Special Meeting MINUTES

Kane County Planning Commission
& Land Use Authority
76 North Main Street, Kanab
August 31, 2015

CHAIRMAN:	Tony Chelewski
MEMBERS PRESENT:	Tony Chelewski, Dale Clarkson, Byard Kershaw, Hal Hamblin
MEMBERS ABSENT:	Robert Houston, Que Johnson, Wade Heaton
EX-OFFICIO MEMBER:	Commissioner Douglas Heaton (absent)
STAFF PRESENT:	Shannon McBride, Land Use Administrator; Mary Reynolds, Administrative Asst.; Kent Burggraaf, County Attorney; Ryan Maddux, Building Official, Linda Little, Assessor and Building Official, Lou Pratt, GIS; Tom Avant, County Engineer.
Public Present:	Mr. & Mrs. Ken Smith, Dani Eskamp-Franke, Shauna Cox, (and three others who didn't sign in)
10:30 AM	Meeting called to order by Tony Chelewski

Administrative **(1) Compliance Review**
Rancho Back Acres, Inc. (Christopher Langham); Nine parcels #3-4-32-2-1, #3-4-32-2-1B thru 1I

Shannon McBride: This [property] is not over ten lots; they kept it at nine. This has been recorded. So, I am going to ask Kent, what else do you need as far as our compliance review on the Record of Surveys? If you look at the application, you'll see the taxes have been paid. They have to [fill out] this application. I look at the zoning, and they have to sign the compliance review. There is an agreement of understanding so they know the roads will not be maintained by the county, and we record that, too. On this [application] we went back and looked at [previous] minutes to see if they came before the Planning Commission. In this particular instance, it used to be the Mongini [property]; they did a lot of these splits. They did go before the Planning Commission. The Planning Commission was a little uneasy because they felt [the owner] was going to develop this [acreage] and subdivide them [more]. But, they were given permission and allowed to do it.

We are making sure everything is in compliance with this Record of Survey, and per the minutes, state code and county ordinance, I have found this to be true. I'll ask Kent if he has any questions on this.

Kent Burggraaf: We are looking at Rancho Back Acres? [Answer was yes] What year was it subdivided?

Shannon McBride: In 1995, but it was recorded in 2001, so I looked at both years. According to the minutes, they received permission [to subdivide] in 1995, but the Record of Survey wasn't recorded until 2001.

Kent Burggraaf: Do we have any record of any form of subdivision happening before this?

Shannon McBride: Just in the minutes of 1995. On most of these we do not know why they weren't recorded at the proper time. But that's what we have [the applicant] mark on the application [when the land was divided]. I went over it with Rob (Van Dyke), [County Attorney] and Commissioner (Dirk) Clayson; this [situation] is a procedural defect only, because they are in compliance but the Record of Survey wasn't recorded [filed], or [have a] letter, which the county didn't require back then.

Kent Burggraaf: Are any of the lots less than ten acres? [Answer was no] So that wouldn't be an issue on this one; so we'll probably be looking at 2001 because it wasn't formally divided or subdivided.

Shannon McBride: Yes; in 2001 [state code] says ten lots or less and it doesn't say anything about ten acres. So they were in compliance with exemptions to the plat in 2001 by state code. I have [the state code book] here if you need to look at it.

Kent Burggraaf: This is the one you have attached, right, for 2001? [Referring to a page out of the state code book.] If you'll give me just a moment [to read it].

Dale Clarkson asked if the applicant was in the room, and Shannon said Lynette Foster was going to come in for this application, but she didn't attend. This compliance review doesn't require the applicant to come in; a lot of them live out of town. Some [applicants] are here, but it's not a requirement.

Hal Hamblin asked where these properties were located and Shannon told him they were out east by 8-mile gap. She said all of the [applicants] today were in that area.

Shannon McBride: We have a lot that went through the Planning Commission, but we don't know why the Record of Survey wasn't recorded [filed at that time]. We have been able to obtain the Record of Surveys [now in question]; they have all been recorded [filed], and that's what I have to go back and look for. A lot of times the [people] didn't go before the Planning Commission; there

was a little bit of difference between county ordinance and state code, and interpreting [either] for what they thought they should do.

Back in that time the building official was over zoning, so he issued a lot of permits just because [he] interpreted it [to be correct]. That's why we are going through this; a lot of [the properties] have homes on them already. That was the stance the county [took] so we are just going through and requiring the Record of Survey, or the Planning Commission minutes.

