

MINUTES

Kane County Planning Commission & Land Use Authority Meeting 76 North Main Street, Kanab November 9, 2016

CHAIRMAN: Tony Chelewski

MEMBERS PRESENT: Tony Chelewski, Wade Heaton, Dale Clarkson, Danny

Brown, Robert Houston

MEMBERS ABSENT: Byard Kershaw, Hal Hamblin

EX-OFFICIO MEMBER: Jim Matson

STAFF PRESENT: Shannon McBride, Land Use Administrator; Mary Reynolds,

Resource Management Planner; Kaylea Crosby, Administrative Asst.; Ryan Maddux, Building Supervisor/Chief Deputy Assessor; Reid Mann, Deputy

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

Announcements/Updates:

Shannon asked if all the veterans could stand so they could be recognized. Tony said he called Mike Kemph and Mike said he had not seen Rudy.

Motion was made by Danny Brown to approve the October 12, 2016 minutes. Motion was seconded by Dale Clarkson. 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.

Administrative (1) Compliance Review of Previously Divided Property Douglas B. Murray, parcel #3-5-34-4A2

Shannon said thanks to Sally Quinn, realtor; they found the record of survey that was not filed so this just a procedural defect. Shannon went through State and County ordinances to make sure it is in compliance and a staff report is in the info packets. She went through the previous minutes and could not find where they had gone before the Planning Commission in the past.

Reid Mann stated that this parcel was not illegally subdivided. He said it was legally subdivided through the agricultural exemption statute in Utah State Code at the time. He said now that they want to build on the parcel it needs to be adapted through the subdivision ordinance process.

Wade asked what the existing zone and size was.

Shannon said it was Ag and 21 acres (+/-).

Dale Clarkson asked if all the properties that are improperly split have to go through this process.

Shannon replied yes, if they want to get a building permit. She said if it was pre-1982 she doesn't even have to look at the Compliance Review, but if it is after 1982 it was not grandfathered in, then they have to go through the process to make it compliant.

Dale asked if they should change the grandfather ordinance.

Shannon replied, the Attorney said they cannot grandfather something in that goes against Utah State Code.

Chairman Chelewski called the commission out of public hearing.

Motion was made by Robert Houston to recommend approval of the Compliance Review of Previously Divided Property, for Douglas B. Murray. Motion was seconded by Danny Brown. The Chair called for the question and the motion passed unanimously.

Chairman Chelewski called the commission into public hearing.

Legislative Public Hearing

(2.) Kane County Land Use Ordinance: 9-1-7, 9-5-3, 9-6A-6, 9-7B-5
Adding Definition and use matrix of Lodges, Agriculture Zone, & Residential Zone; Adding Definition and use matrix of Vacation Rentals & Residential Zones; Adding Definition and use matrix of Bed & Breakfast; Submitted by Shannon McBride

Shannon said she and Mary met with Reid and Rob, to come up with some definitions. She said there are a lot of Ag parcels that are all zoned AG. She said the P&Z members voted and decided that commercial uses could be allowed in the agricultural zones. She said recreation camps, motels,

hotels, and vacation rentals are all becoming the big fad. Shannon stated that the Rural Unimproved Subdivision's (RUS's) are zoned Ag because they are 10 acres or larger. You can't place 10 vacation rentals on one lot because vacation rentals are a home (dwelling) or a guest home; only two are allowed on any one parcel by ordinance. If someone was to call and want to put a tent, cabin, hotel, or motel on the lot then they are allowed to do that; that's the difference. It is a bit confusing but that is how the ordinance works. Ag is the least restrictive zone, besides manufacturing.

Shannon stated this is why the definitions are really important and the consequences need to be considered. She went on to say most of the uses are going to be in Ag zones.

Robert said the issue is that some of the RUS's are being used for commercial ventures.

Shannon clarified that commercial uses are allowed in Ag Zones (refer to Chapter 5). They want commercial and now they have these RUS's without infrastructure and are using them for commercial ventures.

Robert said they need to agree that this is a problem in the RUS's.

Wade said they knew when they approved RUS's that this would happen. They landed on the side that was less restrictive to accomplish their goal for the RUS's. He said the only way for the RUS's to work out as they envisioned, was to allow these uses as well. He is not happy about it, but the RUS's are accomplishing what they intended; unfortunately, property owners are taking advantage of it.

