



MINUTES

Kane County Planning Commission
& Land Use Authority Meeting
Kane County Commission Chambers
76 N. Main Street, Kanab, UT
March 13, 2024

CHAIRMAN: John Reese

MEMBERS PRESENT: Doug Heaton, Byard Kershaw, Gwen Brown, Jeremy Chamberlain, John Reese, Matt Cox, Mason Haycock

MEMBERS ABSENT:

EX-OFFICIO MEMBER: Commissioner Wade Heaton

STAFF PRESENT Wendy Allan, Assistant P&Z Administrator; Charee Shepherd, Zoning Administrator; Rob Van Dyke, Attorney

6:00 PM	Meeting called to order	John Reese
	Invocation	Jeremy Chamberlain
	Pledge of Allegiance	Byard Kershaw

GENERAL BUSINESS

1. Update on Commission Decisions

Commissioner Wade Heaton reported that the Commission approved the zone change for Julie Coefield to go from R-1 to R-5.

2. Approval of minutes February 7, 2024

MOTION: Doug Heaton made a motion to **approve** the February 7, 2024 minutes. Gwen Brown seconded the motion.

VOTE: The **motion passed** unanimously.

MOTION: A motion was made by Byard Kershaw to go in and out of public hearing at the call of the chair. The motion was seconded by Gwen Brown.

VOTE: The **motion passed** unanimously.

3. Public Hearing – Ordinance 2024-6: KCLUO 9-21F-6

An ordinance revising Kane County Land Use Ordinance 9-21F-6 Right-Of-Way and Roadway Improvements; removing the requirement of chip seal or asphalt roads in subdivision.

Commissioner Wade Heaton led the discussion explaining that the County Roads Department does not have enough money in their budget to maintain hard surface roads, however, our ordinance requires developers to put in hard surface roads if their subdivision hit a certain Average Daily Trips (ADT) threshold.

Bert Harris, KC Roads Department, gave a history on class B roads, as well as where we get our funding, explaining that it is a portion of the tax from fuel sales. In 1996, the legislature changed the way they distributed the funds and put it in a weighted mile system. Because Kane County was so low in population the majority of our roads funding was going to go away. The state put the county in a hold harmless agreement stating that they would not take any funds away but they would not increase funds either. We have been on that 1996 funding schedule for the past 28 years. We currently receive 1.4 million dollars per year from the B roads funds, which is not enough to take care of the current county roads. He agrees that asphalt roads in a subdivisions is a good thing, but the county cannot be burdened with the upkeep of these roads without some kind of additional funding. He stressed that the county is not in the business of maintaining roads in municipal type areas. Bert clarified that B roads only have to be maintained to the level of passable.

Commissioner Wade Heaton explained that general fund monies (tax dollars) and TRT dollars fund the county road budget. The county maintains 732 public road miles with only 8000 residents to bear that burden. He said that Kane County property taxes are some of the highest in the state because there is so little private land in our county (7%). He suggested that people moving into unincorporated areas in the county need to understand that the county will only blade the dirt roads approximately twice a year. If they want more than that then they need to do something at a local level to facilitate that. He does not think the County should require hard surface roads. Commissioner Heaton is asking the P&Z to remove the hard surface roads requirement and let the free market/developers/homeowners decide if they want hard surface roads.

Tom Avant, KC Engineer and Private Developer, explained that most entities follow the AASHTO federal traffic design standards. Anything over 400 ADT is considered a standard road. Anything under that standard has a lower design standard. Tom stated that wider asphalt roads promote higher speeds. He suggested that lower volume roads be dirt with more turns in them to cause people to slow down.

Tom explained that when the Vermilion Cliffs subdivision was established the county did not have any specific road requirements. With our current standards that condition should not be repeated. He explained that people buy and build on gravel roads then decide they want city level facilities in the unincorporated county. He stated that hard surface roads are not economically viable in subdivisions with lots larger than one acre.

