



# MINUTES

Kane County Planning Commission  
& Land Use Authority Meeting  
76 North Main Street, Kanab  
**June 8, 2016**

CHAIRMAN: Tony Chelewski

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

MEMBERS ABSENT: n/a

EX-OFFICIO MEMBER: Jim Matson (absent)

STAFF PRESENT: Shannon McBride, Land Use Administrator; Mary Reynolds, Resource Management; Reid Mann, Deputy County Attorney; Linda Little, County Assessor/Building Official; Ryan Maddux, Deputy Building Official; Tom Avant, County Engineer

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: I called Mike Kemp a month ago. He said he has seen only a couple of guys on the road. I called him again today and Mike said he hardly ever sees them.

Shannon said Rudy Delapaz has a couple of jobs in the area at this time.

**Motion** was made by Dale Clarkson to approve the **April 13, 2016** minutes. Motion was seconded by Hal Hamblin. The Chair asked for any questions or comments. 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 Robert Houston. The Chair called for the question and the motion passed.

Chairman Chelewski called the commission into public hearing.

**Legislative**                    **(1) Revision to Land Use Ordinance 9-21K-2(8-9)**  
**Public Hearing**                **Discussion on easements to newly created parcels for Rural Unimproved Subdivisions; originally submitted by Commissioner Dirk Clayson.**

Shannon McBride explained that she and Tom Avant have been handling revisions to this document for two months between them and Commissioner Clayson. Shannon went over the changes, the additions, and the revisions. She verified there are Class b, c, & d roads in Kane County and that the county needs to keep all three kinds of roads.

Robert Houston asked about whether access was referring to ‘within the development’ or ‘to the development’. The answer was ‘to the development’. Shannon explained further that she and Tom feel this is going to kill the Rural Unimproved Subdivision process. Wade Heaton asked why the prescriptive right clause was being stricken. Tom said Commissioner Clayson does not want the assertion of a prescriptive right to be there. He wants it written and recorded [with the deed] that there is access there for everyone. Tom said he has an issue with placing “public” with road access. It gives access to anyone. He believes it should only allow utilities. Shannon said she will note it, but not change it because it is Commissioner Clayson’s change. Tom says it should say public utility easement, and private ingress/egress. Tom thinks Dirk just wants access for emergency vehicle access, however, utility easement allows for that kind of access.

Discussion continued about what the recorded access means. Tom explained what the public access would allow. Tom showed on the white board through a diagram how the access will work as stated by Clayson. If an owner only has a prescriptive right to a property, and he has to obtain a written right to prove he has access to his property, it could prove to be a cumbersome if not impossible process. Tom explained in detail how a combination of WUI (Wildland Urban Interface) access, utility access, and a combination of Title V access together would work to obtain access to a property (and be a minimum of 28 feet wide). Then when it reaches the RUS, the access route has to be 66 feet. (Anything existing has to be 28 ft. wide; anything new has to be 66 ft. wide.) All access under Commissioner Clayson will have to have the 66 foot access easement.

Members of the Planning Commission argued this would kill the RUS. Several agreed. Wade went on record to say he believes Commissioner Clayson is wrong in doing this. The whole point of the RUS is to divide those parcels [that are located] off the beaten path. He would rather scrap the RUS altogether. He believes we are defeating the point of the RUS. Robert Houston said the RUS was created to help families and this is helping the developers/realtors. Wade says this change is falling way short of what the Planning & Zoning Commission originally intended. Wade says we are jerking the rug out from under the people who are the regular property owners. Wade says he will fight this at the Commission level. He will take it to the other two commissioners and ask them to vote against it.

Dale Clarkson disagreed that it helps developers. He thinks it makes it worse for everyone. The easement puts a burden on everyone – the 66 foot easement is out of line. This is not for real estate people at all. It blows the opportunity for anyone to use their land. It takes away the right for people to use their own property.

Tom said North Folk has many roads with no recorded easements; neither does Skutumpah or [some] roads in Alton [per Wade]. The discussion continued with most members being against the change. Danny Brown talked about what the 66 ft. easement would do to him on his property.

Shannon clarified that Commissioner Clayson wants this issue to go to the Commission regardless of how the Planning Commission votes.

Wade reiterated why the RUS was created in the first place. People had a choice of either creating a full blown subdivision or doing nothing with their property. The RUS gave them a chance to subdivide without the infrastructure expense. But if this is the change that is going to happen, then he believes the RUS should be made so unattractive that no one will do it.

Byard Kershaw questioned the RUS process and who it best served; Shannon explained they could not discriminate between families and developers with the RUS. Brent Carter asked what the reasoning was for the 66 foot access. Shannon said it was to be consistent with the other subdivision ordinances (on the inside). The problem is about needing to have the access on the outside where neighbors can hold you hostage. Wade doesn't think the county should assure the buyer has access; this is a buyer-beware state.

