



# MINUTES

Kane County Planning Commission  
& Land Use Authority Meeting  
Kanab Center Board Room  
20 N. 100 East, Kanab, UT  
**February 8, 2023**

CHAIRMAN: Doug Heaton

MEMBERS PRESENT: Doug Heaton, Gwen Brown, Jeremy Chamberlain, John Reese, Matt Cox

MEMBERS ABSENT: Aaron Bonham, Byard Kershaw

EX-OFFICIO MEMBER: Commissioner Wade Heaton (via phone)

STAFF PRESENT Shannon McBride, Land Use Administrator; Wendy Allan, Assistant Planning & Zoning Administrator; Rob Van Dyke, Attorney;

6:00 PM Meeting called to order Doug Heaton  
Invocation Jeremy Chamberlain  
Pledge of Allegiance Gwen Brown

## GENERAL BUSINESS

### 1. Update on County Commission Decisions

Commissioner Heaton (via phone) reported that the commission approved the ordinance regarding Agricultural Protection Areas. He informed the P&Z that the commission has had two meetings on the Willow Estates PUD, one to take public comments and a work session to determine changes they would like to see made. He stated that they will keep this project at the commission level.

### 2. Approval of minutes January 11, 2023

**MOTION:** John Reese made a motion to **approve** the January 11, 2023 minutes. Matt Cox seconded the motion.

The Chair asked for any questions or comments.

**VOTE:** The **motion passed** unanimously.

### **3. Public Hearing – Zone Change/Ordinance 2023-02: Godfrey**

**An application for a zone change from Agricultural (AG) to Residential 2 (R-2), parcel 1-8-15-1, consisting of 520 acres, located off of Highway 9 on Mineral Springs Road. Submitted by Luke Godfrey.**

Brandee Walker, Civil Science Engineering, presented the project. The applicant is now asking for R-2 for the whole piece of property. They have worked with John Files, a geologist with Cascade Water Resources. They plan to drill down to the Navajo aquifer. Mr. Files is confident there is enough water in the area.

Luke Godfrey (applicant) stated that they currently have surface water rights. They are working on converting them to underground rights. They have an additional 56 acres feet of water tied up (they can close on these at any time), with the potential to get up to 81 acre feet. He was told that with the flow rates on the surface rights they will gain underground water rights, however, that has not been approved yet. Luke indicated that lack of water rights will not stop this project. He feels that they can push forward with the first phases of the project with the water rights they currently have. He feels there is plenty of water available in the area.

Brandee clarified that the RV Park is not a part of this application. They will come back at a later date to request Commercial zoning for the RV Park.

Shannon reminded the P&Z that this came before them in July 2022. They originally requested both R-2 and C-2 zoning. They are now asking for only R-2 zoning. She expressed concerns over the access off of Highway 9. She indicated that the surrounding zones are AG with a few R-5 and some SITLA and BLM land in the area. Shannon reviewed the staff report with the P&Z noting that this project is a half mile off of Highway 9.

Luke Godfrey reiterated that he has 56 water rights. He will put the infrastructure in at his cost. He is planning on developing deceleration and acceleration lanes.

Jeremy questioned if they had 224 acre feet of water under contract. Luke stated they have 56 water rights. He does not know how that converts to acre feet. Luke mentioned that they have talked with the Esplins regarding their concern about the protection of the roadways for cattle.

**MOTION:** A motion was made by Jeremy Chamberlain to go in and out of public hearing at the call of the chair. The motion was seconded by John Reese.

**VOTE:** The **motion passed** unanimously.

Chairman Heaton called the commission into public hearing.

Richard Lucas: He owns property at the intersection of Highway 9 and Mineral Springs Road. In January he lowered his well pump to 191.5 feet. In 1997 it was at 107 feet. His well is a surface

well that is drilled at 200 feet. He stated that there is not enough water in the area to support this requested growth.

Tito Gana-He is the owner of Elohi Camp Zion, a luxury glamping resort north of this property. He objects to this zone change because of the density of the project. He was asked to obtain the necessary water rights and actual water on the ground prior to being granted a zone change. They feel the same concerns and requirements should be applied to this applicant. The feasibility report they submitted is inadequate and provides no evidence that the surface water rights can be transferred to well water rights. He estimated that they will need over a hundred water rights to support the residential development and RV Park.

