



# MINUTES

Kane County Planning Commission  
& Land Use Authority Meeting  
76 North Main Street, Kanab  
April 13, 2016

CHAIRMAN: Tony Chelewski

MEMBERS PRESENT: Tony Chelewski, Robert Houston, Hal Hamblin, Wade Heaton, Dale Clarkson

MEMBERS ABSENT: Danny Brown, Byard Kershaw

EX-OFFICIO MEMBER: Jim Matson, absent

STAFF PRESENT: Shannon McBride, Land Use Administrator; Mary Reynolds, Assistant Administrator; Jeff Stoddard, Kanab City Attorney (standing in for Deputy County Attorney), Tom Avant, County Engineer

STAFF ABSENT: Reid Mann, Deputy County Attorney; Ryan Maddux, Building Official

5:30 PM Work Meeting

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

**Announcements/Updates:** Tony Chelewski welcomed the Boy Scouts Troop #361 to the meeting. He also said he called Mr. Kemp and things are getting very busy [on the mountain]. Shannon McBride said she would give Rudy Delepaz a call to check in with his work schedule. The chairman recognized Jeff Stoddard (Kanab City Attorney) for sitting in for Deputy County Attorney, Reid Mann, who was attending the UCIP conference.

**Motion** was made by Hal Hamblin to approve the **March 9, 2016** minutes. Motion was seconded by Wade Heaton. 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. 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.

**Administrative  
Public Hearing**

**(1) Finalizing Preliminary Plat: Peaches Planned Unit Development  
Kevin McLaws, Zion Mountain Development, LLC, parcels #1-9-13-4, 1-9-13-5A, 1-9-13-4A, and 1-9-14-3A; Submitted by Tom Avant, Red Rock Engineering, holding Power of Attorney**

Tom Avant: I did a slope analysis; 85% is buildable under the ordinance. Everywhere a cabin is placed is buildable according to the ordinance. All lots [on the plat] are buildable. Only 16% of the property is unbuildable. Every lot we have [laid out] is buildable.

Shannon relayed information to the commission about 'open space'. The Planning & Zoning members questioned a few placements on the cabins/lots. Tom explained the proposed locations.

Shannon referred to her staff report and Warren Monroe's [alternate county engineer] recommendations. There are a few conditions that need to be met. The owners need a final review from a (new) attorney for the agreement pertaining to the solid waste disposal system because their previous attorney, Ed Robbins, passed away [last year].

Wade spoke about the original agreement regarding waste. The board is meeting again. Shannon said the preliminary plat can be approved with conditions (pending receipt of the waste agreement and fence line situation).

Chairman Chelewski called the commission out of public hearing.

**Motion** was made by Wade Heaton to approve the preliminary plat of Peaches Planned Unit Development for Kevin McLaws, Zion Mountain Development, LLC, parcels #1-9-13-4, 1-9-13-5A, 1-9-13-4A, and 1-9-14-3A with the conditions stated by the (alternate) county engineer, Warren Monroe, Jones and DeMille Engineering. Motion was seconded by Hal Hamblin. The Chair called for the question and the motion passed unanimously.

Chairman Chelewski called the commission into public hearing.

**Motion** was made by Wade Heaton to take items out of order. Motion was seconded by Dale Clarkson. The Chair called for the question and the motion passed unanimously.

**Legislative  
Public Hearing**

**(6) Revision to Land Use Ordinance 9-21K-2(8-9)  
Discussion on easements to newly created parcels; Submitted by Commissioner Dirk Clayson**

Shannon explained the situation about creating a [mandatory] easement with an RUS. It would create a situation where a person could hold another property owner hostage. It was explained to Commissioner Clayson that Kane County had land where there is no access. If there is no access, Commissioner Clayson doesn't feel we have a good solution other than to change the ordinance.

There are quite a few parcels that have this issue. The problem is that this could stop the rural unimproved subdivision in its tracks if someone along the line refuses giving an access easement.

Wade says he understands Commissioner Clayson's concern. He understands the county has problems, but he thinks this is where his argument falls apart. When those parcels were set up, the same skilled hands weren't handling Land Use as there is now. The people we have handling Land Use (now) are capable of keeping those problems from happening again. "If we want to split property for our kids we can't do it unless you have an excellent relationship with your neighbor. The *shall* goes too far."

Tom Avant spoke to the same restriction. He addressed prescriptive rights and having to go to court to get an easement. Prescriptive easements might be a better way to go. There is also "easement by necessity". You have, by law, granted an easement for people to go by, so people don't get landlocked.

Shannon stated that Commissioner Clayson wants "proof" of access. The discussion continued on what some of these different easements meant. The "easement by necessity" is rare, but is possible.

Shannon explained that no matter how the P&Z votes, Commissioner Clayson wants this to go to County Commission so they can vote on it. Shannon went over the wordage; it could be changed, but they must be careful.