Doug asked if there is any movement at the state level to increase the Class B road funding. Commissioner Wade Heaton said they implemented a quarter percent sales tax to go to road maintenance and the state will give them on going appropriated funds but made the counties promise to not bring the discussion up again.

John questioned if there was a way to get visitors or the federal government to help pay for road maintenance. Commissioner Heaton stated that they have allocated TRT money to help with this issue. It is very difficult to get help on the Federal level.

Gwen asked why the county accepts so many roads, stating the opinion that the county should not accept any roads that are inside a subdivision. Commissioner Heaton agreed, reminding the Planning Commission that approximately 18 months ago the county change their ordinance to not accept streets within residential subdivisions.

Tom Avant explained that the Lone Spur subdivision was the first subdivision approved after the ordinance was changed. The main road through the subdivision road was accepted as a county road. The internal roads will remain private and will be governed and maintained by an HOA. Matt expressed the concern that HOAs tend to become non-existent over time. Commissioner Heaton indicated that in that case a Special Service District would be an option.

Gwen asked why the county had not implemented impact fees to help pay for these issues. Rob Van Dyke (via text to Wendy) explained that impact fees are imposed by Garkane and the Water Conservancy District because they provide those services. Because we require the developer to put in the roads we cannot charge an impact fee for them.

Chairman Reese called the commission into public hearing.

Scot Tolman - He lives in Rocking Horse Ranch. He said the county has denied their road and it is a mess. He said that most of the traffic that is destroying the road is traffic going through Johnson Canyon. He is against the paved road requirement as long as there isn't a lot of thru traffic.

Wendy explained the Rocking Horse Ranch is a Platted Unimproved Subdivision and the owner was not required to put in the roads. The road Scot talked about is part of the East Corridor Transportation Plan that allows for public access.

Chairman Reese called the commission out of public hearing.

MOTION: Matt Cox made motion to remove the requirement for asphalt or chip sealed roads in any subdivisions in the county. Doug Heaton seconded the motion.

Gwen expressed concern over that motion and suggested the developers should maintain the subdivision roads. Matt argued that asphalt is more expense to put in and more expensive to maintain. Tom suggested adding to the motion that on any plat where roads are not accepted by the county include a statement to that affect.

FRIENDLY AMENDMENT: Matt asked that Tom's suggestion to add a note to the plat regarding road ownership and who is responsible for maintenance be added to his motion. Doug seconded that change to the motion.

John wanted to amend the motion to specify that subdivision with lots smaller than 5 acres still require pavement to reduce the dust and mud issues.

AMENDED MOTION: Matt clarified that he would like his motion to remove all requirements for chip seal and asphalt from subdivisions.

Wendy acknowledged that Matt's motion would allow them to revise the ordinance accordingly.

VOTE: Chairman Reese called for a vote on the motion to remove the requirement of chip seal and asphalt roads within all subdivisions in Kane County and to add a statement that the County will not be responsible for the maintenance of roads within a subdivision to the plats.

Matt Cox, Doug Heaton, Mason Haycock, Jeremy Chamberlain and Byard Kershaw voted Aye. Gwen Brown and John Reese voted nay. The motion to **approve passed**.

(This decision will be forwarded to the County Commission for final approval.)

**4. Public Hearing – Zone Change/Ordinance 2024-07: Third Mesa LLC/ JT Maxwell
An application for a zone change from Agricultural (AG) to Rural 10 (RU-10) parcel 3-5-34-3A containing 71.34 acres, located near the mouth of Johnson Canyon. Submitted by JT Maxwell.**

JT Maxwell explained that he is with a company called Grand Classroom and he brings middle school kids from all over the country to Kanab and the national parks. He said that a minority of these students might be interested in camping. He bought this land seven years ago with the idea that the kids could camp if they chose to. He said a typical group is 30 students with an average stay of 2 nights. Eighty percent of their business is between April and June. He stressed that these are not troubled teens but rather normal school kids who are taking advantage of an educational experience outside of school. He will keep the land just like it is with the addition of some tents for use as described above.

