



MINUTES

Kane County Planning Commission
& Land Use Authority Meeting
76 North Main Street, Kanab
March 8, 2017

CHAIRMAN: Tony Chelewski

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

MEMBERS ABSENT: Wade Heaton

EX-OFFICIO MEMBER: Jim Matson

STAFF PRESENT: Shannon McBride, Land Use Administrator; Kaylea Crosby, Administrative Asst.; Reid Mann, Deputy County Attorney; Tom Avant, County Engineer; Linda Little, County Assessor

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:

Tony Chelewski called Mr. Kempf and he said Rudy hasn't bothered him so things are looking up.

Motion was made by Hal Hamblin to approve the **February 8, 2017** minutes. Motion was seconded by Dale Clarkson. The Chair asked for any questions or comments. Motion passed unanimously.

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

Chairman Chelewski called the commission into public hearing.

**Administrative
Public Hearing**

**(1) Lot Joinder: Craig Simmons & Rosalind C. Tsosie
New Paria Subdivision, Amended, lots 27, 28, & 4, becoming new lots 4 & 27, parcels 125-27, 125-28, & 125-4; submitted by Iron Rock Engineering, Tom Avant holding Power of Attorney**

Chairman Tony Chelewski recused himself. He is a resident of New Paria and would like to comment on the project. (Asked Vice Chairman Danny Brown to preside for him during this project).

Shannon McBride said new lot 125-4 will shrink in size, is currently zoned commercial and will remain commercial. The zoning will not change with this lot joinder; that requires a zone change application and is a separate matter.

Tom Avant said there are three existing lots – 27 & 28, and a portion of 4 are being combined. Lot 4 will remain commercial, whereas, the other two lots will be joined together and will be residential. As described in the plat – they retraced the recorded easement and kept that the same as the already existing recorded easement.

Brett Nybo asked if the property pin was within the easement and if lot 4 was going to be turned into a business.

Tom responded that it was not in the easement and he does not know what the property owners plans are for that lot.

Charlie Steen asked about the parking.

Shannon said the property is strictly R-1 and they will get red tagged if they do not follow protocols for parking and other conditions allowed in the residential zone.

Vice Chairman Danny Brown called the commission out of public hearing.

Shannon is recommending conditional approval, with the approval of County Attorney Reid Mann. Tom Avant and Warren Monroe will be working the conditions out – they are easy fixes.

Byard asked why so many people showed up.

Shannon explained that the people came angry and left happy – they didn't understand that the property owners were shrinking the lots instead of expanding and that the zoning does not change with a lot joinder.

Motion was made by Byard Kershaw to recommend conditional approval of the lot joinder, for Craig Simmons & Rosalind C. Tsosie, New Paria Subdivision, Amended, lots 27, 28, & 4, becoming new lots 4 & 27, parcels 125-27, 125-28, & 125-4. The 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.

Legislative **(2.) Kane County Land Use Ordinance: Open Range**
Public Hearing **Addition of 9-1-7, adding definition of Open Range; 9-5-5 (E), addition of Open Range to Ag Zones; 9-10-18, adding definition of Open Range into Supplementary and Qualifying Regulations; 9-21A-5, adding definition of perimeter fencing and maintenance; 9-21B-4 (I), adding maintenance to perimeter fence; submitted by Harold Hamblin**

Reid Mann explained there was a key piece of language missing. He talked about adding language into Kane County statute – he interpreted that in the language there is a conflict. In his opinion, the problem lies in the language “all land not privately owned” meaning that if the land is privately owned then it is not open range. (Reid demonstrated on white board.) He read, “The term ‘Open Range’ means, and includes, all roads outside of private enclosures used by the public, whether the same have been formally dedicated to the public or not.” Reid said it seemed as though their goal is to broaden the definition of Open Range, in which, Kane County cannot be broader than the State Statute, Kane County can only be more restrictive. He looked at Wyoming and Idaho State Statutes and they both have great definitions that cover livestock/animals rather than Open Range specifically. He believes the state statute should drop “all privately owned land”, and they would be better off protecting the livestock/animals instead of the Open Range definition itself –and do something similar to Wyoming and Idaho. The examples that were given are:

