



# MINUTES

Kane County Planning Commission  
& Land Use Authority  
76 North Main Street, Kanab  
December 9, 2015

CHAIRMAN: Tony Chelewski

MEMBERS PRESENT: Tony Chelewski, Dale Clarkson, Byard Kershaw, Wade Heaton, Hal Hamblin

MEMBERS ABSENT: Que Johnson, Robert Houston

EX-OFFICIO MEMBER: Commissioner Douglas Heaton (absent)

STAFF PRESENT: Shannon McBride, Land Use Administrator; Mary Reynolds, Assistant Administrator; Rob Van Dyke, County Attorney; Lou Pratt, GIS Director; Tom Avant, Kane County Engineer

5:30 P.M. Work Session

6:00 P.M. Meeting called to order by Tony Chelewski  
Pledge of Allegiance Byard Kershaw  
Prayer Dale Clarkson  
Announcements Tony Chelewski

## Announcements:

Tony Chelewski said he called Mike Kemp; he had not seen Rudy [Delapaz] for two weeks and all is well. Shannon McBride said there is a project in the area at this time, so she will call Mr. Kemp and inform him.

**Motion** was made by Byard Kershaw to approve the November 4, 2015 minutes. The motion was seconded by Hal Hamblin. The chair asked if there were any comments or questions. The Chair called for the question, and the motion passed unanimously.

**Motion** was made by Wade Heaton to go in and out of public hearing at the call of the chair. The motion was seconded by Hal Hamblin. The chair asked if there were any comments or questions. The Chair called for the question, and the motion passed unanimously.



approval or denial. It is only a little grey, because it is quasi administrative. Property owners have rights. He [also] has the right to appeal. There is a lot of discretion here.

Hal Hamblin asked about the number of [allowable] pets. The application showed horses, mules and dogs.

Shannon McBride: The livestock description allows for more if we go by feet instead of zone (per the Kane County ordinance). He could have several more large animals. For the sake of this report, he is fine with the large animals.

Travis Legler: I am requesting a zone change on [my] corner lot. The south end properties are commercial. You have the maps; in the back of the map it shows the BLM boundary where a lot of people ride horses. The other map shows a close-up of my property.

Mr. Legler described the conditions his dogs were kept in; fencing, water troughs, a lot of area for the dogs to run. There is a shelter for dogs in the evening. His son waters the dogs every evening. Another map showed the four commercial properties nearby.

Mr. Legler said he researched the ordinances prior to purchasing land, but he didn't know it was zoned R-1. He also contacted the Sheriff's office regarding complaints. The Sheriff has responded three times in four years. But just last month there has been three visits (around Halloween). The neighbor(s) trespassed onto his property and removed a dog. Mr. Legler filed a report (with the Sheriff's office). His dogs have bark collars and will bark at feeding time. Ms. McBride visited twice and the dogs did not respond. Neighbors have come onto his property to pet his larger animals. He said he has only bred dogs once since he has lived there. Two of the dogs belong to his ex-wife. Mr. Legler has made improvements to the property and these improvements have benefitted the value. He wants to utilize all of his acreage.

Tony Chelewski called for public comment. He instructed them to keep their comments to two minutes.

Tom Williams: My property is adjacent to Mr. Legler's on the northwest. I am not anti-dog, but I take exception to the remark that the dogs don't nuisance bark, because they do. They make a lot of noise, every day. I moved to the country to have a quiet, peaceful existence. I have seen the dogs being hit and yelled at. I am opposed to allowing more dogs.

Judy Lee: I live kitty corner to the Leglers. Having 12 dogs that close is too close. I can hear the dogs barking. I haven't made any complaints, but I don't want double the dogs.

Eileen Clarke: I live across from Mr. Williams. I hear the dogs all the time. I am concerned about property values. I oppose the zone change.

Herb Alexander: I don't live too close [to the Legler's]. It isn't a matter of the number of dogs; it's a nuisance problem. If he is allowed more, it will exacerbate the problem. There is a dog nuisance ordinance, but it isn't on the website.

John Sichta: I live to the west of Travis. From sunrise to sunset, there is a lot of wildlife around. The dogs consistently bark. I keep my windows closed. It's a nuisance. We are talking about a commercial breeding operation. The animals are used in business, yet they are housed on residential property. I am opposed to the zone change.

Tiffany Legler: They are my dogs; my pets. They are taken care of greatly. They don't bark a lot and I live there. They act up sometimes, but not a lot – like if they see deer. People who aren't around dogs don't understand.

