining forces to submit letters [against it]. Their attorney (PLPCO) was in attendance and he said if you didn't already have a Sage-grouse plan it was too late to make comments. We have hit that road block before so my idea was to adopt the State's [Sage-grouse Conservation Plan] to show we are fully aware of the Sage-grouse and the problems [associated]; we are going to put it in the Appendix as the State [of Utah's] Sage-grouse Plan. But we are working on a local Sage-grouse element so that if this all moves forward, we will have our own Plan [in place].

6:25 pm Robert Houston arrived.

Shannon McBride continued: One thing Kevin Heaton [USU Ext.] said to make sure we understand is that they have had the Sage-grouse under study [for several years]. It is a small area, but it is the one around the Alton Coal Mine, and we want to make sure we protect that. Kevin said to make sure that when we accept this, "...make sure that the state plan indicates that Kane County's Sage-grouse population is not essential to the survivability of the species, and that Kane County's grouse are important for maintaining the historical range."

This item is more for reference like we used the State's Resource Plan (in the Appendix).

Planning Commission members passed around a map that showed the habitat area (around Panguitch and down into Kane County). Shannon indicated the Sage-grouse was doing better since the Alton Coal Mine had been in operation. We are also seeking information from Professor Frey (Cedar City) for more data. Commissioner Matson will obtain that information.

Shannon McBride: The Extension office has been proactive and has data back to 1994.

The Chair called the Commission out of public hearing.

**Motion** was made by Hal Hamblin to recommend approval to the County Commission the revisions to the Kane County Resource Management Plan, adding Appendix I, "Conservation Plan for Greater Sage-grouse in Utah", with note that the Sage-grouse population in Kane County is not essential to the survivability of the species and Kane County's grouse are important for maintaining the historical range. Motion was seconded by Byard Kershaw. The Chair asked if there were comments or questions. The Chair called for the question; and the motion passed unanimously.

Chairman Chelewski called the Commission into public hearing.

**Administrative**  
**Public Hearing**

**(4) Rev. Kane County Land Use Ordinance**  
**Revisions to Chapter 1, 5, & 21; Submitted by Shannon McBride**

Shannon McBride: We are adding a few [new] definitions to clean up [the matrix]. I have had a lot of calls regarding CC&R's (Covenants, Conditions & Restrictions) so I'd like to add it to the matrix. I want to add the wordage: "The restrictions will be enforced by the HOA (Home Owners Association), not the county." We also added HOA, along with not enforcing these.

If you recall, Swains Creek wanted to put in a park, but the explanation wasn't clear. I found some good definitions (per Kent's request). The matrix didn't address it.

Hal Hamblin asked about activities in a park; Rob Van Dyke read what was broad and what was excluded. Hal asked if "similar activities" would cover anything outside the norm? Rob thought it would. Recreation and leisure are very broad. The discussion used fireworks and guns, as examples.

Shannon McBride thought those [activities] should require a conditional use permit.

Byard Kershaw asked if engine-powered activities were addressed; what about bicycles? Do they need to be specifically addressed?

Shannon McBride again suggested it should be conditional. Rob Van Dyke thought a bicycle was a typical activity for a public park, but Byard clarified it could be a BMX event.

Tony Chelewski asked about the word "nation" and it was eliminated.

"Recreation grounds" was spelled out further; borrowed wordage from Hurricane's ordinance. Recreation and entertainment, indoor and outdoor, as in radio-controlled sports was also added. Also added shape files (for Lou Pratt) for the GIS files. A shape file is a digital file that Lou can absorb into his mapping system.

Tony Chelewski asked about gliders; Shannon McBride answered there was no use of aircraft included in this definition.

Shannon also clarified that she signs off on setbacks and Ryan Maddux signs off on building plans.

End of Chapter 1 revisions.

The chairman called the meeting out of public hearing.

**Motion** was made by Byard Kershaw to recommend approval to the County Commission the revisions to Chapter 1, as amended, of the Kane County Land Use Ordinance. Motion was seconded by Que Johnson. The Chair asked if there were comments or questions. The Chair called for the question; and the motion passed unanimously.

The chairman called the meeting back into public hearing.

Shannon McBride: On Chapter 5 we had to add it in Ag (parks information). If you think it should be permitted, let me know, but I think it should be conditional, for safety, parking (traffic, etc.) These are all 10-acre pieces, where you can be less restrictive. The first one is a private park and the second one is a public park. If they [public] called now, here are the definitions we would go by. Most of these stipulations are for a public park; we aren't going to want to regulate a private park. Both of these changes are for public parks, not private. The matrix clarifies whether it is permitted or conditional.

Ryan Maddux, Building Official: You could require a PUD (Planned Unit Development) if they all have ownership. [Shannon agreed; the HOA should address that on its own.] I would make it permitted.