Lawrence Reese-He owns property on Highway 9. His well is now drawing 4-5 gallons a minute. He has difficulty filling his 10,000 gallon tank in a month. The water level in the area drops every time a new well is drilled. He stated that a home requires ¼ acre of water rights for each home. He is against approving a subdivision of this size with the lack of water in the area.

Callie Lucas-She lives off Highway 9 and Mineral Springs Road. They bought in the area because they wanted agricultural land. They discovered the water issues in the area after they purchased their home and had their well dry up. She stressed that water rights do not equal water in the area.

Garrett Alldredge-He is concerned about a lack of water, issues with increased traffic and the effects on animal migration.

Katrina Young-She is concerned about the displacement of wild life in the area. She is also concerned about increased traffic.

Cory Young-He is concerned about the lack of water in the area. He does not have enough water to irrigate his crops. He feels that above ground water has a direct correlation to below ground water. He is currently in the process of redrilling his well. He said this isn't about water rights as much as the fact that there is not water in the area.

Chairman Heaton called the commission out of public hearing

Luke Godfrey (applicant) stated that surface water equals a quarter of well water. He said that if they put in a half million or million gallon tank it would help everyone with their wells. He explained that when they drill they will encase it in cement to prevent it from affecting wells above it.

Brandee Walker read an email from John Files (hydrologist) that stated that the Navajo aquifer by Orderville and Glendale is a good producer. He said that if Luke purchased the water rights available to him the potential drawn down would be 53 gallons per minute. John's email goes on to say that there should not be any interference with water rights in the area as they will target the temple cap in the Navajo. He suggested drilling a test hole in to the Navajo and pump testing while metering the existing wells at the same time.

Luke reminded the P&Z that once the zone change is approved they will need to upgrade the roads, entrances, water, etc. Brandee acknowledged that an approval of this zone change does not guarantee any entitlements with a subdivision. If they do not find water they will not be able to proceed.

Addressing the wild life concerns, Luke stated that they will put in fenced trails that will lead to BLM land. These trails will allow access for wild life, horses, ATVs and the like.

Tito Gana stated that Elohi's well is in the Navajo aquifer at 1300 feet and they are pumping 30 gallons per minute.

John read from the Land Use Goals in the General Plan, "Unincorporated land uses will remain at densities which can be adequately serviced and which retain the qualities of a rural, open setting with uses not typically found in a town or city. Intensive, urban-scale uses will be directed to municipalities where basic services can be accommodated." He does not feel that R-2 zoning fits in this area as it does not "retain the qualities of a rural open setting".

Jeremy agreed. He feels there is a health and safety risk with the water issue. He said that fire mitigation for 200 homes will become an issue. Density is an issue in this area because of the lack of water in the area. He noted that Elohi actually purchased their water rights and drilled their well prior to being granted a zone change.

Gwen is concerned that there is no proof of water in the area. She stressed that this is spot zoning as the majority of the land in the area is agricultural. She expressed the need for turn lanes in the area if this development is approved. She predicts that the applicant will be back in a few months for Commercial zoning for an RV Park. She stressed the need to uphold the General Plan and keep rural areas rural.

**MOTION:** John Reese made a motion to **recommend denying** the zone change for parcel 1-8-15-1, AG to R-2 & Ordinance 2023-02 to the County Commission based on the facts and findings as documented in the staff report. Seconded by Matt Cox.

Doug suggested that the main concern with this zone change is the increase of density.

**VOTE:** The vote **was unanimous to recommend denial of** this zone change.

Shannon reminded the public that this item will be forwarded to the County Commissioners for a final decision.

