

Minutes of the Kane County Planning Commission
and Land Use Authority Meeting
76 North Main Street, Kanab
September 10, 2014

CHAIRMAN: Tony Chelewski

MEMBERS PRESENT: Tony Chelewski, Roger Chamberlain, Robert Houston, Dale Spencer, Harold Hamblin

MEMBERS ABSENT: Wade Heaton, Dale Clarkson

EX-OFFICIO MEMBER: Commissioner Douglas Heaton

STAFF PRESENT: Shannon McBride, Land Use Administrator, Bonnie Haycock, Land Use Administrative Assistant, Mary Reynolds, New Administrative Assistant, Deputy County Attorney, Kent Burggraaf, Assessor & Building Official, Linda Little, County Engineer Tom Avant, Lou Pratt, Road Department (GIS)

5:30 PM Work Meeting

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

MOTION was made by Dale Spencer to approve the minutes with the name change of Wade Spencer to Wade Heaton. Motion was seconded by Harold Hamblin. The Chair asked for any questions or comments and there were none. Motion passed unanimously.

MOTION was made by Harold Hamblin to go in and out of public hearing at the call of the Chair. Robert Houston seconded the motion. The Chair called for the question and the motion passed unanimously.

Chairman Chelewski called the commission into public hearing.

Public comment period: There were no comments from the public at this time.

The Chairman said we are not going to have a specific comment period during this meeting. He asked Deputy County Attorney Kent Burggraaf to lead the discussion for this first Legislative item.

Legislative/6:00pm
Public Hearing

**Chapter 21, Subdivision Regulations – Kane County
Land Use Ordinance proposed additions & revisions
pertaining to the intent section of Article K (9-21K-1).**

Land Use Admin. Shannon McBride said: A letter from Dale Clarkson was submitted addressing the intent section of Chapter 21 and is attached to these minutes.

County Atty. Kent Burggraaf discussed Chapter 21 revisions; whether developers should or should not be able to utilize the Rural Unimproved Subdivision Ordinance. The intent section of the ordinance uses ‘*should not*’; however, such language is not legally binding and still allows for a developer to use the Rural Unimproved. “Should not” is more advisory, as opposed to ‘*shall not*’. If the Commission is looking to change [the wording] to ‘*shall not*’ you will have to do more than just change it from ‘*shall not*’. You will have to define what you are referring to as ‘developer’. It will have to be defined in a way that is defensible. In considering “equal protection” under the law, specifically excluding developers may be something that is challenged by a developer. You can’t exclude them or apply the ordinance differently to them without having a rational basis for doing so. It may be difficult to go this direction.

Robert Houston stated: I think the reasons for developing [the intent section of Article K] was for two reasons; it was for families, and to fix illegal subdivisions. It wasn’t to create more subdivisions. The trouble is we are coming up to the edge of state law to the point that if we get too far out they will come back to us and say we can’t do it. Is that a true statement?

Atty. Kent Burggraaf replied: The state legislature may eliminate the exception the Rural Unimproved was created under if they feel the exception is not used as it was

intended; they may eliminate it or make it a more restrictive exception. It's one thing if you want to say that this section shall only be used for correcting illegally subdivided parcels, because you're not saying who's permitted to utilize the ordinance; you're not excluding a certain group, as opposed to saying developers can or developers can't. If you are trying to limit it to just families, and you use that terminology, you will probably be creating something that would be challengeable.

Question on state's wording? Per Atty. Burggraaf: We used the "exception" to the full blown statute on subdivisions. We've taken this one little paragraph and effectively created two chapters, Rural Unimproved and Platted Unimproved. Ours doesn't go beyond what State Code says; they probably just didn't envision we would take what they said and put them in those parameters and provide a whole process.

6:13pm Commissioner Douglas Heaton came into the meeting.

Dale Spencer stated: I have concerns about the way Dale Clarkson worded his letter. Also, when I read the paragraph [in Chapter 21] on intent, I think there are ambiguous words: what is *small*, and what is *large*. It isn't clear what kind of development is small or large, when even building a fence is development.

