

Minutes of the Kane County Land Use Authority Meeting
March 14, 2012

CHAIRMAN: Tony Chelewski

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

MEMBERS ABSENT:

EX-OFFICIO MEMBER: Commissioner Douglas Heaton

STAFF PRESENT: Shannon McBride, Land Use Administrator, Ryan Maddux, Kane County Building Department, Keri West, LUA Secretary, Rob Van Dyke, Deputy Attorney

5:30 PM Work Meeting

5:33 PM Carolyn McDonald swore in Tony Chelewski and Roger Chamberlain as members of the Kane County Planning Commission. Both members agreed to terms and accepted their Oath of Office.

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

MOTION was made by Roger Chamberlain to approve the minutes of February 08, 2012 and Robert Houston seconded the motion. The Chair asked for any questions or comments and there were none. Motion passed unanimously.

MOTION was made by Dale Spencer to go in and out of public hearing at the call of the Chair. The motion was seconded by Wade Heaton. The Chair asked for any questions or comments and there were none. The motion passed unanimously.

Chairman Chelewski called the Commission into public hearing.

Administrative

Vacating or Amending a Subdivision Plat- Stephen R. Bailey and Debra Bailey, Willie Cooper and Sandra L. Maya; Zion View Mountain Estates Unit “D” – Amended Lot 26 and Amended Lot 25

Tom Avant presented a map to the commission of the above stated property requesting an amendment. The owners previously combined only 2 lots in this cul-de-sac and the Water Conservancy now wants to widen the road and bring it up to county standards. The homeowner prefers a smaller driveway and would like to alleviate the necessary work it would take to widen the existing road. He wants to abandon the cul-de-sac and split the property with his surrounding neighbors. Property owners would each own and take responsibility for 50% of the road. The county would no longer have to maintain this road. Administrator McBride did confirm that Lou Pratt had no problems with this application and did recommend it to the commission because the road is not currently being used or maintained properly. Wade Heaton asked current length of the road and Mr. Avant answered, 120 feet. Robert Houston questioned if Mr. Avant has power of attorney for the homeowners, Mr. Avant confirmed that he does have power of attorney. Chairman Chelewski asked for any public comments or questions and there were none. Wade Heaton questioned what surrounding properties have as far as road ownership. Mr. Avant confirmed that surrounding roads are all county owned and maintained. The road in question is strictly dealing with the cul-de-sac owned by the applicants. Commissioner Heaton asked if the fire department will have any problems having access to all cabins. Mr. Avant confirmed they would still have access to the homes as the road does meet W.U.I road standards, but does not meet county road standards.

Chairman Chelewski asked if there were questions or comments from the public and there were none.

The Chair called the Commission out of public hearing.

Robert Houston questioned Chairman Chelewski and Administrator McBride on the process of power of attorney. Administrator McBride clarified that we do have the notarized documentation present when someone has valid power of attorney.

Administrator McBride confirmed that Warren Monroe did okay this application. He did have a few corrections that needed to be made and Mr. Avant has already implemented those corrections.

MOTION was made by Roger Chamberlain to refer this to the Kane County Commission as approved by the Planning Commission and seconded by Dale Spencer.

The Chair called for any questions or comments and there were none. Motion carried unanimously.

The Chair called the Commission back into public hearing.

Administrative Conditional Use Permit Application- 199' Lattice cell phone tower; Parcel #3-5-32-2, Property of Bruce H. and Jane Hansen