If you recall, about two years ago Arlea Gibson and Peggy Bryant did the same thing, where they went before the Planning Commission. State code said if they go before the Planning Commission and they have a written certificate/affidavit, then it's O.K. That's what we had to go back and do; we recorded that affidavit and we have it marked "proper". That's what we're hoping to do today; to give [the applicants] the Planning Commission's approval because a lot of times they didn't obtain it.

Kent Burggraaf: [Directed question to Tom Avant, county engineer] Tom, did you have an issue that you wanted to address on this one related to the plat or the Record of Survey?

Tom Avant: No, we can talk about that after the meeting today; it's a separate issue.

Kent Burggraaf: Commissioner's, if you'll forgive me, this is obviously the first time we're going through this process, and if we had hammered it out a little more I could try to save you a little time. If you can bear with me a little bit – on each of these, if you haven't already, you obviously want to look at the paperwork. [Held up page of state code/ordinance he was reading and directed question to Shannon.] Did they get a copy of this as well?

Shannon McBride: No, I just gave that to you. The Commissioner and Rob told me to check the ordinances.

Kent Burggraaf: So what we're saying here, they are exempt from the plat requirements, but you're not saying they are exempt from the subdivision requirements.

Shannon McBride: [In terms of] subdivision requirements, they are allowed to do the ten lots or less without the plat; it's in the Kane County ordinance.

Kent Burggraaf: O.K. So what were the subdivision requirements at the time?

Shannon McBride: Are you talking full-blown subdivision; or just the exempt?

Kent Burggraaf: We are still doing a subdivision here, correct?

Shannon McBride: Yes, but state code has this exemption and that's where these guys fall under. They are exempt because they have ten lots or less – as it says in state code – that state code [referring to page he was reading.]

Kent Burggraaf: You're referring to 806, right? [Correct] Which is referring to exemptions from the plat, not from requirements of a subdivision.

Shannon McBride: That's how it's been [interpreted] the whole time in county ordinance and they treat state code like that. It goes on to talk about a written note from the Planning Commission, [and measuring] by metes and bounds. In metes and bounds you don't need a plat. When it talks about dividing by metes and bounds, that's what most people did.

Kent Burggraaf: So Commissioners, I can take the time to review this now, but because I haven't – it may take me a little while, because I haven't fully reviewed this. I am not recommending that you approve it at this time. I want to verify that we are in legal compliance with what we have for state code before I give my recommendation for approval. Shannon may be right that the exemptions from plat requirements also apply for an exemption or a non-subdivision; that's not my understanding as a definition of a subdivision or what is not considered a subdivision. If it is a subdivision then there are still substantive requirements that need to be met. I'd like to verify that we're complying with that before I give my recommendation for approval. At the end of the day it's just a recommendation. So my recommendation is that you don't approve it today. You could postpone the decision to the next Planning Commission meeting.

Dale Clarkson: Or approve it subject to your review?

Shannon McBride: I wouldn't recommend that because there are people waiting for building permits. That's why we have met here today – they want the building permit. Otherwise, if you're not going to give it [your approval] I would just wait until the Sept. 9th meeting. Several of them [the applications] are for that reason [obtaining a building permit.] That's why I wanted a special meeting called – there were pending building permits. I actually have two more, already, for the next Planning Commission meeting, but they aren't waiting on permits.

Tony Chelewski: So are we going to postpone it or just wait?

Shannon McBride: Yes; we can just wait [for the P&Z meeting.] And have everyone come back on Sept. 9th because Kent will have the same [argument] on all of them. The same question will come up. That will give Kent time to talk to me. The same question will come up on all of these – that's what Rob and Commissioner Clayson [and I] talked about regarding the exemptions to the plat. If there isn't an exemption to the plat then none of these can be approved.

Kent Burggraaf: Do they all have a Record of Survey?

Shannon McBride: Yes; that's why we are doing this – the compliance review – because they are exempt from the plat and they had a Record of Survey or written approval [minutes]. And they have all been recorded [filed] through VerJean (Caruso) [County Recorder]. That is why Commissioner Clayson got these recorded. It is how they set this up.

Kent Burggraaf: Have you reviewed the substantive requirements for subdividing for each of the years?

Shannon McBride: Yes, but I did it under the 'exemption to the plat' by dividing by metes and bounds, which isn't like a full-blown subdivision. There is a subdivision requirement that can either be two or three [divisions] – it changed back then – and then they have exemptions to the plat, which is what we did all of these [applications] under, because its metes and bounds. These Record of Survey's are done by metes and bounds; it is not a plat and they aren't called a subdivision, they are recorded as a parcel. Like our Rural Unimproved – [it is] called a subdivision and we started requiring a Record of Survey (and everything), but back then it was an exemption because they were divided by metes and bounds and not a plat.