Atty. Burggraaf said: That would probably be better addressed in a separate section, rather than addressed in the 'intent' section. There is already a section for that, but it would have to be better defined, such as, you couldn't be a developer, and it has to be a small development.

Harold Hamblin questioned what the minimum acreage was under the Rural Unimproved Ordinance.

Admin. Shannon McBride answered: It is 10 acres, and one cannot have more than 10 lots.

Harold Hamblin further questioned if it was our intent to shrink the [illegally created] subdivisions [through this ordinance]? Were they originally 10? 100?

Admin. Shannon McBride said: No; it could be all of the above. We have required them to combine them back with the parent parcel and re-split it.

Atty. Burggraaf added: Quite often the parent parcel would be 160 acres, or larger. It just so happens that in the development in Juniper Hills the BLM had patented several different parcels that weren't the full size of a typical parent parcel, so the parent parcel is actually smaller.

Admin. Shannon McBride said: Each individual case takes its [own] research to see what the parent parcel is. They are all unique.

Robert Houston asked about the [unplatted] subdivision Dale Clarkson purchased and corrected. What he was trying to accomplish did not match the intent.

Atty. Burggraaf replied: That was true in part. According to the intent section it fit one paragraph, and not the other. I think that's where some of the angst was from. It was an illegal subdivision he was correcting, but he is a developer and he was doing it for his own purposes.

Admin. Shannon McBride said: Dale Clarkson split the [parcels] further down. Atty. Burggraaf added: They were larger parcels; he divided the parent parcel into more parcels than what it was illegally subdivided into, which is permitted under our ordinance. Admin. Shannon McBride added that Dale Clarkson first merged the parcels, and then created several rural unimproved subdivisions.

Harold Hamblin asked: Is it our intent, if I am a developer, [that I] can go out and find these illegal subdivisions, buy them up and redo them, and develop them, is this our intent?

Admin. Shannon McBride answered: You know why I created [this ordinance]. I have already stated my opinion on several different occasions.

Harold Hamblin said: I don't think it was [our intent]. I agree it was for family splits, not developmental splits. It was also for [correcting] the illegal splits, if [someone] owned a piece [of land] and [another person] owned a piece [of land next to him], and they didn't have any access to it, they could get together, and each make it work so they each give up a piece of ground [to give them access.] It was not for a developer or an engineer, or anybody else to go in and make money on it. That's my opinion and that's the way I'd like to see it written.

Atty. Burggraaf said: The issue you may have is defining what type of person you are excluding. If you don't have good, strong grounds for why you are excluding them (i.e., a rational basis), which would be defined in our ordinance, then they have an argument for unequal protection under the law.

Harold Hamblin asked for clarification: If [for example, Dale] owned that for the last 40 years, which he didn't – he went and bought it – from Caroline Lippincott and others. Those people should have been the ones to make it legal. And if they didn't make it legal then it shouldn't have been developed, when it was bought later. He [Dale] already knew it was an illegal subdivision. We didn't open the door for a developer to buy illegal subdivisions and make them legal. We opened the door for those people who had bought it and were restricted from access to it – if they wanted to make it legal they could; that's the original person, not me, a developer, Tom Avant, anybody who bought it and wanted to redo it – if we buy it we know we're buying an illegal subdivision. If we want to subdivide it we know we have to fall back on the regular subdivision rules. That's what I thought we were discussing. And why can't we do it that way?

County Engineer Tom Avant stated: You can't be a developer and buy an illegal subdivision now because you'll be prosecuted.

Atty. Burggraaf said: The person who sold Dale [Clarkson] the property could technically be prosecuted for a Class B misdemeanor. We have a current case that is very similar; the person selling it shouldn't sell it because they are committing a crime under our ordinance, but the buyer isn't necessarily committing a crime unless you wanted to stretch it to aiding and abetting.

Harold Hamblin added: I don't want to prevent the developer from buying; I want to prevent them from subdividing under this particular Rural Unimproved Ordinance. He can buy it and develop it all he wants under the legal subdivision ordinance, which I thought we had.