Valerie Bermant: I don't live too near [the Leglers]. It's a property rights issue. There is no reason not to grant it. We don't need to impact a person's livelihood. We hear critters all the time – coyotes, other dogs, etc. I have lived by dogs that are noisier. I think you should allow the variance.

James Bermont: This isn't new; it has already been done before. If it's a nuisance, that's one thing, but if it's legal, then it's legal. A nuisance is separate from this and not germane to the issue of the number of dogs he can have. I was at the original meeting that described the amount/number of animals allowed [and placed in the ordinance].

Diane Leake: I live northeast of Travis. He never has been in compliance since he's lived there. Today he wasn't around and neither were the kids. The dogs barked for 2 ½ hours. This is a daily occurrence. I am against having 12 dogs. [Ms. Leake played a recording of barking dogs].

Carol Wahlstrom: I live with Diane. We went to the house Halloween night. Twelve dogs beat up on one, and I thought the dog was dying and going into shock. His dogs are tools, not pets. I am opposed to the zone change.

Tia Muchey: I am in a relationship with Travis. These dogs are well-loved, fed, and sheltered. Other dogs around the area bark, too.

Tad Mecham: I live east of Travis. He is a good friend. He didn't know he was out of compliance. Is this really about nuisance barking or is it about people's opinion? I am in support of his request.

Lynn Mecham: I am in support of the zone change. With the amount of property he has, the zone change should be made.

Tony asked the general public if Mr. Legler had six dogs and followed the regulations would barking still be a problem. The answer was yes. Tony asked how they are housed and Mr. Legler said they travel in packs during the day.

Ray Wells: I live across the highway. The dogs don't bother me, but I walked all over the subdivision and could hear the dogs all the way. I am opposed to the zone change.

George Reese: I live in Vermillion Cliffs. Mr. Legler wasn't in compliance when he moved here. You can't have a business there. People are very gracious to allow some things, catteries, etc. They are taken care of and there are a lot of strays. You aren't talking about one property having more dogs you are talking about the whole area. You can't take care of that many dogs. If you make this legal, others will do it. You'll have to take spray with you if you walk (to be safe); no one can handle that many dogs (if they are walked).

Joann Wendeman: I have lived in Vermillion Cliffs for 16 years. I think he is law enforcement for a government agency, so he should know the laws. He knows he is in a residential area. Other homes are residential; I believe 12 dogs are too many when they are all barking. I am opposed to the zone change.

Millie Gardener: I have a plat map to show the board. [Ms. Gardener was allowed to bring the plat forward to the Commission members]. I did research. I live behind him. My front door is 60 ft from his back fence. I was involved with the rescue of the attacked dog. The dog was being torn to pieces; I have nightmares about it. I want to read a statement.

Ms. Gardener explained which ordinance she looked up. She said she has considered moving. She read a letter from a realtor who said property values will be affected. She stated she had read about how dogs will attack one if injured. He should be concerned about the neighbors. He is aware of the noise problem. If the zone change is approved it will be a total lack of concern for neighbors.

Mike Muellner: I am a resident at the end of the cul-de-sac [Red Hills]. I am against the change.

Larry Erdman: I have lived here 5 ½ years. I live about a ½ mile away. I can hear [the dogs] and it is affecting us ½ mile away. To characterize this as commercial is a mischaracterization. He trains, breeds and boards. He is doing business on his property. He is out of compliance for R-1 or R-2. I suggest Mr. Legler do the right thing and get commercial property somewhere else. It is a commercial operation. I ask you to deny his request.

Jerry Foote: I have lived in Vermillion Cliffs for 16 yrs. One dog barks, two more bark and it becomes a geometric thing. Barking dogs have been a problem in the past, but if you add more, it will get worse. I am opposed to the change.

Jackie Liebfried: I live about a mile west of Mr. Legler. I can hear the dogs. Allowing more dogs will allow others to have that many. I am against the request.

Jeff Fisher: I live in Vermillion Cliffs [at the base of] the cliffs. There's an echo and it sounds loud. Those commercial lots are a joke.

Herb Alexander: This is a noise problem, not a zone problem. There is no ordinance on line.

Shannon McBride: The ordinance on nuisances is separate from this. The Sheriff handles nuisance complaints, not the Planning & Zoning Commission.