- 1.1 ANIMALS OUTSIDE CITY LIMITS – NO DUTY TO KEEP FROM HIGHWAY. No person owning, or controlling the possession of, any domestic animal running on land outside of city limits, shall have the duty to keep such animal off any highway or roads, outside of private enclosures, used by the public, whether the same have been formally dedicated to the public or not, and shall not be liable for damage to any vehicle or for injury to any person riding therein, caused by a collision between the vehicle and the animal.
- 1.2 OWNER OR POSSESSOR OF ANIMAL NOT LIABLE FOR ANIMAL ON HIGHWAY. No person owning, or controlling the possession of, any domestic animal lawfully on any highway, shall be deemed guilty of negligence by reason thereof.

Hal asked what highways fall under Open Range and he stated for example, if he didn’t want his livestock to get hit on the highway he was responsible to maintain the fencing.

Shannon said the highway is a state highway and this is a “fence out” state.

Reid thinks by taking a different approach by adding protection of livestock or domestic animals under the Nuisance or Animal Control Ordinances would be the best option.

Charlie Saba asked if they were talking roads or highways – is there a difference or are they considered all the same.

Commissioner Jim Matson asked if Reid could send a resolution for this ordinance.

Hal would like to add in gross negligence into the language. (Example 1.2)

Chairman Chelewski called the commission out of public hearing.

Motion was made by Hal Hamblin to recommend approval of the Kane County Land Use Ordinance: Open Range, to the Kane County Commission, addition of 1.1 & 1.2, adding to the definition of Open Range, with Reid Mann submitting a Resolution. Motion was seconded by Dale Clarkson. Motion passed unanimously.

Chairman Chelewski called the commission into public hearing.

Dale would like to see on 1.1 (example above) the removal of “NO DUTY TO KEEP FROM HIGHWAY” - He was concerned about that language.

Shannon said in the Subdivision Chapter she suggested putting a definition of perimeter fencing and maintenance into Chapter 21 and the Supplementary and Qualifying Regulations into Chapter 10. The ordinance doesn't have a definition of fences.

Hal said under Federal Law the BLM has fence regulations in Chapter One that specifies how fencing should be installed which reads: no further apart than 20 feet, and has to withstand 250 pounds of force.

Shannon said she will add it into Chapter One definitions. Suggested in 9-10-5, add in to wall, fence, or hedge (add A & B). As well as add in perimeter fencing in subdivisions.

Chairman Chelewski called the commission out of public hearing.

Motion was made by Danny Brown to recommend approval of the Kane County Land Use Ordinance: 9-10-18, 9-21A-5, adding definition of perimeter fencing and maintenance; 9-21B-4 (I), adding maintenance to perimeter fence, to the Kane County Commission. Motion was seconded by Hal Hamblin. Motion passed unanimously.

Chairman Chelewski called the commission into public hearing.

Legislative **(3.) Kane County Land Use Ordinance: Solar Power Plant**
Public Hearing **Adding regulations to the Solar Power Plant Ordinance 9-24-(1-5), 9-24-**
3, Sections 1, 2, & L; submitted by Danny Brown

Shannon did some research and found that California County (CA) had 149 conditions that needed to be met when it came to the conditional use permit for solar power projects. She explained that California County spelled out the Performance Bond/Decommission Fund in case solar power plants went belly up – this could protect the County and its citizens; they would have an engineer's

estimate for the cost and use that amount when it came to issuing the bonds. A 25-year life span seems to be the average.

The situation that will be coming up is for Garkane on privately owned land, but they have not turned in an application yet. She recommends adding Visual Appearance to the conditions. If it is by a highway it needs to be a mile away from the frontage. The Kane County Resource Plan will be coming up and we can add it as a resource to protect.