Discussion continued on miscellaneous opinions regarding what the original intent of the ordinance was for. There was also discussion on requiring specific language on the final plats informing the buyer the roads are unimproved and there are no utilities [infrastructure]. Language was placed in the ordinance indicating the county was not responsible for maintaining the roads; utilities were also the responsibility of the property owner. The county does not bear the responsibility to install the

infrastructure now or in the future. Improvements are the responsibility of the property owner. The Planning Commission also added to the language that if the subdivision owners bring the infrastructure up to county standards in the future, the county has the option to accept the improvements or not.

Comment was made by Mary Craven, a member of the public, regarding the county developing an integrity statement in the ordinances: They need to be complied with and out where people understand them. If somebody doesn't comply then the county should protect themselves(s).

A member of the public, Greg Metcalf commented: I agree with Hal, I understand that 5, 10, or 20 years from now it can all be over ruled by some court, so doing it correctly from the beginning is important.

Lou Pratt, GIS, said: This is a good thing for families, and for cleaning up illegal subdivisions, but it does impact the county road department. We require the roads to be done inside the subdivisions, but most of these unimproved(s) are on [County roads such as Skutumpah for one]. The more of these [rural unimproved(s)] that go in, the more people we will have traveling those county roads so it is indirectly going to affect the county budget whether we want it to or not.

The Chair asked if there were any comments or recommendations and there were none. The Chair called the Commission out of public hearing.

Atty. Kent Burggraaf suggested that the last sentence of the first paragraph of the Intent section of Article K be removed, to avoid confusion as to its applicability (if not being further refined within the enforcement provisions of Article K).

MOTION was made by Roger Chamberlain to recommend the changes to the ordinance, Article K of Chapter 21, to the County Commission for approval, allowing legal counsel to revise the wording as may be appropriate. [Attached to these minutes is a copy of the revisions made and recommended.] Motion was seconded by Dale Spencer. The Chair called for the question and the motion passed unanimously.

Chairman Chelewski called the Commission into public hearing.

Administrative/6:02pm Amending a Subdivision Plat (Easement Descriptions) - Duck Creek Partners, LLC, Property Owners; Stewart Duck Creek Subdivision, Containing 16 Lots and 24.24 Acres; Submitted by Attorney L. Edward Robbins.
Public Hearing

Engineer Tom Avant and Attorney L. Edward Robbins presented the subdivision plat in Stewart Duck Creek Subdivision for amendment with easement descriptions. Tom Avant explained: We have a 50 ft. right-of-way north of the fence, (and the Water Conservancy District has their water lines, power lines, telephone lines, and pv lines). Lou has reviewed the plat. I have not talked to Kent; the concept plan we came up with, (they have complied with) fit the plat, [they have] reviewed it and made about five different revisions today, and I think we're good to go.

Atty. Ed Robbins added: The only comment I have is that it requires us to get an easement or deed or something from our neighboring properties from the east. When we were here last time I was very pessimistic about our ability to do that. The conversations since then [have been] very positive, so I think we'll be able to do that. What's happened is taking a little bit of ground off these two lots [referring to plat map], we still meet minimum lot sizes, and with this little piece here, we have road curvature requirements and you have your 50 ft.

Tom Avant added: We have verbal [agreement]; we can't actually give them the deed until we have approval here. My final letter says, "I will need to review the road dedication deed prior to the execution and after they have been signed, prior to recording." So these two pieces of road dedication have to be reviewed by [the other party].

Ed Robbins added: That was a conversation I thought I'd have with Kent; what form he wants that to take because we have some flexibility there. That will be after your action. The agreement we have with the Mitchells is we get our approvals, we install a new road, and then they Quit Claim to us or the county after that.

Atty. Burggraaf agreed the Quit Claim could be to the county.

Discussion took place about the movement of utilities. Atty. Robbins clarified: The travel surface of the road, as designed right now, is not in the middle of the 50 ft. easement. The utilities will be moved a little bit; you have your 50 ft. for the future

but you have a couple of pedestals over here, [reference was made to the plat map a few times thereafter]. That's what makes this work; that way we don't have the expense of digging all that stuff up.

The Chair asked if there were any comments or recommendations and there were none. The Chair called the Commission out of public hearing.