Someone asked how many R-2 properties were in the Vermillion Cliffs; Shannon said there were five. She explained there were commercial lots, too. Mr. Legler could ask for a change to Commercial instead of R-2. This isn't a spot zone issue. If there weren't other R-2 properties the application could still be considered.

Ken Hodson: I live across the road about a ½ mile south and I can hear the dogs.

There was a question about why the R-2 zoning was allowed and Shannon said it was set up [when the development was formed] so there was no information why the property was zoned that way. Several meetings have been held on this issue.

Justin Jones: I live out there. I can hear his dogs, mine, and others. It isn't just his dogs barking. His business leaves town.

**The Chairman called the commission out of public hearing** and Tony thanked the public for participating.

Shannon McBride: I have given you my staff report. You have all the information. If you approve this [or deny it], it has to go to County Commission.

Rob Van Dyke: To clarify as far as public comments are concerned - there are things to consider and not consider. It's important to hear opinions, but as far as making your decision, you must use a rational basis. Not, 'I live nearby and oppose the change'. Mr. Legler is not making application based on the number of dogs he has; the ordinance is set. Comments about noise can be considered but only in relation to what is in the surrounding area – does it fit in? There is a separate ordinance that governs nuisances. You can consider it to a certain extent, but you aren't deciding [the merits of the application] based on noise. Comments must be substantive, not opinion. The substance would be based on specifics; you can consider those.

Wade Heaton: This is not our ordinance; it belongs to everyone. We need to address a couple of issues. One – I love hound dogs; I love what he does, that he's self-employed. But safeguarding private property rights is what this board does. We protect the rights of each individual. That is important. There is a difference between the land use ordinance and the nuisance ordinance. [The nuisance ordinance] is not enforced by us. Barking dogs need to be taken up with that authority. Mr. Legler tried to get out of town with his dogs. Technically, [this] R-1 isn't out of town; it's designed for residence. City limits zoning is often R-1. But the key is the zoning. The zone is what's important. Above all else, we must protect the zone. This creates an issue, because everyone bought in R-1 – residential. [That means] normal residential activities. We have identified in our ordinance what that is [i.e. six dogs or less]. It looks like Mr. Legler is doing

wondrous things. He has well-cared for dogs. But we have to protect the zone. The expectation is outlined in the ordinance. I don't know if we can change the zone and protect the zone.

Hal Hamblin: That sounds good but we have the right to change it to R-2. If it was in a different place, it would be different. Do we have the right to deny it?

Wade Heaton: We are within our legal bounds to make the change. If this was a new subdivision, I would say yes. But others have a vested interest. We have to protect their rights.

**Motion** was made by Wade Heaton to recommend to the County Commission the denial of the application for a Zone Change for Travis Legler parcel #6-148 (All of Lot 148 Vermillion Cliff Estates) from R-1 to R-2, because we have to protect the vested interest in the R-1 zone. 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.

Tony told Mr. Legler the matter had to go before the County Commission and it could be overruled there. Mr. Legler requested extra time to find homes for some of the dogs. Shannon will get the application on the County Commission agenda.

The Chairman called the commission into public hearing.

**Administrative**                      **(2) Lot Joinder**  
**Public Hearing**                      **Dale Fry, Meadow View Estates, Plat D, Lots 91 & 92, new lot 92;  
Submitted by Brent Carter, New Horizon Engineering**

Brent Carter: These people have two lots to join together into one.

Shannon McBride: You have my staff report. I recommend it, so does the Kane County engineer.

The Chairman called the commission out of public hearing.

**Motion** was made by Hal Hamblin to approve the application for a Lot Joinder for Dale Fry, Meadow View Estates, Plat D, Lots 91 & 92, new lot 92. 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 unanimously.

The Chairman called the commission into public hearing.

**Administrative**                      **(3) Lot Joinder**  
**Public Hearing**                      **Wesley & Beverly Ronald, Zion View Mountain Estates, Unit A-  
revised, Lots 186 & 187, new lot 187; Submitted by Brent Carter,  
New Horizon Engineering**

Brent Carter: These are two more lots to join together as one.

Shannon McBride: You can see my staff report. It doesn't have to be recommended to County Commission.

The Chairman called the commission out of public hearing.

**Motion** was made by Dale Clarkson to approve the application for a Lot Joinder for Wesley & Beverly Ronald, Zion View Mountain Estates, Unit A-revised, Lots 186 & 187, new lot 187. 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.

The Chairman called the commission into public hearing.