**FACTS & FINDINGS:**

- Parcel 1-8-15-1 meets the requirements to be zoned R-2. The parcel is currently zoned AG.
- The applicant requests the entire parcel be zoned R-2 which requires a zone change.
- If the zone change is approved all uses contained in the R-2 uses table will be allowed.
- **9-6A-1: PURPOSE:** To provide for residential neighborhoods of a rural character together with a limited number of livestock for the benefit and enjoyment of the residents. (Ord. 2013-5, 8-12-2013, eff. 8-27-2013)

- **Zoning:** Surrounding parcels are zoned AG and BLM.
- **Kane County Land Use Ordinance 9-1-2:** It is Kane County policy to refuse to participate in spot infrastructure improvements which benefit only a localized area yet burden the taxpayers at large.
- The parcel would gain access from Highway 9.
- There are no existing turn lanes off of Highway 9 at this time.
- All property owners within 500 ft. of this parcel have been mailed a public notice. Notices are posted on the state and county websites.
- **Kane County General Plan, Preamble:** Given these basic premises, the Kane County Commission will use this Plan to guide land use decisions for the county. Where decisions regarding property rights versus property values are being made, deference shall be given to property rights. This Plan will assure that present and future residents and visitors to Kane County will be housed under safe, sanitary, and attractive conditions. Land uses in the unincorporated county will reflect the intent of the Commission to expect intensive, urban-scale uses and to provide self-supported basic services without county financial support.
- Mineral Springs is a County Road.

#### **4. Public Hearing – Zone Change/Ordinance 2023-04**

**An application for a zone change from Agricultural (AG) to Commercial 2, parcel 1-9-5-3A, consisting of 206.30 acres, located on the North Fork Road north of Zion Ponderosa Resort, Kane County Utah. Submitted by Iron Rock Group, holding power of attorney.**

Chris Heaton, Iron Rock Group, presented the project. He stated that Zion Ponderosa Resort would like to expand their campground. He reminded the P&Z that the Ponderosa Resort has a water and sewer system in place. He acknowledged that they will need to come back for a conditional use permit.

Shannon showed the zoning in the area noting that this parcel borders some R-1/2 lots on the west and C-2 on the east.

Chairman Heaton called the commission into public hearing.

(No Comments)

Chairman Heaton called the commission out of public hearing

**MOTION:** Matt Cox made a motion to **recommend approving** the zone change for parcel 1-9-5-3A from AG to C-2 and Ordinance 2023-04 to the County Commission, based on the facts and findings as documented in the staff report. John Reese seconded the motion.

**VOTE:** The vote was **unanimous to recommend approval** of this zone change.

#### **FINDINGS:**

- Parcel 1-9-5-3A meets the requirements to be zoned C-2. The parcel is currently zoned AG.
- The applicant requests the parcel be zoned C-2 which requires a zone change.
- If the zone change is approved all uses contained in the C-2 Uses will be allowed.
- Surrounding parcels are zoned AG, Commercial 2 and Residential ½ in the dry subdivision Little Ponderosa Ranch which borders Zion National Park.

- **Utah State Code 17-27a-308.** Land use authority requirements -- Nature of land use decision.
  - (1) A land use authority shall apply the plain language of land use regulations.
  - (2) If a land use regulation does not plainly restrict a land use application, the land use authority shall interpret and apply the land use regulation to favor the land use application.
  - (3) A land use decision of a land use authority is an administrative act, even if the land use authority is the legislative body.

*Effective 5/12/2015*

**17-27a-505. Zoning districts.**

- (1) (a) The legislative body may divide the territory over which it has jurisdiction into zoning districts of a number, shape, and area that it considers appropriate to carry out the purposes of this chapter.
  - (b) Within those zoning districts, the legislative body may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, and the use of land.
  - (c) A county may enact an ordinance regulating land use and development in a flood plain or potential geologic hazard area to:
    - (i) protect life; and
    - (ii) prevent:
      - (A) the substantial loss of real property; or
      - (B) substantial damage to real property.
- (2) The legislative body shall ensure that the regulations are uniform for each class or kind of buildings throughout each zone, but the regulations in one zone may differ from those in other zones.
- (3) (a) There is no minimum area or diversity of ownership requirement for a zone designation.
  - (b) Neither the size of a zoning district nor the number of landowners within the district may be used as evidence of the illegality of a zoning district or of the invalidity of a county decision.