Jerome Gourley introduced himself, representing Atlas Tower as applicant. Chairman Chelewski asked what mile marker the property is located by; Mr. Gourley said that is unknown. Robert Houston explained where the parcel is located. Mr. Gourley is making an application for a tower of a 199' total. Actual structural height is 195' with a 4' lightning rod. Mr. Gourley specified that Atlas Tower is not a service provider, they are a tower company. Any revenue they earn is by renting space to the service providers. Marching orders for the tower are for AT&T and they want antennas at 190', which is allowed by this application. The cell tower is designed to be co-locatable to support a minimum of 4 carriers. Their hope is to eliminate the requirement for an abundance of towers by inviting co-location by other carriers as well; therefore, enhancing signal capability to everyone, mostly AT&T, but possibly T-Mobile as well as Verizon. Robert Houston inquired about the range of this tower. Mr. Gourley explained that radio frequency engineering is line of sight. The hope with this facility is to enhance the entire Kaibab vicinity. The amount of miles that the signal translates to is unknown. Topography, such as mountains, can cause interference. Harold Hamblin questioned whether this would clear Cedar Ridge. Mr. Gourley confirmed that their engineering states it probably will not. Their hope is to build another tower in the future to capture a better signal, particularly for travelers to the east. Harold Hamblin asked where the Kaibab tower is located that this tower would connect to. Mr. Gourley confirmed that this tower would connect to Jacob Lake, as well as AT&T's antennas on the mountain. Mr. Gourley also confirmed that these plans were engineer approved and with the Planning Commission's approval, they will move forward with the request to obtain a building permit. Administrator McBride reminded the commission that this conditional use permit was previously passed with conditions. Kelsey, a representative from Alltel, did present to the Planning Commission their studies that this is the ideal location for this tower and proper zoning is in place. Conditional Use Permits expire after one

year and since the other cell phone company did not act on this permit within the allotted time, Atlas Tower is now here to claim ideal tower location. Administrator McBride confirmed that the original applicant was Alltel/Verizon, not Atlas Tower. Robert Houston inquired about other cell phone towers that have conditional use permits outstanding. Administrator McBride confirmed there has been no construction started on any of the previously awarded conditional use permits for cell phone towers. Administrator McBride did mention that the Department of Defense asked to be notified of cell phone tower applications. She did notify them of this application and has not heard back. Tom Avant said the Department of Defense has moved their training routes further to the east. Mr. Gourley clarified that standard FAA regulations and certifications have to be met before they can build. Mr. Gourley confirmed there will not be a red flashing light located on the tower, as it is not required by the FAA. Wade Heaton questioned what the other potential buildings are on the tower site. Mr. Gourley confirmed they would be for future carriers' receiving equipment, which would be kept in a shelter, usually a concrete building with an air conditioning unit. The outside dimension of these buildings are 11 ½' x 16'. Mr. Gourley directed the commission to the map and explained the location of potential future buildings. He also confirmed that the facility will be surrounded by a 6' tall chain link fence. Chairman Chelewski and Administrator McBride gave copies of maps to the public to allow them to view. Mr. Gourley confirmed that these sights do have to have power and they are working with Garkane Energy. Wade Heaton questioned the current zone of the parcel. Administrator McBride confirmed the zone is M-1 and this is approved zoning for a cell phone tower.

6:20 PM Deputy Attorney Van Dyke arrived.

The Chairman asked if there were any questions or comments from the public.

James Kurtz commented about the public hearing notice in the paper. He does not believe it had sufficient information as it just stated the property owner's name and he does own more than one property. He also stated that this tower would be within 1000 feet from his house and he does not like the idea. He suggested relocating the tower. Administrator McBride addressed Mr. Kurtz' concern with the public notice, as a conditional use permit does not require a public hearing or a public notice. She was concerned with the public's reaction and wanted to post it publically, even though it was not required. Mr. Kurtz also had a concern that the first time this tower was approved; it was a monopole instead of a lattice tower, which is what is on the current application. Administrator McBride confirmed that was a condition that was implemented on the first application and could be addressed again tonight.

Ruthie Itow expressed that she is here at the request of Bruce Hansen as he was unable to be at the meeting. He was very adamant in his desires to have a pole, not a lattice tower. Bruce Hansen was at the meeting and did stand up to say that he and the public would rather have the pole instead of a lattice tower. Chairman Chelewski explained they can build these towers to blend in with the environment. He also suggested that Mr. Gourley and Mr. Hansen need to get together and discuss the deal they are making. Commissioner Heaton reiterated that the type of structure should be discussed between the leasee and the lessor. Wade Heaton clarified that the last time this conditional use permit was submitted; the commission did have some jurisdiction on the type of structure. Mr. Gourley stated that Mr. Hansen has expressed his strong desire to build a monopole. However, the maximum height you can achieve with a monopole is 180' and they cannot accommodate what AT&T needs with 180'. The lattice tower is a 3 legged tower that you will be able to see through and will blend in with the environment. The monopole is galvanized steel and will weather. It will not rust, but it will weather and will begin to look atmospheric. After time, it may need to be painted. Mr. Gourley offered to have the tower painted if that is required, but it needs to be a 3 legged lattice tower, to accomplish what is desired.