MOTION was made by Robert Houston to recommend approval to the County Commission amending and vacating the Stewart Duck Creek Subdivision plat subject to the review as outlined by staff. Motion was seconded by Hal Hamblin. The Chair asked if there were comments or questions and there were none. The Chair called for the question and the motion passed unanimously.

Chairman Chelewski called the commission into public hearing.

Administrative/6:03pm Lot Line Adjustment-Newell Brent & Susan Carter, Public Hearing Property Owners; Zion View Mountain Estates, Unit E, Lots 87 & 88; Submitted by Brent Carter, New Horizon Engineering.

Admin. Shannon McBride said: The Lot Line Adjustment for Newell Brent & Susan Carter, property owners, Zion View Mountain Estates, (Unit E, Lots 87 & 88) has to be postponed and placed on the November agenda.

The Chair asked if there were any comments or recommendations and there were none. The Chair called the Commission out of public hearing.

MOTION was made by Robert Houston to postpone the Lot Line Adjustment for Newell Brent and Susan Carter. Motion was seconded by Harold Hamblin. The Chair asked if there were comments or questions and there were none. The Chair called for the question and the motion passed unanimously.

Chairman Chelewski called the Commission into public hearing.

**Administrative/6:04pm Lot Joinder- Ence Cabin LLC: Karen E. Smith, Mgr.
Public Hearing Bear Springs Estates, Unit 1, Lots 11, 12, & 13;
Submitted by Brent Carter, New Horizon Engineering.**

Admin. Shannon McBride indicated: Brent is not going to be here tonight but the County Engineer will answer questions pertaining to this project.

Tom Avant added: He has one issue that he has to clear up; it's with the consent to record. In the title search they found a mortgage on the property from 1974 in the amount of \$7,500 that's never been cleared off the title, and the bank no longer exists. He has to have that cleared off the title before he can record.

The Chair asked if there were any comments or recommendations and there were none. The Chair called the Commission out of public hearing.

MOTION was made by Harold Hamblin to approve the Lot Joinder of Ence Cabin, LLC, Karen E. Smith, Mgr., Bear Springs Estates, Lot 1, Lot 12, 11 & 13 with the title search and financial correction. Motion was seconded by Dale Spencer.

The Chair asked if there were comments or questions and there were none. The Chair called for the question and the motion passed unanimously.

7:57 pm break for 10 min. Meeting resumed at 8:12 pm.

Chairman Chelewski called the Commission into public hearing.

**Administrative/6:05pm Lot Joinder-Roger D. & Diane M. Adams, Managing
Public Hearing Members-DC Southern Comfort LLC; Color County
Subdivision, Plat I, Lots 234, 235, & 236; Submitted by
Brent Carter, New Horizon Engineering.**

Engineer Tom Avant presented the project for Brent Carter: I have reviewed it and all is in order. Admin. Shannon McBride concurred.

Assessor Linda Little stated: The cost that is incurred to join two lots together will be made up in the taxes after five years.

The Chair asked if there were any comments or recommendations and there were none. The Chair called the Commission out of public hearing.

MOTION was made by Dale Spencer to recommend approval of the Lot Joinder for Roger D. & Diane M. Adams, Managing Members of DC Southern Comfort LLC, Color Country Subdivision, Plat I, Lots 234, 235 & 236. Motion was seconded by Hal Hamblin. The Chair asked if there were comments or questions and there were none. The Chair called for the question and the motion passed unanimously.

Chairman Chelewski called the Commission into public hearing.

Administrative/6:06pm Lot Joinder-John V. Ortiz, Trustee of the John V. Ortiz Living Trust, property owner; Strawberry Pines, Unit A, Lots 9, 10 & 11; Submitted by Tom Avant, TC Engineering.
Public Hearing

Engineer Tom Avant presented the project as the surveyor; Admin. Shannon McBride said: County Engineer Warren Monroe confirmed everything is O.K. All fees are paid.

MOTION was made by Dale Spencer to approve the Lot Joinder for John V. Ortiz, Trustee of the John V. Ortiz Living Trust, property owner; Strawberry Pines, Unit A, Lots 9, 10 & 11. Motion was seconded by Roger Chamberlain. The Chair asked if there were comments or questions and there were none. The Chair called for the question and the motion passed unanimously.