Robert Houston didn't understand why people could divide property if they didn't have access. Physical access is there, but legal access isn't necessarily written down. Shannon explained that Commissioner Clayson wants it written down. Tom Avant said it could be prescriptive (and still give Commissioner Clayson what he wants [as a solution]). If P&Z requires legal, written access, it is likely one of the neighbors will eventually balk and not let the easement go through.

Shannon gave an example of a man who could not get an easement from his neighbors because he wanted to do a commercial venture in a residential zone. Although that was an extreme (and it was against ordinance to do commercial in residential) it was an example where the neighbors organized to keep their neighbor from getting the needed access for a commercial project.

The discussion continued regarding the improvements of the access roads – gravel/repairing/developing; according to Jeff Stoddard, the access roads could still be repaired and maintained, but not asphalted.

Dale Clarkson spoke to the county roads that have no accounting. They are used through prescriptive rights. He didn't want the developers to continue to be responsible for them. Wade said Alton roads were a lot like that. If there wasn't a written [documented] easement, the land couldn't be given to their kids; that's the trouble he saw with this.

Tom said the prescriptive easement should still be 66 feet; Shannon agreed for consistency. Jeff said both required the recorded easement or have the owner say/define (by written document) that

it's a prescriptive easement. It's not as harsh as Dirk's suggestion but more palpable than not having anything at all.

Wade said the rural unimproved applications have been 50/50 families and developers. Robert said if they had to get easements, they couldn't have gotten the parcels recorded.

Charlie Saba (public member) asked if prescriptive easements were transferable; the answer was yes. The burden to meet: 7 years for public access, 20 years for private access. It needs to be documented.

It was suggested to let the attorney's word it; hold it off for one month.

Chairman Chelewski called the commission out of public hearing.

**Motion** was made by Wade Heaton to postpone the revision(s) to Land Use Ordinance 9-21K-2(8-9) until the May, 11, 2016 meeting so the attorneys can reword the ordinance. Motion was seconded by Hal Hamblin. The Chair called for the question and the motion passed unanimously.

Chairman Chelewski called the commission into public hearing.

**Legislative Public Hearing**                      **(4) Revision to Land Use Ordinance 9-21D-3(e)(10) and 9-21G-8**  
**Discuss the definition and requirements of "fencing"; and exterior perimeter fencing; Submitted by Shannon McBride**

Shannon McBride addressed the fencing changes/requirements that were currently required around subdivisions. Do you still feel we need this requirement? Did you intend every subdivision in the county to have a perimeter fence?

Tom Avant: It's really up to the planning commission.

Tony Chelewski: I live in [a subdivision] that was supposed to have one. The cows got in because there wasn't one [a fence]. What they did was put up a T-fence and [placed] one slice of barb wire [across the top] which keeps the cows out. It works on the one side, not the other. The cows walk around it. If the developers had followed the ordinance it wouldn't be a problem. And if there weren't any cows next to the subdivision, it wouldn't be a problem.

They discussed 20 acre and one acre fencing; Hal didn't want the ordinance taken out completely; he wanted it left in. Shannon read the fencing ordinance the P&Z added into the Rural Unimproved Subdivision regulations. She addressed the regular subdivision fencing section.

Wade addressed the fencing requirement for a rural unimproved subdivision verses a residential subdivision. They wouldn't likely be next to each other. Wade pointed out what part wasn't being enforced.



**Legislative  
Public Hearing**

**(5) Revision to Land Use Ordinance 9-21E-4(b)  
Item under 'General Submission' on plat: add an item "30"  
Culinary Water Authority/Sanitary Sewer Authority, & Local  
Health Department signature blocks; Submitted by Shannon  
McBride**

Shannon McBride: We haven't had this before, but it would be wise for us to adopt this. Other counties have done it. Trainings I have gone to show how often people change positions, so if we have the signature blocks and it is recorded on the plat it would be less of a liability for the county. The 'Culinary Water Authority' and 'Sanitary Sewer Authority' are part of the development meeting [and should sign the plat]. I think they would pay more attention to what they are signing if their signatures were recorded. It is on the checklist and it would only apply to subdivisions.

Discussion covered how this would help the county and what this would look like on the plat.

Chairman Chelewski called the commission out of public hearing.

**Motion** was made by Wade Heaton to make a recommendation of approval to the County Commission for revision to Land Use Ordinance 9-21E-4(b) to add two additional signature blocks of Culinary Water Authority/Sanitary Sewer Authority to the subdivision plat. The motion was seconded by Robert Houston. The Chair called for the question and the motion passed unanimously.

**Motion** was made by Hal Hamblin to adjourn the meeting. **Motion** was seconded by Robert Houston. The Chair called for the question and the motion passed unanimously.

Meeting was adjourned at: 7:16 pm

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Land Use Authority Chairman,  
Tony Chelewski

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Land Use Assistant Administrator,  
Mary Reynolds