Dale thinks the access should read 28 feet. Robert said his concern is the future. Future development could mean a lot of people driving through his property when he doesn't want them to. Tom explained the difference between private and public prescriptive rights. Shannon stated the county requires 50 feet at this time (in the ordinance) on the RUS.

Wade said he agreed with the 28 ft. suggestion, but the bigger issue is about having to have written recorded access. Shannon said easements can hold development off a long time. Robert wondered if this could be redesigned to allow for a different kind of access. Wade pointed out Dirk was trying to fix a potential problem by creating a bigger problem.

Charlie Saba: Can't emergency vehicles travel where they need?

Ryan Maddux: WUI just says you need a certain width to allow vehicles through; it doesn't give permission to cross private property.

Reid Mann: Private property is governed by local statute. I don't see how a property owner can be held responsible if they don't allow the police to cross his property in an emergency.

Shannon explained property owners who do an RUS sign a document where they acknowledge their roads are not maintained by the county.

Tom said surveyors have the right of trespass (on the corners) of peoples' property. He thinks EMS is the same.

Wade said the heart of this is about private property rights. One should not have to jump through a bunch of hoops to divide their property.

Reid: Just because a person is law enforcement, that doesn't give them the right to cross onto private property; Fire personnel (during a fire) is different.

Discussion continued about prescriptive easements and access. What Dirk wants will stop development, not traffic. (Wade gave an example about the 40 lots behind Todd's Junction. There is only one point of access and the lot is owned by his grandmother. If Dirk's change is allowed to take effect, she could stop everyone from using that access.) The point is everyone would have to beg Wade's grandmother to get a recorded easement.

Reid: Dirk is dead set against prescriptive easement. He wants a recorded easement.

Linda Little: In Wade's case, all these people have a prescriptive easement, right? [Yes] If Dirk's change takes effect, and I must get a recorded easement, can I get an exclusive easement? [Yes.] Then only I would have access to my development? [The answer: Unless someone else went in and got an exclusive, too.]

Robert: Right now, everyone has a prescriptive easement.

Tom: Increasing traffic on a prescriptive easement does not over burden it.

Tom quoted Utah Ombudsmen – public agency's can go onto property in emergency situations. Entry does not constitute trespassing or taking.

**Wade asked whether this should even be voted on. He wants the recorded easement part removed; and prescriptive easement to remain. Do affidavit – or prescriptive easement with evidence. (Say prescriptive use has been established.)**

Shannon asked Reid about adding a clause to limit how many times acreage can be divided. Tom said there are ways to get around that.

Ryan said we should focus on the owners not the developers. Forget about the abusers. The market will drive what will go in [the size of the development] free market will dictate this.

Robert said he agrees but the issue still remains about how to get access to the property. How do they get from here to there? Wade said they should have bought closer to the road.

Chairman Chelewski called the commission out of public hearing.

Tom: I see two issues – minimum width, and whether you want recorded or prescriptive access. If you don't want this, what are the alternatives?

**Motion** was made by Wade Heaton to make a recommendation to the County Commissioners the proposed revisions to Land Use Ordinance 9-21K-2(8-9) with the following changes: remove the requirement of recording a written easement or access (for paragraphs b and c); and remove the minimum from 66 feet to 50 feet (for paragraphs a and b3). Motion was seconded by Dale Clarkson. The Chair called for the question and the motion passed.

Robert Houston voted nay.

Chairman Chelewski called the commission into public hearing.

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

**Administrative**      **(5.) Rural Unimproved Subdivision: Grandpa's Road Subdivision**  
**Public Hearing**      **John Taylor, parcels #3-4.5-29-3 & 3-4.5-29-4; Submitted by TC Engineering**

Tom Avant explained where Grandpa's Road was located. One side is already subdivided. Robert asked about room for a frontage road. Tom said there is room for one and Robert said we should plan for one. Tom said UDOT doesn't want one because the traffic flow wouldn't be right.

There was a short discussion about the parent parcel. A non-conforming piece was lumped into the subdivision. Water isn't required in this RUS. The only access is one road.

Chairman Chelewski called the commission out of public hearing.

**Motion** was made by Danny Brown to recommend approval to the County Commission for the Rural Unimproved Subdivision, Grandpa's Road Subdivision, for John Taylor, parcels #3-4.5-29-3 & 3-4.5-29-4. The motion was seconded by Hal Hamblin. Wade Heaton recommended amending the motion to include the conditions made by the alternate engineer, Warren Monroe. The amendment to the 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.