Kent Burggraaf: Again, Commissioners, I apologize that I haven't had enough information to give you a good recommendation for or against. It may be that all of these are all good to go, but this is the first time I have seen an application as of this morning, and so as far as my legal recommendation I couldn't tell you whether they are otherwise substantively compliant. The real issue we are dealing with here as a compliance review - were they substantively compliant, and if they were, were they procedurally compliant. If they weren't procedurally compliant, that's a hurdle we can overcome through one of these compliance meetings, but if they weren't substantively compliant that's an issue that has to go back to the property owners to correct through the proper process. So, just not having enough information prior to this morning I have explained to Shannon we could make this meeting real lengthy if we all go through what statutes were [applied] at the time, and say 'do we have this box checked?' It's something I can do separately so you could just have a recommendation as far as me checking the boxes – or Shannon, for that matter – but I think without that, as far as your legal counsel, I couldn't give you a recommendation to go forward with it, not knowing whether those substantive issues were taken care of.

Tony Chelewski: O.K. Are we ready to adjourn?

Dani Eskamp-Franke, applicant: I won't be here next week is there any reason we couldn't move mine forward since I already came before the Planning Commission before?

Shannon McBride: She's the five-acre [applicant].

Kent Burggraaf: It would be the same issue; I couldn't give a recommendation.

Dani Eskamp-Franke: But I have approval from the Planning Committee to build on my lot. I have that in writing.

Shannon McBride: It was in the minutes.

Kent Burggraaf: Yes, and I reviewed those minutes. Again, it has some other issues with it, but I don't recommend that this body give you formal approval today without further review.

Dani Eskamp-Franke: So I can't file for a building permit because I need it.

Kent Burggraaf: The Planning Commission can make a decision however they like, but I wouldn't recommend going forward with it.

Dani Eskamp-Franke: So you're saying that the agreement that I was given before I bought the lot in 2006, all of a sudden ten years later doesn't hold?

Kent Burggraaf: No, I am not actually saying that. I just haven't had enough time to review it to give you an adequate opinion on that. I am not saying that one way or another.

Tony Chelewski: Does she need to be here for the next meeting? Can she send somebody in her place?

Dani Eskamp-Frank: I don't have anyone to send.

Shannon McBride: She has all the information and knows all the ins and outs.

Hal Hamblin: Could she call if we had an open line?

Dani Eskamp-Franke: I could.

There was a brief discussion amongst the Planning Commission members about waiting for a legal recommendation on the applications. They asked if they should postpone the meeting until the next P&Z meeting.

Shannon McBride: It will be hours because we have about ten of these plus a few other projects; plan on a long meeting.

Kent Burggraaf: It could potentially be a quicker meeting, at least as far as these issues go. Once we verify the substantive compliance it will be as simple as giving you what our review is of the substantive issues – just give you a quick rundown - if there are any procedural issues, and then giving you the recommendation. I don't anticipate these would take too long if we have a thorough review.

Tony Chelewski: [To Dani Eskamp-Frank] Do we have your phone number? [Yes] Could you apprise her a couple of days from now about what [the situation is?] [Yes]

Hal Hamblin: Could we put these people first? [Yes]

Dani Eskamp-Frank was asked where she was travelling from and she said California. She also said she would be back in two weeks. She indicated she was getting very close to needing the building permit so the timing was very important.

There was a brief discussion with a few of the other applicants who were present about whether they were local and could attend the next P&Z meeting. The question was posed whether the Planning Commission members could hear some of the considerations before the Sept. 9th meeting.

Kent Burggraaf: You can; it sounds like you don't plan on making a decision today, but it doesn't mean you can't get the rundown on some of these [applications]. But on the 9th there will be other Planning Commission members who won't have heard the same information. It would probably be more prudent to come on the 9th and make that information available to the whole panel of commissioners.

Motion was made by Hal Hamblin to postpone all the reviews until the September 9, 2015 Planning & Zoning meeting, so legal counsel has a chance to study the applications and give us his advice.

Shannon McBride: Sorry to waste your time and money, gentlemen.

The motion was seconded by Byard Kershaw. The chair called for the question and the motion was passed unanimously.

Tony Chelewski: We apologize for [this postponement] but thank you for coming in anyway.

The meeting was adjourned at approximately 10:55 a.m.

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Land Use Authority Chairman, Tony Chelewski	Land Use Assistant Administrator, Mary Reynolds