Jo Anne Rando-Moon commented about her concern for safety. She mentioned that there has been no conversation about the fall zone for this tower, which is supposed to be 105-125% of the height of the tower, according to her research. She is concerned that this tower will be next to a two lane highway. In addition to safety concerns, Ms. Rando-Moon stated concern for the view that will be obstructed with this tower. Vermillion Cliffs currently has underground utilities to maintain the view of the red rock. Mr. Gourley addressed safety concerns about the fall zone. This tower will be 280' away from US-89, with the right-of-way being 150' wide. There is absolutely no concern about a fall zone. In addition, all utilities with this construction will be underground. As far as the visual disturbance, they have engineered this to be co-locatable, so this will eliminate the potential for future towers. Future applicants would be required to contact Atlas Tower before they can submit an application to build another tower. There will not be another tower built until the traffic increases substantially to require another tower. The need is there today to build this tower.

Stuart Willoughby introduced himself as the EMS Director and explained that they currently lose cell phone service when they travel eastward from Kanab until they reach Big Water. They have no way to contact the hospital from the road. Currently, their only way to contact is by radio and can be a HIPA violation when they give personal information via radio. It is a hindrance to our public safety to not have cell phone service. Mr. Gourley explained that the FCC has required that any carrier who places antennas on a structure must also establish E911. This site will

automatically have E911 capabilities. This is a major plus for public safety, as well as search and rescue. Wade Heaton agrees with the benefits this tower will provide for public safety. He also stated that they required the previous applicant to make this a monopole, despite their strong desire to have a lattice tower. The previous conditional use permit was never used and he personally believes that is because of the stipulations they required. Wade Heaton also clarified that Mr. Hansen is applying for a conditional use permit and the commission needs to only consider if there is anything in their code which would prohibit them from approving this. They cannot determine the need for a cell phone tower. They need to remember their scope in this situation.

Mary Craven commented that she lives in Johnson Canyon and only has service in a few spots in her home. She loves the view, but that is not as important as her safety. She believes the public needs to give a little and realize that this will just be one tower. There will still be beautiful views all around.

Charles Saba asked why this is not being proposed closer to the Garkane substation. Mr. Gourley stated that AT&T has done research and has chosen this location as the best possible site for efficiency.

Robert Houston clarified that he does not think this tower will get a signal to Johnson Canyon, so he believes AT&T will have to build another tower in the future for that purpose. He suggested relocating the proposed tower away from the community. He believes this will benefit the carrier even more as it will increase coverage. Commissioner Heaton commented that he believes the safety issue is a benefit with the ability to dial 911. He went on to say that the base of a monopole would have to be at least 5' wide, making it very unsightly. He would prefer a lattice tower.

Wade Heaton reiterated that as a commission they are here to discuss the conditional use permit that Mr. Hansen has applied for. It is not within their scope to debate the need for the cell service or how good the cell service will be. Attorney Van Dyke further clarified that as a quorum, all they can do is identify the negative impacts of the proposed conditional use permit and specify what conditions will negate those negative impacts. He continued to say that the only problem being discussed is aesthetics. Mr. Gourley stated that they are willing to accept conditions. If the commission requires them to paint the lattice tower, they will paint it. That is an acceptable compromise.

The Chair asked the audience if painting the tower would be an acceptable condition. Bob Kaczowka stated that painting it could possibly make it look worse. He also stated that he understands AT&T is looking for the easiest and quickest location for power and accessibility. However, if they could relocate it further south, that would not affect their coverage and the community would benefit as well.