**Administrative Public Hearing**                      **(4) Lot Line Adjustment**  
**Alan & Sheri Hughes, and Maxene Tanner, Trustee of the "Maxene Tanner Trust", Mirror Lake, Plat B, Lots 20 & 21; Submitted by Brent Carter, New Horizon Engineering**

Brent Carter: There's a boundary line disagreement that has been worked out. They must change the amended plat to the new line. The property line was too close to the house.

Shannon McBride: I am strongly recommending the easement be vacated. The house is over the line. This doesn't have to be recommended to the County Commission until it is vacated. They had attorneys work with them to split the line.

Tom Avant, County Engineer, said the owner on one side had to quit claim deed the property; one for the north lot.

Brent Carter: There is no change on the easements. They are leaving it where it is.

There was a short discussion on the size of lots and what is being lost.

The Chairman called the commission out of public hearing.

**Motion** was made by Wade Heaton to approve the application for a Lot Line Adjustment for Alan & Sheri Hughes, and Maxene Tanner, Trustee of the "Maxene Tanner Trust", Mirror Lake, Plat B, Lots 20 & 21 with the caveat that Planning & Zoning strongly recommends the Tanner Trust vacates the existing easement. 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.

Brent asked about the process to vacate the easement. He was told they must notify all the utility companies. They can use the same plat. Tom said it has to go through P&Z then through Commission; it needs an ordinance [number]. Rob said it doesn't need a new plat but that might be

confusing to future owners. A recommendation must be made to the county commission. Brent was told he could do an application to vacate an easement. A new plat is recommended, but not required.

The Chairman called the commission into public hearing.

**Administrative  
Public Hearing**

**(5) Amendment to Development Agreement  
Agreement between Canyon Land Development, LLC and Kane  
County regarding parcel #187-OS-3; Submitted by Tom Avant,  
Iron Rock Engineering**

Tom Avant: With the Canyon Lands plat, they have commercial pieces in different areas. They left a lot of open space. In the agreement, there is a provision that allows them to build in open space. It is zoned Ag. There are provisions that allude to open space, but there is a disagreement as to what activities are allowed there. They [Amangiri] want to build “tents” (\$650,000). It is considered high-end camping. Customers spend a lot of money to stay in these tents. They are permanent structures; they have A/C, plumbing, concrete floors, and a dipping pool. The tents are elaborate. They want to clarify if these can be built as part of a recreational package. They want to amend 9.2 of the [amended] agreement. Originally, it said they could build recreational facilities (tents). Rob and Craig (attorney for Amangiri) have been working on language to add specificity for what can and can’t be allowed.

Rob Van Dyke: This 9.2 section identifies recreational facilities but doesn’t define it. They are trying to say tents meet that [definition], but they are permanent structures. Clearly, it doesn’t fit (the agreement). They talk about common areas, which is open space, but that destroys the concept of open space. Normally, they should come back with a plat amendment and zone it appropriately. We have done previous amendments. They want to do it this way [amending the development agreement] because of the multiple international banking agencies that would have to get involved. What they propose, and what they agreed to, restricts them on what they are used to doing. They want to make 50% open space. We don’t require that. This proposal blows open space out of the water. It lets them do what they want. Their attorney now understands they have to do a plat amendment in the future. For now, we can let them expand the recreational description with permanent structures. He [attorney] will add language we will accept. He will contact Tom for amounts [percentages]. They will only use 5-10% of the common area, and the rest is open space. They must figure out what our open space requirement is. In order to have 20% [open space], a certain percentage of common area has to be open space. Other expanded uses can be used in the common area.

Shannon said she will get a ledger from Tom Avant to keep track of this, since there isn’t a plat, yet. Tom agreed to make a spread sheet to delineate what is what. Discussion ensued about what open spaces are continuous. Rob agreed this was a good idea. It is pretty wide open and should be no problem. Shannon said the ordinance doesn’t say “contiguous” just 20%. It could be contiguous, but the ordinance doesn’t require that.

Wade Heaton asked if the ordinance doesn't require it why go above and beyond. It's their barbecue; they can do what they want to do as long as it falls within our ordinance. Rob said it sets precedence for future dealings.

Shannon added that Kevin McClaws has a similar situation. Recreation areas can be defined differently. Wade said the open space concept is more a marketing strategy. If they want to spread it out, that's their business; that is free market. Rob said this is a little different because normally we would get a plan, and we haven't got one. We're going to let them do their thing, but we don't know what it looks like until they turn in a plan. The discussion continued about open space. They have six, plus, sections.