Discussion ensued about a park that had a pool, which was a conditional use. Rob Van Dyke said a pool could not be put in as an accessory to circumvent the ordinance. Shannon McBride said they would need to get a zone change. Public parks can't put up anything they want.

The Planning Commission said permitted was fine [in the matrix].

More changes to the matrix were discussed; permitted verses conditional.

Shannon McBride said she was getting calls on [the legality of] tourist-based companies on Ag. She asked Planning Commission members if they wanted to allow it; it was mostly tour guides. The consensus was to allow it.

Rob Van Dyke questioned the Planning Commission members about zone restrictions – which is most restrictive and which is less? Do you want to have less restriction if it's in Ag?

Shannon McBride said we have missed a lot of definitions. Ryan Maddux said it was listed in the commercial zone. Conditional or permitted on Ag; Consensus was on permitted.

Shannon said it is also in Chapter 7 without a definition. We aren't talking about retail sales; we are talking about hikes, tours, helicopter rides.

Tony Chelewski indicated his neighbor, Sally Child, was operating a tourist business out of her residential property without a permit. He wants it to become "conditional" so things like this can be regulated; she can be inspected.

Rob Van Dyke: The business offers guided tours like ATVs, raft trips, etc? [The answer was yes.]

Tony Chelewski: If it has to be conditional, they might only do things a few days at a time.

Shannon McBride asked if the individual was operating the tour business out of her home. Tony said yes. Que Johnson asked about requirements of having it conditional; Planning & Zoning could set conditions but couldn't deny it.

Rob Van Dyke: One of the conditions could be that they have appropriate permits.

Dale Clarkson: We should encourage their economic [independence]. We don't have to boss them around; the permits they have to obtain will do that.

Hal Hamblin voted for permitted; others agreed.

**Motion** was made by Hal Hamblin to recommend approval to the County Commission the revisions to Chapters 5, as amended, of the Kane County Land Use Ordinance. 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 unanimously.

Robert Houston asked about home owners policing themselves; can we require them to have a set of [their own] rules? Shannon McBride answered yes, if it's a full-blown subdivision; then they need to record their CC&Rs. Robert was worried about a CC&R stating there were no restrictions and Rob Van Dyke concurred that was a possibility. Rob said we don't have requirements on what the CC&Rs should say. You can't require an HOA [to have restrictions]; that's up to them. But you can require CC&Rs. Robert was looking for a notification for people who were purchasing the land – either there are rules or there aren't.

Shannon McBride continued with revisions to Chapter 21. CC&Rs were listed again; same with HOA (definition only).

Robert Houston asked about CC&Rs – are they good forever? Rob Van Dyke said they run with the land. It's a right of the CC&R held by the properties collectively against one or adjacent property. They can be abandoned like easements, but they must collectively abandon them. An HOA that comes together has bylaws that address rules and change; at least a majority is required. If you don't have an HOA, it must be 100% participation or nothing can be changed. If the developer owns all the property and he puts CC&Rs in place, that runs with the land. Any group of contiguous property owners could come up with their own CC&Rs and record them. The other major difference – an HOA has an elected (board); the majority decides how it is enforced. With CC&Rs, one individual property could enforce it against another property. There must be 100% agreement/participation.

Shape files were addressed again.

Rob Van Dyke addressed penalties [for illegal/improper land splits]; the issue is that several years ago the subdivision ordinance was fixed. Now [the county] is strict and has amended the penalties (to be harsh). [If a person has an improper land split] they can't sell or build. Commissioner Clayson wants Land Use to come up with a [different] solution because there are a lot of people who bought property [that was] illegally divided [but were unaware]. Some have houses, but cannot sell their properties. It is a detriment to the local economy not being able to build or sell. Rob is proposing a mechanism to address this. Any person who owns property that can't be sold can apply to the Land Use Authority and Shannon McBride will have the authority to give "authorization to transfer," exempting them from criminal penalties. [To be eligible for this transfer] the land had to [have been improperly split] before January, 2005. If it was divided after that date, then they are not

eligible; and if you are the person who divided it illegally, then you are not eligible to transfer. You have to be the person who unknowingly purchased it. The eligibility becomes void if they [the current land owner] does something illegal.

Discussion: We are basically giving people permission to sell their property that was divided improperly? [yes].

Rob Van Dyke: For a period of time the building department didn't check with land use [regarding the proper or improper split of land].

Ryan Maddux: For a time the two were the same (building dept and land use); the ordinances that were created since were to solve that issue.

Rob Van Dyke: The bigger counties just say it's your fault and you're stuck with it.

Dale Clarkson: That freezes the ownership of property? [yes]

Shannon McBride: Iron County won't go below 20 acres; they created a Rural Unimproved [similar to] ours.