Wendy showed the surrounding zones which are Residential, AG and AG-FAA. John asked if RU-10 is the best zone for his project. Wendy said it is the most restrictive zone that will allow him to do what he wants to do.

Gwen asked if the tents would be there all the time. JT indicated there would probably be a wood platform and canvas tents and in the off season the canvas would probably be removed. John asked how many tents he is planning as the RU-10 would allow up to 70. JT said that he does not plan to go that big. He said a busload is approximately 45-55 students so he would probably want to do approximately 7 tents total in the first phase with the option to add enough for a second bus load of kids. Matt expressed concern over the list of uses allowed in the Rural 10 zone.

Chairman Reese called the commission into public hearing.

Hilda Crutchfield - She is against this zone change. She is concerned about the zone changes taking place in the county and the uses that will be allowed if the zone is changed. She stressed that this is a rural community and the residents bought there because they wanted a rural way of life. She is concerned about the added traffic, noise and light pollution.

Chuck Porter - He owns 30 acres next to this parcel and he is in favor of the proposal. He has known JT for a long time and has confidence that he will do what he says he is going to do. He said that if JT doesn't get this zone change he could divide his property into 10 acre parcels. He would prefer seasonal tents over more 10 acre parcels.

Larry Crutchfield, - He is opposed to this project. He noted that the current AG zoning will accommodate enough tents for the amount of people he stated. He reminded the P&Z that once you change the zone it is changed for good and while JT has good intentions the next owner may not. He is concerned about light and noise pollution. This is a residential community in a rural neighborhood. He feels that the Rural 10 zone is actually light commercial and it will change the nature of the area.

Rocel Bettencourt - She is opposed to changing this zone. She considers the RU-10 zone to be light commercial. She noted that this zone change would allow for potentially 80 1500 square foot cabins. She stressed that that would be a commercial development. She also feels that the potential of 70 tents is way too big for this area. She is concerned about the condition of Johnson Canyon Road and the lack of funding for maintenance on the road. She asked why the county would allow more traffic on a road that is in such bad shape. She also stated that allowing more development east of Kanab without adequate fire protection is irresponsible and a liability to the county.

Judy Habbeshaw - She is opposed to this zone change. She is concerned about the nature of the groups that will be coming to the area. She is also concerned about open camp fires in the area.

Michael Palmer – He lives in Grand View Estates. He moved to Kanab for its agricultural, wide open spaces. He is opposed to mixing commercial business with the agriculture and residential areas. He also reiterated that the road is in bad shape. He opposed the zone change.

Norris Church – He spoke in favor of the project. He owns land next to JT. He has dealt with the kids that JT has brought and stated that they are good kids. He likes the idea of the tents for a season over the idea of a bunch of houses. He reiterated that the kids are good kids.

Scot Tolman - He is opposed to this zone change. He is concerned about what could go in there if JT were to sell the property after getting the zone change.

Chairman Reese called the commission out of public hearing.

JT Maxwell acknowledged that people don't like change or the idea of commercial. He stated that he does not want to change or divide the land. He said that 90% of the land will be kept in grazing.

He thinks that the tents are much less intrusive than the possibility of 70 houses to the south of his property. He noted that the kids would not be there during the day.

John asked what the current zone allows. Wendy reminded the Planning Commission that they are approving a zone, not a project. She said that his current zone of AG allows for 7 tents. There is not a limit to the amount of people allowed.

JT noted that he had the option of dividing his property into 10 acre parcels and eventually putting 7 tents on each parcel. He would prefer to keep it as one large parcel and cluster the tents closer together.

Jeremy said there are 19 uses in the RU-10 and 11 of those are conditional uses. That means that a lot of the concerns can be addressed in a conditional use permit. Gwen reiterated that they are not approving the project, they are approving the zone change. She feels that this is spot zoning. Matt is concerned about the domino effect of approving this zone change. He would prefer to change the 7 tent limit to a tiered system and allow more tents based on the amount of acreage. Charee reminded the Planning Commission that all the uses in the Agricultural zone are allowed in the Rural zones. Wendy confirmed that all the uses in the Residential and Agricultural zones are allowed in the Rural zones.