Tom Forsythe commented that he was on the planning commission when this application was approved previously with the appropriate conditions. Mr. Forsythe went on to say that South Central Communications has since gone out of business and should have vacant towers that could be used by other carriers, rather than building another tower. He continued, stating that the commission needs to find the balance between corporations and the public needs and desires.

Mary Craven asked if you can reinforce the tower because of the wind. Mr. Gourley stated that the tower has three independent legs and is considerably stronger than a monopole. A lattice tower is much less wind resistant.

Bob Kaczowka suggested building a few smaller towers instead of a single 200' tower. Mr. Gourley stated that in rural areas, you cannot use small urban technology. It simply does not work.

Chairman Chelewski commented regarding the cell phone towers located by his home. His tower is over 60' away. There is another tower that is close by, but is not being used because it has not been changed from analog to digital. He went on to say that the issue of this being a monopole or a lattice tower is between Mr. Hansen and Atlas Tower.

Wade Heaton stated again that the commission needs to remember their scope of responsibility. There has been a deal made between Mr. Hansen and Atlas Tower, as well as Atlas Tower and AT&T. Those deals are none of their business. They are now coming to the commission for a conditional use permit for a 199' lattice tower. AT&T has made it clear that they do not want a monopole. Wade attempted to address the public but was interrupted by Attorney Van Dyke reiterating that they cannot base their decision on how the public feels. They cannot poll the audience. Wade asked if he can ask the public for their preference between a monopole and lattice tower. Attorney Van Dyke stated that you can ask the audience, but you cannot base your decision on how the audience feels. The commission has to determine what the negative impact is and what conditions will mitigate that negative impact. Wade asked if they can ask how many views are obstructed. Attorney Van Dyke approved that discussion. The public did agree that moving the tower further south would lessen their concern with the visual of the tower. Commissioner Heaton suggested going out of public hearing and discussing this amongst the commission.

Chair called Commission out of public hearing.

Commissioner Heaton asked if the right to build a tower supersedes the right to see what we want to see. The location of where this tower will be built is not the commission's prerogative.

MOTION made by Dale Clarkson to approve the application for a conditional use permit for the Bruce Hansen property. Motion was seconded by Roger Chamberlain.

Chairman Chelewski opened item for discussion. Dale Clarkson commented that this is for a new conditional use permit. Although there was a conditional use permit previously approved on this property, this is a new application and they are making a motion to approve it and second it with possible conditions to qualify their approval. Wade Heaton clarified that the motion has to state the conditions. The current motion is to approve the application as submitted, with no conditions. Attorney Van Dyke read the description aloud, as stated on the conditional use permit. Wade Heaton states that Mr. Hansen has the right to build a tower on his property. The neighbor's rights do not supersede Mr. Hansen's right to have this tower built on his property. Harold Hamblin commented that Mr. Hansen does have the right to put up the tower. Although, he does not think this tower will benefit the community. He expressed his desire to have this benefit the community, but he does not think this will improve service for anyone. However, this case comes down to visual versus property rights and he has to side with property rights. Robert Houston questioned whether they could make it a condition that it will have to cover certain areas. Attorney Van Dyke responded, inquiring as to what the negative impact is for that condition to be necessary. Administrator McBride also stated that the previous Alltel rep brought a map that showed how much this would improve service for our area. The improved service and the zoning is what made AT&T select this location. Wade Heaton reiterated that the desired location is AT&T's decision. Attorney Van Dyke clarified that the only articulated negative impact is aesthetics. Robert Houston stated that we need to protect our visual appeal. Dale Clarkson stated that he is not qualified to make conditions on the proposed engineering. He believes it has already been through the finest engineering and they are not qualified to make conditions on the proposed structure. Commissioner Heaton asked if there are any suggestions for conditions. Chairman Chelewski clarified that there was a previous condition to change it to a monopole. But he understands now, that is not an option. Robert Houston stated that Mr. Hansen has the option to withdraw his application and Chairman Chelewski confirmed, stating, "That is his option and has nothing to do with the commission". He continued to clarify that what they are voting on is the conditional use permit as submitted.