Discussion continued on how Kane County wants to help people in the position (of owning illegally divided property). It has become a major project for the Land Use office.

Rob Van Dyke stated the other thing this transfer paper does is puts the unsuspecting buyer on notice that it is an issue that has to be corrected. [But there are still questions to be answered.] Is the [cut off] date appropriate (January, 2005)? Should it be sooner or later? Should it be more restrictive? If you are the person who broke the law you shouldn't benefit from it.

Dale Clarkson: The developer should enjoy the same opportunities the [regular] person does. If we rack up the date we are allowing more freedom to more people.

Rob Van Dyke: There are two mechanisms we have [teeth] to enforce the subdivision ordinance. It's the ability to sell and the ability to build. This county has chosen to use those teeth. It is within your power to change that. We can change the requirements of the county but not state law. We have to use one or both of the teeth to make people comply with the law.

Shannon McBride: We are still getting improper splits but they are caught quicker. Linda Little (Assessor) has probably given me five this year already. When people hear about it, they are grateful to have a solution.

Robert Houston: The Commission will still act on this regardless of what we do, right? [Most likely]. We probably should vote for it.

Tony Chelewski: We need to fix this, and stop it from continuously cycling.

The consensus was to go for it.

Shannon McBride: A little more clean-up has happened in Chapter 21; we need to get it done and send it to the codifiers (all at once).

Shannon went over more minor changes regarding notifications, and eliminated some superfluous language. Item – fences; Shannon added verbiage regarding fences. Utah is a “fence-out” state, but if fencing originally exists, it has to be replaced. That brought up the next issue – Lou Pratt told Shannon UDOT [might have] to be notified, it is limited access as it is. They could require a turn-out; we need to ask them what they need.

Verbiage: For a Rural Unimproved Subdivision, if fencing already exists it has to be reconstructed or barriers remain in place.

Robert Houston explained Lutherwood was fenced for cattle, but it wasn't on Lutherwood property. The real property owner tore it down. This verbiage should protect the old barriers. It is a safety issue. He asked for clarification regarding an owner who buys a property that has fencing on it. This ordinance will make it so that he has to maintain the fence.

Discussion continued on what requirements should exist for these fences. Verbiage needs to include gates, cattle guards and fencing. Rob Van Dyke said it should say they must remain in place but can be moved to conform to new lot lines. Planning Commission members questioned whether any verbiage should be added about roads - that they can't be diminished. Rob said we don't regulate private roads. Robert Houston said everyone has a right to get to their property up in the Lutherwood

area/subdivision. People can cut across his property if it means getting their own property access.

Shannon McBride: If we get more restrictive we are going to have to up the cost [of the application] because we will have to inspect it. Right now, the fee only covers Tom's [county engineer] expense.

Discussion continued on where statements regarding the road could be placed. Hal Hamblin suggested it be a condition of the Rural Unimproved Subdivision. Rob Van Dyke said it could be a condition of approving it [the application]. It would be a new area of regulation for the county.

Ryan Maddux: If you make it a part of the application process, you will have the information before you approve it. The applicant should supply the evidence. Shannon shouldn't have to go out and inspect it. The property owner needs to provide the proof.

Shannon explained the requirement of the 50-foot easement on the Rural Unimproved Subdivision application. Rob Van Dyke clarified you have to dedicate the easement but you don't actually have to create the road. The guy in Lutherwood [might have] misunderstood what his requirements were when he widened the roads [to 50 feet]; we should put that in this ordinance. Hal Hamblin also wants it stated the roads/easements cannot be diminished.

Shannon McBride asked for clarifying language: If any roads exist at the time of applying for the Rural Unimproved Subdivision application they must continue at the existing or improved condition. The applicant does not have to improve any existing road to the full dedicated easement [of 50 feet] at the time of application.

Minor subdivisions: minor doesn't have to go through Land Use Authority, but a letter of approval from Land Use has to be recorded with the deed; (protects ordinance, that there is 100 contiguous acres.)

Rob Van Dyke: Do you want to change Ag land and Ag use to just going through Land Use Authority Administrator or have [applicants] come through Planning & Zoning? Shannon will sign a document that stipulates their requirements.

Tony Chelewski suggested Shannon McBride have the option to forward the application to the Planning Commission [if she deems it necessary]. Planning Commission members agreed.

**Motion** was made by Que Johnson to recommend approval to the County Commission the revisions to Chapter 21, as amended, to the Kane County Land Use Ordinance. 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 unanimously.

**Motion** was made by Que Johnson to adjourn the meeting. The motion was seconded by Robert Houston.

Meeting was adjourned at: 8:24 pm

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Land Use Authority Chairman,  
Tony Chelewski

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Land Use Administrative Assistant,  
Mary Reynolds