Mason does not want to make a decision based on the fear of what might happen. John asked Wendy if the applicant could do a deed restriction stating they won't sell under the new zone and if he did sell it would revert back to the old zone. Wendy said the county has never done that and it would be a tracking nightmare. Commissioner Wade Heaton stated that the property owner could voluntarily offer up deed restrictions that would be recorded and binding on the property.

MOTION: Matt Cox made a motion to **recommend denying** the zone change from AG to RU-10 for parcel 3-5-24-3A & Ordinance 2024-07 to the County Commission based on the facts and findings as documented in the staff report. Gwen Brown seconded the motion.

VOTE: Matt Cox, Gwen Brown and John Reese voted aye. Mason Haycock, Byard Kershaw, Jeremy Chamberlain and Doug Heaton voted nay. The **motion failed**.

MOTION: Jeremy Chamberlain made a motion to **recommend approval** of the zone change from AG to RU-10 for parcel 3-5-24-3A & Ordinance 2024-07 to the County Commission based on the facts and findings as documented in the staff report. Byard Kershaw seconded the motion.

VOTE: Byard Kershaw, Jeremy Chamberlain, Mason Kershaw, and Doug Heaton voted aye. John Reese, Gwen Brown, and Matt Cox voted nay. The motion to **recommend approval passed**.

FINDINGS:

- Parcel 3-5-24-3A meets the minimum acreage required to be zoned RU-10. The parcel is currently zoned AG.
- The developer requests RU-10 zoning which requires a zone change.
- If the zone change is approved all uses contained in the RU-10 uses table will be allowed.

- Surrounding parcels are zoned AG, AG-FAA and R-1.
- The parcel would gain access from Johnson Canyon Road.
- All property owners within 500 ft. of this parcel have been mailed a public notice and a sign has been posted near the parcel.
- **9-5A-1: PURPOSE:**
To preserve appropriate areas for permanent and temporary agricultural and open space areas as defined herein. Uses normally and necessarily related to agriculture are permitted as set forth in the use matrix below and uses adverse to the continuance of agricultural activity are discouraged in general and specifically prohibited only as set forth herein. (Ord. 2013-5, 8-12-2013, eff. 8-27-2013)
- **9-5B-1: PURPOSE:**
Kane County continues to grow and increase in economic development. In areas of the county where there is a large amount of land that is zoned agricultural there is very low density and many lands that retain a rural feel along with many traditional agricultural uses. These lands are not suitable to be zoned commercial with the possibility of many varied commercial uses that are much higher in density and come with a much larger impact to the surrounding areas. However, to promote appropriate growth and economic development in these low density rural areas there is a need to allow additional uses beyond what is allowed in the Agricultural Zone. The purpose of the Rural Zone is to allow uses that are similar to the Agricultural Zone but also allow some additional uses for growth and economic development, such as recreation and tourism related uses that are better suited for these rural areas. (Ord. O-2020-14, 6-23-2020)
- 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 Use: **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.

5. Public Hearing – Zone Change/Ordinance 2024-08: Rogers

An application for a zone change from Agricultural FAA (AG-FAA) to Rural 10 (RU-10), parcels 256-6, 256-7, 256-8 and 256-9 totaling 40 acres, in the Paunsaugunt Ranches Rural Unimproved Subdivision, located off of Lutherwood Road near Tod's Junction and the Oaken Acres Subdivision. Submitted by Bart Battista, Cliffside Engineering PLLC, holding power of attorney.