Shannon said they could make the RUS's an R-5 zone, instead of agricultural, but it would require the uses to be more restrictive, for example: Palomar Estates is zoned R-5; they could go down to 5 acres if they go through the subdivision process, but you could still require only residential uses. The only drawback is, you would affect farmers and ranchers due to limitations on ranching uses in residential zones.

Robert asked if there was a way to fix these issues.

Wade said they have talked about a way to fix it already, but they couldn't differentiate between a family use and a commercial development. They knew people would hack up these 10 acre pieces until they are unable to sell them. The market is still improving, so this could be a long term thing. This could be a problem, increase of traffic, building permits, and water, but right now it is not.

Shannon said what is happening is they are getting building permits, water, and the economy is picking up and these parcels are selling. However, the county will not maintain the roads and the applicant has to sign an acknowledgement that they understand that.

Reid came up with definitions that are in the staff report.

Wade said his biggest fear is possibly creating a problem when there is not one; they don't dictate free market and he would like to fix it (creatively).

Charlie Saba said his main concern is infrastructure, specifically the roads.

Danny said with the property owners are doing what they want without any monitoring with what they do; then whose responsibility is it.

Shannon said in the RUS's application they (the subdivider) have to sign an agreement of understanding knowing the county isn't going to maintain those roads.

Danny worried the people buying the lots will never know that.

Shannon said just the people who made the RUS's on the property; Utah is not a full disclosure state. She said hopefully the buyers will do their research; plus, it is recorded as a RUS.

Wade said that is a slippery slope, when we start worrying about emergency access (ambulance), none of that stuff is their fault. They can't make laws in fear of litigation. He said they discussed this last month; specifically what is a tent, a hotel, or a dwelling.

Shannon said since the meeting they have received a ton of phone calls on tiny homes and what is allowed. She said she needs to be able to look up a definition that is clear and precise. We also need to define bed the breakfast definitions for lodges, tiny homes, and vacation rentals. Shannon referred to the definitions paper in the packet in the staff report. She said there is an email that needs to be made part of the public record from Joanne Rando Moon. In the emails she wrote they are still having a lot of people going into the home next to hers and she is having an issue with the 20+ people.

Danny asked Reid if they would feel comfortable defending this definition in court.

Reid said the roads and water regulations are different from the definitions.

Shannon stated if they add definitions it takes care of the vacation rental problem.

Robert asked what if they live in a commercial area in a RUS; they never intended it to be used as commercial, but most RUS's are going to be used as a commercial area such as a grocery store for example.

Shannon said you can make all RUS's an R-5 zoning.

Dale asked why they were worrying about restricting commercial when you cannot put a grocery store or a McDonalds in a RUS. He said they should not dictate the RUS commercial uses.

Robert said the issue he sees is the infrastructure with all of those people that they could potentially have in there – water hookup, roads.

Dale said they are trying to tell the owners how to make a venture successful and it is not their job to do so.

Wade said he agrees with Dale, that they cannot dictate if the owners have water, roads, etc. His fear with the R-5 zoning for the RUS is that it pulls the rug out from under them in what the RUS was intended to accomplish. It is an agricultural use with logging, mining, cattle on the land, but then all of a sudden you make it R-5 to split it in half then none of those things can happen, it limits and defeats the purpose.

Shannon reminded then that they need to vote on definitions to add clarity and limit the uses therein, if that is their intent to do so.

Robert asked why they just can't eliminate commercial on RUS.

Shannon said we can bring that back next month at another public hearing so that it may be noticed ahead of time.

Robert said they never intended the RUS to have commercial uses allowed.

Wade stated they need to be careful when talking about zones because the uses in commercial zones are allowed in agricultural zones as well.

Shannon said if you put a clause under the RUS then they can be more restrictive than state code, but be aware of the consequences to every change.

Dale said the RUS has accomplished many things, let them mature, and he doesn't believe it is a problem right now. He said it is a great opportunity to clean up the illegal subdividing over the years, it is a means of making property available and he believes it is good.

Shannon said they have created over a hundred RUS parcels.

Wade asked what if they increase lot sizes to say 20 acres instead of the 10 acres.

She replied that it would create an issue, dealing with a lot of the 10 acres that were improperly split because of the 10 acre exemption in Utah State Code and Kane County Ordinances. The RUS has been an easy fix for people who bought those parcels. The consequences would affect the buyers and property owners. The average has been 10 acres for decades now.

Commissioner Matson asked what is bringing this to a head now.

Shannon said the commercial ventures the owners want to accomplish by subdividing through the RUS process—making recreation camps, hotels, lodges all on parcels with no infrastructure.