The Chair called for a vote. Wade Heaton, Chairman Chelewski, Dale Spencer, Roger Chamberlain and Dale Clarkson voted aye. Harold Hamblin and Robert Houston opposed the motion. The motion carried.

Tony clarified that we are still out of public hearing.

Administrative

Vacating an Amendment to the Plat- Chamberlain Ranch Amended and Extended Parcel #202-All, Subdivision located in the NE ¼ of section 33 and the NW ¼ of section 34, Township 39 South, Range 9 West of the Salt Lake City Base & Meridian

Administrator McBride explained that the commission has seen this application several times and they have previously recommended it for approval by the Kane County Commission. The Kane County Commission has asked the Planning Commission to bring it back through the Planning Commission and have a finding stated in the motion as to why they are amending the plat.

They were missing one signature and now they have that. The bank that is the lien holder of one of the properties is claiming that they did not get notice of the amendment and they do not agree to it. Legally, the easiest way to solve the problem is to vacate the amendment and go back to the original plat. Attorney Van Dyke stated that when you vacate a plat you have to mention specifically if you are vacating so that there is no plat at all or if you are vacating an amended plat so that the original plat is still in place. The latter is the case with this application. When you are vacating a plat the code requires that you have to have good cause. So, you need to make a finding of good cause. He continued to say that this is currently in a lawsuit that will be resolved when this application is passed. That could be the good cause. He further explained that the deeds that are in place are not the same property description as the amended plat. That is why there is a lawsuit, because they need to be reconciled. They want to get rid of the amended plat so that the deeds which reflect the original plat will coincide with each other. This will make it clear as to who owns what pieces of property. All owners have consented to vacating the amendment.

Administrator McBride reiterated that the plat will go back to the original. The bank did not agree to the amendment of the amended plat, claiming they did not receive notice of the amendment. Attorney Van Dyke stated that in the lawsuit the county is being accused of illegally amending the plat. This is one way to remedy the lawsuit by just vacating the amendment in question. There was an issue with a missing signature from one of the property owners. Administrator McBride clarified that his signature was missing because he was out of the county, not because he had a problem with vacating the amended plat. They have now received all signatures. Chairman Chelewski asked Attorney Van Dyke if they need to wait until the lawsuit is finished before they can vote on this. Attorney Van Dyke said no. In fact, this process should have been done before any lawsuit was filed. They were supposed to

have filed within 30 days of the amendment of the plat being approved. This is actually resolving the lawsuit.

MOTION made by Wade Heaton to recommend approval to the Kane County Commissioners to vacate the amended plat that Chamberlain Ranch amended and extended parcel #202-All plat, reverting back to the original plat so that it would clear up discrepancies in parcel ownership. Motion seconded by Robert Houston. Motion passed unanimously.

The Chair stated we are still out of public hearing and will go into Legislative session.

Commissioner Heaton asked Attorney Van Dyke about the process of public hearing. Attorney Van Dyke addressed the proper procedure for public hearings.

Legislative Kane County Land Use Ordinance- Chapter 8- Manufacturing Zones

Administrator McBride projected the Chapter 8 matrix for the audience to view and gave each commission member a copy. McBride explained that we have implemented the proposed changes from the last meeting onto this new Chapter 8 matrix. The M-1 items have already been discussed, but we put it together with M-2 as requested by the commission at the last meeting. The commission discussed various items on M-2. Commissioner Heaton asked if you could simplify M-1 as indoors and M-2 as outdoor. Wade Heaton suggested that this cannot be that simple. Commissioner Heaton reiterated that we are trying to protect this zone.

Administrator McBride advised that there will be a discussion at the next meeting of an industrial park. Most counties have a designated industrial park and Kane County does not have that. The county needs to have an area set aside to protect the county in the future. Harold Hamblin questioned the difference between M-1 and M-2 zones. McBride clarified that M-1 is light manufacturing and M-2 is heavy manufacturing. Robert Houston stated that he thinks we should not allow residential in manufacturing zones. Administrator McBride agreed. Discussion continued about property rights and zones. Attorney Van Dyke stated that it is our responsibility to protect the people in the community.