- **Kane County Land Use Ordinance 9-1-2:** It is Kane County policy to refuse to participate in spot infrastructure improvements which benefit only a localized area yet burden the taxpayers at large.
- The parcel would gain access from Highway 9 and the North Fork Road.
- All property owners within 500 ft. of this parcel have been mailed a public notice. Notices are posted on the state and county websites.
- **9-7C-1: PURPOSE:** The purpose of the commercial 2 zone is to provide for heavy commercial areas not appropriate near or in Residential Zones to meet larger commercial uses. (Ord. O-2022-42, 7-26-2022)
- **Kane County General Plan, Preamble:** Given these basic premises, the Kane County Commission will use this Plan to guide land use decisions for the county. Where decisions regarding property rights versus property values are being made, deference shall be given to property rights. This Plan will assure that present and future residents and visitors to Kane County will be housed under safe, sanitary, and attractive conditions. Land uses in the unincorporated county will reflect the intent of

the Commission to expect intensive, urban-scale uses and to provide self-supported basic services without county financial support.

- **Kane County General Plan:** Industrial and commercial land uses are usually located at major highway intersections and near established communities. Much of the existing commercial and industrial activity has been annexed into adjacent communities. However, there are exceptions to this trend. For example: Best Friends Animal Sanctuary is located approximately 10 miles north of Kanab in Angel Canyon, an unincorporated section of Kane County; Canyon Lands Resort Community Zone (Amingiri) is located at the eastern boundary of Kane County; and Buffalo Ridge is located at the boundary of Zion National Park. They are all Planned Unit Developments and Kane County encourages this trend to continue. Kane County will allow development within the perimeters of county land use and zoning ordinances with the understanding that infrastructure improvement, development and maintenance will be at the expense of the subdivider and/or land owners who enjoy the benefits of such improvements. Kane County will not allow development that requires county-financed or maintained services. Landowners who require such services will be required to finance, install and maintain services without expecting or receiving county-provided services. The installation of water systems and fire hydrants does not imply or require county provided road maintenance or snow removal.
- **Commercial Land Uses Goal #1:** Encourage and provide for commercial uses in locations with infrastructure in place to serve the public. Objective: Develop commercial uses compatibly with the use and character of the surrounding area. Policy: The Land Use Ordinance and associated zoning map will determine the standards for commercial uses at appropriate locations. (Pg.18)
  1. Kane County will not become a provider of municipal-scale services, but will assist in such development if serviced by a special service district. Kane County's unincorporated areas cannot be expected to provide municipal-scale services. Residential or commercial zones which require large investments in infrastructure such as roads, water, waste disposal, schools, etc. cannot occur on a land base where such services are not available. Kane County recognizes this distinction, and will not allow development that requires county-financed or maintained services. Landowners who require such services will be required to finance, install and maintain their own services. Kane County will discourage development in unincorporated areas unless such development is serviced by a special district established for that purpose. (Pg. 31)

## **5. Public Hearing – Ordinance 2023-06: KCLUO**

### **An ordinance revising Kane County Land Use Ordinance Chapter 1: Provisions.**

Shannon reviewed the ordinance with the P&Z explaining that this updates the definitions in the ordinance. Rob stressed the need to keep the definition of “Elderly person-A person 60 years or older” as that is the federal definition.

Chairman Heaton called the commission into public hearing.

(No Comments)

Chairman Heaton called the commission out of public hearing.

**MOTION:** John Reese made a motion to **recommend approval** of Kane County Land Use Ordinance 2023-06 to the County Commission with the change to the elderly person definition. Matt Cox seconded the motion.

**VOTE:** The vote was **unanimous to recommend approval.**

John asked how often a property owner can come back to request a zone change. He asked if the P&Z would like to establish an ordinance that would require a property owner to wait six months between zoning requests. It was noted that Kanab City has in ordinance that if they are requesting the same zone they have to wait a year. If they are requesting a different zone there is not a waiting period.

Matt Cox made a motion to adjourn.  
Meeting was adjourned at 7:24 pm.

  
Land Use Authority Chair  
Doug Heaton

  
Assistant Planning & Zoning Administrator  
Wendy Allan