Bart Battista explained that the applicant wants to build a private disc golf course for the people who stay in the cabins he plans to build. He is requesting the Rural zone because the golf course is a recreational facility. Bart stated that in his current zoning he could have a total of 8 units. His client desires to have 5 centralized cabins to rent to guests and then add a primary residence. He

is also entertaining the idea of some camp sites. Wendy showed that this property is surrounded by AG-FAA and AG zoning. She reminded the Planning Commission of the Hardman zone change that was similar to this request and that zone change was denied. Doug asked about the density in the area. Wendy was not aware of development in this area. Bart stated that there were cabins to the northeast that were used for short term rentals. Commissioner Wade Heaton stated that there are several fulltime residents in the area. Commissioner Heaton gave a history of the Rural Unimproved Subdivision process and explained that it has been abused by people who want to circumvent the subdivision process. He feels we should hold those individuals accountable. He asked the Planning Commission to be consistent with these AG-FAA zone changes. Wendy explained that when a rural unimproved subdivision (RYS) is created the property owner is required to sign and notarize a document saying that if the property is developed they will have to be brought up to the current subdivision standards, meaning all infrastructure will need to be put in. She went on to explain the difference between AG and AG-FAA zoning, stressing that this AG-FAA designation is a zoning designation not a tax designation. Wade noted that other developers in this area are watching what is happening with these rural unimproved subdivisions. He stated that if this is turned over to development others will follow.

Chairman Reese called the commission into public hearing.

(No Comments)

Chairman Reese called the commission out of public hearing.

John is concerned that this zone change will set a precedent for future zone changes. Mason questioned what the down side of this zone change would be if the property owner will be required to bring it up to today's standards. It was determined that Lutherwood Road is a private road the developer would be required to arrange for access to his properties. Wendy reminded the Planning Commission that the question at hand is if the Rural zone belongs in this area. Gwen stressed that the requested use doesn't belong in the area.

MOTION: Gwen Brown made a motion to **recommend denying** the zone change from AG-FAA to RU-10 for parcels 256-6, 256-7, 256-8 and 256-9 and ordinance 0-2024-08 to the County Commission based on the facts and findings as documented in the staff report. Matt Cox seconded the motion.

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

FINDINGS:

- Parcels 256-6, 256-7, 256-8 and 256-9 meet the minimum acreage required to be zoned RU-10. The parcel is currently zoned AG-FAA.
- The developer requests RU-10 zoning which requires a zone change.
- If the zone change is approved all uses contained in the RU-10 uses table will be allowed.
- Surrounding parcels are zoned AG, AG-FAA.
- The parcel would gain access from Highway 89 and Lutherwood Road.

- All property owners within 500 ft. of this parcel have been mailed a public notice and a sign has been posted near the parcel.
- **Agricultural Zone 9-5A-1: PURPOSE:** To preserve appropriate areas for permanent and temporary agricultural and open space areas as defined herein. Uses normally and necessarily related to agriculture are permitted as set forth in the use matrix below and uses adverse to the continuance of agricultural activity are discouraged in general and specifically prohibited only as set forth herein. (Ord. 2013-5, 8-12-2013, eff. 8-27-2013)
- **Rural 10 Zone 9-5C-1: PURPOSE:** Kane County continues to grow and increase in economic development. In areas of the county where there is a large amount of land that is zoned agricultural there is very low density and many lands that retain a rural feel along with many traditional agricultural uses. These lands are not suitable to be zoned commercial with the possibility of many varied commercial uses that are much higher in density and come with a much larger impact to the surrounding areas. However, to promote appropriate growth and economic development in these low density rural areas there is a need to allow additional uses beyond what is allowed in the Agricultural Zone. The purpose of the Rural Zone is to allow uses that are similar to the Agricultural Zone but also allow some additional uses for growth and economic development, such as recreation and tourism related uses that are better suited for these rural areas. (Ord. O-2023-03, 1-24-2023)
- **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 Use: 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.