Commissioner Matson asked what is being harmed.

Shannon replied the infrastructure and the roads – with subdivision's (UDOT has to sign off on turning lanes or no turning lanes needed as one example of future problems being created).

Commissioner Matson asked if it is adding value to property/taxes.

Ryan said yes it is adding value.

Danny said he thinks they should proceed how it is and come back next month, and if they want to add the R-5 zoning then, they should put it on the agenda and discuss it..

Robert asked how many dwellings can you put on an acre if you call it a recreation camp, recreational homes, or vacation homes.

Shannon said if you go under the definition for dwelling, they can only put two. They can't do these camps because it is not a dwelling. She said the dwelling is used for residential purposes except for hotel, motel, lodges, apartments, etc is a completely different situation.

Robert asked what a recreational center is.

Shannon said all she has to go by is recreational grounds and facility. She said camping or any recreational use; so if a person says tent, which is camping and is a recreational use so they may put 20 tents, but not 20 houses (dwellings).

Ryan said they are trying to mix two different uses. He said the definition for vacation rental is to help out in residential zones because they don't want a commercial use happening on a residential lot. He said vacation rental is separate from a recreation camp which can't happen in a residential zone and has to go into commercial zones. He said once in a commercial zone it then goes to the business owner and they decide how they will profit from the use. He said the vacation rentals are happening in residential areas and there needs to be some limits and protections.

Shannon asked if everyone agrees with short term or vacation rental and adding (H) to Qualifying Regulations to Chapter 6, adding: if there is more than one dwelling per lot that it is considered a short term rental if it being used as a vacation rental. She said only one (1) of those dwellings can be used for a short term rental at any time. She said it has to be less than 15 individuals in a group under this new definition.

Wade said they have to protect the zone and the neighbors. He asked if there is a way to limit R-1 more and open up R-5 with more people.

Ryan said the 15 people came from the building code. In order for a home to be built on an R-3 zone they have to go through the process, but if you have more than 15 people it is no longer a single family home. The difficult problem is who is going to keep count. He doesn't know how they will be able to limit people in certain zones and who is going to regulate it.

Charlie asked commercial use in Ag could you change it to conditional use so they can address those issues instead of permitted.

Shannon said yes they could. They also need to beef up the Bed & Breakfast definition to state the following: a building of residential design, in which the property owner or manager personally resides on premises, in which no fewer than one, but not more than 5 rooms are rented out by the day, for not more than four guests per room, and offering overnight lodging and meal services to overnight guests only. In the definition for Lodges it would state: a building or dwelling with one or more rooms that is rented out by the day for not more than thirty days by a single paying affiliated group of fifteen or more individuals. For the home occupation, the definition needs to exclude use of the dwelling as a vacation rental, bed & breakfast, inn, or similar business involving renting out all or part of the dwelling for a temporary overnight stay to a paying third party. She said (H) is placing regulations into the residential section and will be added into Chapter 6.

Wade asked if they need to modify them in the matrix and put where they are permitted.

Shannon said she doesn't think they need to modify it, but it is in the Ag use table.

Ryan said in the event of protecting the residential zone, if people want commercial they need to go through the process.

Robert asked if you have a home and a guest home can you rent them both out as vacation rentals.

Shannon said no you can only rent out one home at a time under the new definition and qualifying regulations as stated in the addition of (H).

Robert said the Supreme Court ruled that you could rent your own home and it doesn't matter the amount of time they rent it. He would like someone to research that and make sure.

Reid said it is worth researching. He said the people can choose whether they are going to rent their home or their motor home but they can only rent one.

Wade said the city, or county can be more restrictive than State Code.

Robert said he hopes this is right and wants to pass it to commission.

Chairman Chelewski called the commission out of public hearing.

Motion was made by Robert Houston to recommend approval to the Kane County Commission for the Kane County Land Use Ordinances: 9-1-7, 9-5-3, 9-6A-6, & 9-7B-5, Adding a definition & the use in the use matrix for Lodges, Agriculture Zones, & Residential Zones, and adding the definition and use to the use table of vacation rentals in Residential Zones, and adding the definition and use to the use table of Bed & Breakfast. Motion was seconded by Wade Heaton. Motion passed unanimously.

Wade stated for clarification that they are approving the definitions and putting them in the use matrix so that they have vacation rentals in residential and commercial.

Chairman Chelewski called the commission into public hearing.