Chairman Chelewski called the Commission into public hearing.

Legislative/6:10pm Chapter 1, General Provisions- Kane County Land Use Ordinance proposed additions & revisions including definitions.
Public Hearing

Atty. Burggraaf presented the proposed additions and revisions to Chapter 1, including the definitions that will be attached to the minutes: Group Home, Family, and Easement.

Discussion occurred on semantics used on some of the definitions. Overall consensus was to keep the definitions simple if they were defensible. Atty.

Burggraaf said they were defensible. The Commission decided to leave the definition of easement as is, and add the definition of group home.

The Chair asked if there were any comments or recommendations and there were none. The Chair called the Commission out of public hearing.

MOTION was made by Harold Hamblin to recommend approval to the County Commission on Chapter One, General Provisions as modified. Motion was seconded by Robert Houston. The Chair asked if there were comments or questions and there were none. The Chair called for the question and the motion passed unanimously.

Chairman Chelewski called the Commission into public hearing.

Legislative/6:15pm
Public Hearing

Chapter 27, Escalante Region Multiple Use/Multiple
Functions Grazing Zone

Admin. Shannon McBride and Atty. Kent Burggraaf presented the revisions and additions for Chapter 27 of the Land Use Ordinance: A copy of the Ordinance was sent to the Planning Commission members prior to the Land Use meeting. The proposed revisions and additions will be attached to the minutes along with the approved changes. Admin. McBride said: We will be continually going over this chapter over the next year with the Grazing Environmental Impact Statement (EIS) process taking place within the BLM. As we get reports from some of our scientists, financial representatives, and so on we will add them into this chapter.

Admin. McBride continued re: “*Grandfathered uses*” this [definition] is definitely up for discussion, because we keep going through [BLM] regulations; I have been to the BLM meetings and tell them how we use “grandfathered uses” they have a different concept than I have in county ordinances, so I thought it might be good to put this definition into the chapter to make our stand clear.

Atty. Burggraaf said: One thing that may help, it lets them (BLM) know we’re using the same definition as them, if we’re using their manual and it looks like a definition we can agree with. When they have to coordinate for consistency they will have to consider what we have in our definitions.

Noel Poe, a member of the public, handed out a copy of his comments and referred to a correction, which will be attached to the minutes and includes the use of an ellipsis in Chapter 27 of the Land Use Ordinance.

Charlie Saba, a member of the public, and Commissioner Jim Matson commented that language in Chapter 27 should include that the State of Utah and Kane County would continue to manage fish and wildlife.

Atty. Burggraaf typed in the sentence: “The State of Utah shall continue to have the responsibility and authority to manage fish and wildlife.”

Admin. Shannon McBride said: I thought it would be good to re-emphasize the Planning Commission is in charge of providing for the health, safety, and welfare; through Utah State Code. We are stating that Grazing is part of our health, safety and welfare. We have jurisdictional zoning power down through state legislation.

Commissioner Matson commented on Lamar Smith’s and local rancher’s recommendations listed as additions to Chapter 27. Mr. Smith’s comments are guidelines that allow the Planning Commission to regulate grazing and coordinate consistency.

Atty. Burggraaf said the guidelines might be better suited for the Resource Management Plan, but will be included and re-worded in Chapter 27 as requirements for grazing plans.

The Resource Management Plan will be noticed as a public hearing next month if the information is ready for the Planning Commission’s review.

The Chair asked if there were any comments or recommendations and there were none. The Chair called the Commission out of public hearing.

MOTION was made by Harold Hamblin to recommend to the County Commission to approve the changes as discussed and highlighted in Chapter 27, Escalante Region Multiple Use/Multiple Functions Grazing Zone (a copy of the recommended changes being attached to these minutes). Motion was seconded by Dale Spencer. The Chair asked if there were comments or questions and there were none. The Chair called for the question and the motion passed unanimously.

MOTION was made by Dale Spencer to adjourn the meeting. Motion was seconded by Roger Chamberlain. Motion passed unanimously. The meeting adjourned at 8:59 p.m.

Land Use Authority Chairman,
Tony Chelewski

Land Use Administrative Assistant,
Mary Reynolds