6. Public Hearing – Lot Joinder: Guy

An application to amend a subdivision plat for a lot line adjustment joining lots 57 & 58, becoming new lot 57 consisting of 1.06 acres and vacating (2) 7.5' utility easements, Strawberry Valley Estates, unit 4. Submitted by Mike Stewart, Red Sands Geomatics, holding power of attorney.

Mike Stewart, Red Sands Geomatics, presented the project, stating that this is a standard lot joinder.

Wendy indicated that Shannon and County Engineers have reviewed this project and everything is in order.

Chairman Reese called the commission into public hearing.

(No Comments)

Chairman Reese called the commission out of public hearing.

MOTION: Jeremy Chamberlain made a motion to **recommend approval** to the Kane County Commissioners amending a subdivision plat for a lot joinder and vacating (2) 7.5' utility easements, in Strawberry Valley Estates, Unit 4, lots 57 & 58 becoming new amended lot 57, on behalf of Timothy S. and Jacqueline C. Guy, based on the findings documented in the staff report. Matt Cox seconded the motion.

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

FINDINGS: Amending (joining) the lots and vacating two 7.5-foot public utility easements for the above-stated lots conforms to the standards in Kane County Land Use Ordinance, 9-21E-9, (A-F) and Utah Code Sections §17-27a-201, 202, 206, 208 and §17-27a-608, 609 and 609.5. All requirements have been met. The project has been posted in two public places and on the county and state websites. Notices were mailed out to all property owners within 500 feet of the project. A sign was posted showing the vacating of two 7.5 foot public utility easements. The new lot will retain the Residential ½ zoning (R-1/2). Combining these lots complies with all state and local ordinances.

7. Public Hearing - Amended Plat: Bean/Chournos

An application to vacate, amend and extend a subdivision plat to adjust the lot line between parcel 297-1 in the Square One Rural Unimproved Subdivision and parcel 317-1 in the Johnson Canyon Estates Rural Unimproved subdivision. Submitted by Tom Avant, Iron Rock Group, holding power of attorney.

Tom Avant, Iron Rock Group, presented the project explaining that they are exchanging a small portion of land to allow for a septic tank.

Wendy stated that Shannon and the County Engineer have reviewed this and everything is in order.

Chairman Reese called the commission into public hearing.

(No Comments)

Chairman Reese called the commission out of public hearing.

MOTION: Matt Cox made a motion **recommend approval** to the County Commissioners, Ordinance 2024-09 to amend, extend and vacate amended plats for the Johnson Canyon Estates Platted unimproved Subdivision and the Square One Rural Unimproved Subdivision parcel/lot line adjustment, for parcels 297-1 and 317-1, based on the findings documented in the staff report. Mason Haycock seconded the motion.

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

FINDINGS: The application for Amending, Extending and Vacating the plat of the Johnson Canyon Platted Unimproved Subdivision (PLUS) and Square One Rural Unimproved Subdivision (RUS) complies with Utah State Code unannotated §17-27a-605 (1), (ab)-(i)-(iv). Johnson Canyon Estates, PLUS and Square One RUS both comply with Kane County Land Use Ordinance, Title 9, Chapter 21, Subdivision Regulations, Article E-9. All requirements for rights-of-way and EXISTING easements conform to the standards in the Kane County Land Use Ordinance at the time of the application for the PLUS and RUS process. No easements are being vacated. All notices are in conformance with all standards and notice requirements of §17-27a-202. A notice was posted on two public notice boards at the Kane County courthouse, Utah State website and the Kane County website. A sign was placed on the property being vacated.

- (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.

Charee explained the funnel down system to our zoning noting that all residential uses are allowed in the AG zone, all AG uses are allowed in the AG-FAA zone, all those uses are allowed in the Rural zone and then all uses are allowed in Commercial zoning. The multi-residential uses are not included in the funnel, being allowed only in the MR and Commercial zones.

Matt Cox made a motion to adjourn. Mason Haycock seconded the motion.
Meeting was adjourned at 8:19 pm.

Land Use Authority Chair
John Reese

Assistant Planning & Zoning Administrator
Wendy Allan