Legislative Public Hearing (3.) Kane County Land Use Ordinance, Solar Power Plant: 9-24-3 (C-2) 1,200 Feet discussion of Solar Power Plant Ordinance; Submitted by Shannon McBride

Shannon said Elizabeth Coates asked to have her email go on public record that she is for the 2,640 setback. Another company is looking into building another solar power plant out by Vermillion Cliffs. They need to change the setback distance now before the next power plant comes in.

Shannon said sPower would just have to come in and renew or amend their existing CUP and would not have to meet the new requirements unless they have not made progress in a year, if they have they cannot revoke sPower's CUP. sPower asked them to change the ordinance to take that year limitation out, but our attorney said why you would make an exception for an exception. Shannon said she was under the impression that they would be grandfathered in.

Reid said if the permit expires they need to seek a new one and then would have to go under the new regulations after applying for a CUP again.

Danny said in order to protect the rights of the neighbors they need to raise the setbacks to a mile to discourage the power plants from getting too close to the already existing communities. Then it would help future buyers decide where they would like to buy lots, if power plants were already there but are further from the community. This would likely protect the communities if they increase the setbacks.

Shannon said they can increase the setbacks more if they would like, the setback number she gave was just a recommendation.

Wade said they have to protect the rights of people in the subdivisions first. He said he was pretty comfortable with half a mile.

Ryan asked as they created the ordinance and distances, how far from a certain zone does it have to be.

Wade said he doesn't know if they are protecting the use or zone.

Shannon said it is already in the ordinance – (interconnection requirements). She said the power plant has to have an existing interconnection agreement in place in order to obtain a building permit and is a requirement.

Dale said he believes the footage Shannon recommended is adequate.

Wade said there are a lot of complaints about the federal government over regulating and he said that is exactly what they are doing – making it hard for the businesses, they need to meet somewhere in the middle.

Shannon said she talked to Reid Erickson, (Iron County Planner) and he said their biggest complaint is the humming noise. sPower said that it would to be tough to stay within the noise requirements if they did not have the 1200 feet set back to reduce the humming noise, she thinks they should protect the zone.

Wade asked where they draw the line – (protection, eye sore, humming, etc.). He doesn't know if they should shut the door on power plant ideas by being so restrictive, but they also have to protect the neighbors and meet in the middle.

Tony brought up Danny Little and their property with water lines. He said that is why sPower relocated next to the highway because of the infrastructure.

Shannon said the way they protect zones (Church Wells) from a cell tower being built on a commercial lot is with concern of health safety and welfare of people. She said this is affecting something that already exists.

Jim suggested going to Milford and driving to delta and take a look at the solar and wind turbines.

Shannon said Reid Erickson said we could give us all a tour to go out and see it.

Chairman Chelewski called the commission out of public hearing.

Motion was made by Wade Heaton to recommend approval to the Kane County Commission of the changes of the Kane County Land Use Ordinance: 9-24-3 (C-2), 1,200 to 2,640 Feet setback for Solar Power Plant Ordinance. The motion was seconded by Dale Clarkson. The Chair called for the question and the motion passed.

Chairman Chelewski called the commission into public hearing.

Legislative (4.) Incorporate RMP Into General Plan

Public Hearing Per Utah Code 17-27a-401 through 408; Submitted by Mary Reynolds

Mary said a couple of years ago the Resource Management Plan was separated from the General Plan and last year Utah State combined the two back together through Legislation. She said so what this is re-incorporating the Resource Management Plan back into the General Plan.

Chairman Chelewski called the commission out of public hearing.

Motion was made by Robert Houston to recommend approval to the Kane County Commission to Incorporate RMP into General Plan, Per Utah Code 17-27a-401 through 408. The motion was seconded by Danny Brown. The Chair called for the question and the motion passed.

Administrative (5.) Compliance Review of Previously Divided Property Milt Farney, parcel #4-5-2-5

Shannon said she has all of the documentation, the record of survey, and recommends approval to the Kane County Commission.

Wade asked if they have to pay the old fee and the state fee.

Shannon said there are no fees because Commissioner Clayson asked to not charge fees – it is a public service.

Motion was made by Danny Brown to recommend approval of the Compliance Review of Previously Divided Property. Motion was seconded by Wade Heaton. The Chair called for the question and the motion passed unanimously.

Motion was made by Tony Chelewski to adjourn the meeting. Motion was seconded by Dale Clarkson. The Chair called for the question and the motion passed unanimously.

Meeting was adjourned at 7:33 pm	
Land Use Authority Chairman, Tony Chelewski	Administrative Assistant, Kaylea Crosby