The Chairman called the commission out of public hearing.

**Motion** was made by Wade Heaton to recommend approval to the County Commission the amendment of the development agreement between Kane County and Canyon Land Development, LLC, with the caveat that the agreement the attorneys reach will be followed, and future facilities will be built with an amendment to the plat (and zone change, if required). 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.

**Administrative**

**(6) Re-conveyance of Lots to Property Owner**

**Wayne Schwalbach, Good Earth Development, LLC, Bryce Summit, Lots 3 & 4. Located 3.7 miles north of Todd's Junction on Hwy. 89 & Hwy 14; Submitted by Shannon McBride & Lou Pratt**

Lou Pratt explained the situation with the conveyance of lots. UDOT has authority over access on highways. Mr. Schwalbach got to develop a seven-lot subdivision, but was limited to [selling] 5 until he built an access road into the development. Since things have changed – UDOT has made the highway safer – they are willing to release the hold/requirements on the lots.

Shannon McBride: This needs to be recommended to the County Commission. They will take care of the paperwork. [Signing off the trust deed.]

Lou Pratt: This will be good to get off the books. We just approved a 10-lot subdivision up the road [from this development]. It doesn't look good if we force him to do turning lanes and not the other one. This has nothing to do with a rural unimproved subdivision. It's not a full-blown subdivision, but it now has safe access. UDOT approved it. [See UDOT's letter in the packet.]

Wade Heaton agreed with Lou Pratt's assessment. He said it was one of the [original] requirements; at that time, UDOT weighed in and required a turnout. The fact that they released [the requirement] is enough for me to let it go.

**Motion** was made by Hal Hamblin to recommend approval to the County Commission the re-conveyance of Lots 3 & 4 of Bryce Summit, to Wayne Schwalbach, Good Earth Development,



**Administrative  
Public Hearing**

**(8) Lot Joinder  
Douglas & Darlene Crowe, Elk Ridge Estates, Unit 1, Lots 23 & 24,  
new lot 23: Submitted by Tom Avant, Iron Rock Engineering**

Tom Avant explained the plat and the Lot Joinder. He said the title report and [consent] letters would be delivered to Shannon.

Shannon McBride: The county attorney said it was O.K. to approve the Lot Joinder pending receipt of the documents.

The Chairman called the commission out of public hearing.

**Motion** was made by Byard Kershaw to recommend approval to the County Commission for the Lot Joinder for Douglas & Darlene Crowe, Elk Ridge Estates, Unit 1, Lots 23 & 24, new lot 23 and vacate a 7.5 ft. utility easement pending receipt of the missing documents. 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.

The Chairman called the commission into public hearing.

**Administrative**

**(11) Temporary Use Permit  
Annie Miller, additional time for living in RV at Vermillion Cliffs  
Estate, 6-83 E. Boulder Bluff Rd.**

Shannon McBride: Annie isn't here, tonight, but we can approve this without her here. The ordinance says she can apply for a temporary use permit without having a building permit. If you do extend her time, she will have six months to obtain a building permit and live in her RV for [part of] 2016. You can approve that I sign a temporary use permit so she can live in her RV for three more weeks [the completion of 2015]. Then her time starts over in 2016 [per our ordinance]. There has been only one complaint. She was red-tagged and she came to the office to get back into compliance.

Jerry Foote, a member of the public, wanted clarification of the ordinance and asked how many times she can move her RV back and forth? Shannon answered that chapter six [in Title 9] was created to handle this. [The] six month [timeframe] keeps most people appeased. We don't enforce CC&R's. Some subdivisions are creating stricter rules, but we don't enforce them.

The Chairman called the commission out of public hearing.

**Motion** was made by Dale Clarkson to approve the Temporary Use Permit for Annie Miller, 6-83 E. Boulder Bluff Rd. Motion was seconded by Byard Kershaw.

Wade Heaton said we set precedence by doing this. I want her to be able to stay there. But the precedence means it won't be the last time we get this request. We have to be able to justify it. Wade read the ordinance from chapter six.

**[The vote:]** The Chair asked if there were comments or questions. The Chair called for the question; and the motion passed unanimously.

**Motion** was made by Dale Clarkson to adjourn the meeting. The motion was seconded by Hal Hamblin.

Meeting was adjourned at: 8:31 pm

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Land Use Authority Chairman,  
Tony Chelewski

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Land Use Assistant Administrator,  
Mary Reynolds