Bob Kaczowka stated that the location of these zones will affect the public more than the type of the zone.

Ryan Maddux questioned if they are going to pick an area and change the zone or find a place to originally zone as an industrial park. Administrator McBride

stated that this will be a long process to designate an industrial zone. Discussion continued with privately owned versus public land for an industrial park.

Discussion continued about conditional uses on different items in Chapter 8. Dale Clarkson stated that he doesn't believe we should be putting conditions on this list. These owners and businesses should be allowed to do what they want. Charles Saba stated that they should be concerned about the county as a whole. The good and welfare of the county is what they should be focused on.

Robert Houston exited meeting at 8:00pm.

Discussion continued on Chapter 8 matrix. Dale Clarkson likes Commissioner Heaton's suggestions to simplify this Manufacturing matrix and get rid of conditional uses. Wade Heaton suggested to get rid of the list completely and just state that everything is conditional in a Manufacturing Zone. Discussion continued about simplifying the Manufacturing Zone matrix. Ryan Maddux is in favor of generalizing the matrix and not specifying each product. Commissioner Heaton suggested we delegate this to a subcommittee and have them rewrite this as a simpler matrix. He believes having conditional uses complicates the application process and detracts people from building here. Linda Little also stated that we should have one Manufacturing Zone and one Industrial Zone to simplify the matrix. Discussion continued about the possibility of having a subcommittee rewrite this chapter.

Administrator McBride suggested tabling Chapter 8 while they research the possibility of designating an industrial park.

The Chair called the Commission out of public hearing.

MOTION was made by Wade Heaton to table Chapter 8 and assign three members of the commission to a committee to amend Chapter 8 and bring their suggestions back to the Commission for an affirmative vote by the next meeting. Motion seconded by Dale Clarkson. Chairman Chelewski moved to amend the motion to remove the word "assign" and change it to "volunteer". Wade Heaton seconded the amendment.

The Chair called for any questions or comments and there were none. The Chair called for a vote on the amendment, all voted aye. The Commission went back to the first motion as amended. The Chair called for a vote. Motion carried unanimously.

Chairman Chelewski asked for volunteers to be on subcommittee. Administrator McBride suggested Commissioner Heaton be a part of the committee

because of the ideas he has already expressed. Wade Heaton and Roger Chamberlain also volunteered. Ryan Maddux volunteered to assist when available. Commissioner Heaton suggested they select a Chairman of the subcommittee. Wade Heaton volunteered to be Chairman of subcommittee.

Discussion- Member Decorum

Chairman Chelewski opened discussion about the Commission's dress code. Administrator McBride clarified that the public has recently showed an interest in our current mission statement. The areas of dress code and attendance were discussed and changes were suggested by commission members. Ryan Maddux inquired as to who is in charge of enforcing these rules. Chairman Chelewski stated that he thinks they would have to go to the County Commissioners to enforce. Attorney Van Dyke stated that it is not really clear as to who would enforce these rules. However, the Commission does have the capability to vote off a member. Commissioner Heaton stated that he is uncomfortable with the harshness of the tone of this document. He does not like the two absences clause. Dale Spencer stated that you do not have to use it, but it does allow you to dismiss someone if they are not showing up and doing their job as a commission member. Ryan Maddux agrees that this gives a tool to dismiss someone if the need arises. Administrator McBride notated the proposed suggestions and will implement them on an updated mission statement and member decorum document. Attorney Van Dyke suggested that if the commission wants to pass the proposed changes to the document, they need to make a motion.

The Chair asked for any questions or comments and there were none.

The Chair called the Commission out of public hearing.

MOTION was made by Dale Clarkson to accept this document with the corrections that have been made and it was seconded by Roger Chamberlain. Motion carried unanimously.

MOTION was made by Roger Chamberlain to adjourn the meeting and it was seconded by Dale Clarkson. Motion carried unanimously. The meeting adjourned at 8:54pm.

P&Z Chairman, Tony Chelewski

P&Z Secretary, Keri West