It is a requirement to get permits from UDOT – anytime state highways are used for egress or ingress. They must sign off on any of the projects because highway 89 is a limited access of highway. She said they are getting a lot of criticism on the dark sky ordinance so she put a face down lighting condition. They would also like to add a condition that they need to make all efforts to employ local residents.

Shannon said the bond, litigation, etc. was all in the lease that SITLA provided to protect themselves for the sPower projects so she didn't have to add or re-word these lease requirements. The applicant also needs to submit evidence that there is adequate water to serve the project – local water districts must sign off on any additional watering needs. All affected County staff will be notified for a development meeting to discuss these requirements and other probable and significant impacts as identified through the review process. Shannon said the goal was to try and make solar power plants competitive for others. All conditional use permits need to comply with the Kane County Resource Management Plan for restoration of natural resources pertaining to an environmental analysis review.

Danny asked if there would be a problem with limiting distance.

Reid responded that he doesn't see it being an issue.

Dale stated the goal they are trying to achieve is to make it where solar power plants are in an isolated area if they want to use private land.

Chairman Chelewski called the commission out of public hearing.

Motion was made by Danny Brown to recommend approval of the Kane County Land Use Ordinance: Solar Power Plant, to the Kane County Commission, adding regulations to the Solar Power Plant Ordinance 9-24-(1-5), 9-24-3, sections 1, 2, & L. Motion was seconded by Robert Houston. Motion passed unanimously.

Chairman Chelewski called the commission into public hearing.

Legislative **(4.) Kane County Land Use Ordinance: Rights of Way Dividing a Parcel**
Public Hearing **Revising 9-21F-5, Rights of Way Dividing a Parcel (language); submitted**
 by Reid Mann

Reid said the current version of Rights-Of-Way Dividing a Parcel statute presents a problem – they need to either keep the parcel in contiguous or divide it. He read the current version, “If a dedicated right of way extends through a parcel, dividing said parcel into two (2) or more portions can be accomplished providing the division would not create a non-conforming parcel, in which case the parcel would remain undivided. The resulting parcels shall be conforming parcels within their respective zones. The parcel(s) resulting from the division which occurs as a consequence of dedicating the right(s) of way shall be exempt from the Kane County Subdivision Ordinance.”

The question becomes whether or not a road splits a parcel in half, if both of those parcels are non-conforming. It is up to the P&Z if they want parcels to be exempt in this situation (i.e. non-conforming due to division from a right-of-way). Or does the P&Z want them not to be exempt but then provide a way for the new parcel to be made conforming. Reid asked if they were going to exempt it or provide a way for it to be legitimized. If the parcels are non-conforming then what – this has not been addressed. His suggestion is that a road can divide a parcel which would make them conforming. Meaning, in the event a dedicated right-of-way divides a parcel into two or more portions, the parcel shall be considered conforming and undivided so long as each individual parcel created by the right-of-way are conforming to the conditions of their respective zones. Or, in the event a dedicated right-of-way divides a parcel into two or more portions, and one or more of the resulting parcels are not conforming within their respective zone the parcel shall be exempt from the Kane County Subdivision Ordinance.

Shannon said what created this ordinance was the East Transportation Plan and how they had to give up property so the County wanted to entice property owners to be willing to give up property for an additional lot. She said we can take out or add to the ordinance.

Chairman Chelewski called the commission out of public hearing.

Motion was made by Robert Houston to recommend approval of the Kane County Land Use Ordinance: Rights-of-Way Dividing a Parcel, to the Kane County Commission, revising the language 9-21F-5, Rights-of-Way Dividing a Parcel. Motion was seconded by Byard Kershaw. Motion passed unanimously.

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

Meeting was adjourned at 8:00 pm

Land Use Authority Chairman,
Tony Chelewski

Administrative Assistant,
Kaylea Crosby