**Administrative**      **(6.) Rural Unimproved Subdivision: Hidden Hills**  
**Public Hearing**      **Dalco, LC, Bruce & Brent Williams, parcel 8-6-26-3; Submitted by Brent Carter**

Brent Carter explained the RUS for Dalco, LS and where it was located. He also explained where the easement was being given (which wasn't originally on the plat). The easement now being given across lots in Paunsaugunt Ranches is 66 feet so no matter what happens [with the (other Ordinance)] he is in compliance.

Chairman Chelewski called the commission out of public hearing.

**Motion** was made by Robert Houston to recommend approval to the County Commission the Rural Unimproved Subdivision, Hidden Hills, for Dalco, LC, Bruce & Brent Williams, parcel #8-6-26-3 contingent upon the completion of the county engineer's condition listed on his review. The motion was seconded by Wade Heaton. The Chair called for the question and the motion passed unanimously.

Chairman Chelewski called the commission into public hearing.

**Administrative**      **(7.) Lot Joinder**  
**Public Hearing**      **Daniel Meyers, Sr., Elk Ridge Estates, Unit 2, Lots 70, 71 & 73, New Lot 71; Submitted by Brent Carter**

Brent Carter explained the location of the property. Tom originally did a Lot Joinder on a different Lot (Brent is doing it on what's left of Lot 70.) The easements will stay. [All of them.]

Shannon said there are no more conditions left to do on the Lot Joinder. Shannon now has the final report from the county engineer [as of today].

Chairman Chelewski called the commission out of public hearing.

**Motion** was made by Hal Hamblin to approve the Lot Joinder, for Daniel Meyers, Sr., Elk Ridge Estates, Unit 2, Lots 70, 71 & 73, New Lot 71. The motion was seconded by Dale Clarkson. The Chair called for the question and the motion passed unanimously.

**Legislative**      **(2.) Revision to Land Use Ordinance 9-21B-1 Subdivision Regulations**  
**Public Hearing**      **Regarding subsections D-H; Submitted by Reid Mann, Dep. County Atty.**

Reid explained why he wanted to re-order the paragraphs in the Subdivision regulations for better flow.

Chairman Chelewski called the commission out of public hearing.

**Motion** was made by Danny Brown to recommend approval to the County Commissioners for revisions to Land Use Ordinance 9-21B-1. Motion was seconded by Wade Heaton. Motion passed unanimously.

Chairman Chelewski called the commission into public hearing.

**Legislative**                    **(3.) Revision to Land Use Ordinance 9-21D-5**  
**Public Hearing**                **Kane County Commission approval of preliminary plat; Submitted by Shannon McBride**

Shannon: This is about taking preliminary plats to the Commissioners. The Ordinance already went before them so this is a matter of the cart before the horse.

Chairman Chelewski called the commission out of public hearing.

**Motion** was made by Robert Houston to recommend to the County Commission the revisions to Land Use Ordinance 9-21D-5. The 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**                    **(4.) Revision to Land Use Ordinance 9-1-14; 9-15A-2c; 9-15A-4; 9-15A-5**  
**Public Hearing**                **Conditional Uses, permits, applications, terms and fees; Submitted by Shannon McBride**

Shannon: The reason for this is because we have received several Conditional Use Permits for a Solar Power Plant and the county will lose money if we don't change the fee. Reid had a better idea – he said make two different applications; one residential, and one commercial. The residential will stay \$150. The CUP runs for one year. The solar power plant will not be done within the year, but they can amend it. The CUP also runs with the land. It's up to you how to handle it. If they [solar power plant] don't make progress in a year, I can revoke it or extend it. Are you OK with this language? [Yes.] The commercial application is \$500. Tom's review [fee] will be covered this time because the solar power plant put in seven different CUP's at \$150 each. We need to change this for the future, though. If we didn't do this now, we would have to change the Ordinance. We are handling it through the application process.

Reid asked about the likelihood of extra fees incurred in the process. Wade said it can happen with subdivisions so it's not out of the question. Shannon said she keeps an accounting sheet on every project to show costs. Reid said the language could be changed a little.

Reid said in the event additional engineering fees are accrued by the county related to a specific project the project applicant will be responsible for all additional engineering fees. [This can be copy and pasted into 'C' in the Ordinance.]

Chairman Chelewski called the commission out of public hearing.

**Motion** was made by Byard Kershaw to recommend to the County Commission the revisions to Land Use Ordinance 9-1-14 fees (accrual of additional engineering fees). The motion was seconded by Danny Brown. The Chair called for the question and the motion passed unanimously.

**Motion** was made by Wade Heaton to recommend to the County Commission the revisions to Land Use Ordinance 9-15A-2c; 9-15A-4; and 9-15A-5. The 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 Hal Hamblin to adjourn the meeting. **Motion** was seconded by Byard Kershaw. The Chair called for the question and the motion passed unanimously.

Meeting was adjourned at: 8:06 pm

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Land Use Authority Chairman,  
Tony Chelewski

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Resource Management Planner,  
Mary Reynolds