



MINUTES

Kane County Planning Commission
& Land Use Authority Meeting
Kane County Commission Chambers
76 N. Main Street, Kanab, UT
April 10, 2024

ACTING CHAIRMAN: Gwen Brown

MEMBERS PRESENT: Doug Heaton, Byard Kershaw, Gwen Brown, Mason Haycock

MEMBERS ABSENT: John Reese, Jeremy Chamberlain, Matt Cox

EX-OFFICIO MEMBER: Commissioner Wade Heaton

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

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

GENERAL BUSINESS

1. Update on Commission Decisions

Commissioner Wade Heaton reported that the commission approved the lot joinder and amended plats. The zone change request from AG-FAA to RU-10, located east of Tod's Junction, was denied. The Maxwell zone change to RU-10, in the mouth of Johnson Canyon, was approved. The ordinance regarding the hard surface roads in subdivisions was tabled. The commission does not feel that the current ordinance should be applied county wide and they are looking at mechanisms to have it apply to specific areas.

2. Approval of minutes March 13, 2024

MOTION: Byard Kershaw made a motion to **approve** the March 13, 2024 minutes. Doug Heaton seconded the motion.

VOTE: The **motion passed** unanimously.

3. Public Meeting – Subdivision: Kanab 600 LLC

An application for the Willow Reserve Estates Phase 1 preliminary plat, creating 20 lots, parcels 4-5-5-2 and 4-5-6-1, located east of Kanab between the Crimson Estates Subdivision and the Palomar Subdivision.

Tracy Stratton, with Philo Development, presented the project. They are planning a total of 419 lots on approximately 600 acres. This application is for 20 lots in Phase 1, located in the northwest corner of the property along Mountain View Drive. They are not asking for any exceptions to their current R-1 zoning.

Gwen Brown had some concerns with the development agreement. She questioned why they keep referencing PIDs (Public Infrastructure Districts) in the development agreement. She reminded them that the PID had been denied and feels that any reference to a PID should be removed. Tracy indicated that they are agreeable to removing all PID language from the development agreement prior to the approval of final plat. Brennan Reese, Ensign Engineering, pointed out that the current PID language provides an option for an HOA or similar organization to “be responsible for, or have jurisdiction over, the preservation, maintenance, and ownership of open space/common areas” in the development agreement. Gwen reiterated that the PID language should be completely removed since the PID has been denied by the County Commission. Tracy again said that they are okay with removing the PID language. .

Gwen asked about the lots that are less than one acre. Tracy stressed that they will adjust the lot lines to assure all lots will be a minimum of one acre.

Gwen went on record expressing opposition to Recital H. which states “... (ii) has concluded that the terms and conditions set forth herein serve a public purpose and promote the health.” She also wanted it on the record that she disagrees with the statement in 5C about a “compelling, countervailing public interest, safety, prosperity, security, and general welfare of the inhabitants and taxpayers of the County.”

Gwen noted that they mention an equestrian center in the development agreement and that use is not allowed in R-1 zoning. Terry indicated that was an oversight and they will remove the Equestrian Center from the development agreement.

Gwen asked if they will have a sewer system or individual septic tanks. Terry explained that they would like to reclaim some of the sewer water. In phase 1 they want to put in dry sewer lines so that if a municipal sewer system, owned and operated by the Water Conservancy or an HOA, were put in place they would be ready to hook up. They are not opposed to removing those lines from the plans and going strictly with septic tanks. They have a soils report showing the percolation of all lots.

Attorney Rob Van Dyke asked about their request for 15 animals per lot, subsequent phases, the vesting of all current county ordinances for all 15 phases, and authorizing filing a preliminary plat for a subsequent phase as soon as the final plat for the previous phase is approved.

Terry stressed that they are trying to make a community with long lasting viability. If they vest if the current county code today they will be frozen in time. They do have the option of amending

the development agreement at a later date. He stated that the market will judge the build out time but estimated a time frame of 10 to 25 years.

Byard asked if the lot size in a subdivision is required to be one acre or greater. Kane County Engineer, Tom Avant, talked about the rule of aliquot parts, explaining that typically you round to two significant digits, which in this case would show 1.00 acres with the rounding. Terry stressed that they will adjust the lots sizes to 43,560 square feet or more to avoid any size issue.

Tom reported that he issued a review a week ago and just got a response back late yesterday and he has not had time to do a full review of that response. He is concerned about some items in the drainage report. He noted that they excluded the comments on the development agreement in their response. Tom brought attention to item 3B4 in the development agreement which allows for them to get a third party engineer for review. He also noted that the application was signed by Greg Whitehead but he is not an officer of Kanab 600 LLC. He can sign as a manager of Philo Ventures who is the manager of Kanab 600 LLC. He recommended we have new applications that are signed properly. Tom stressed that he still needs to do a complete review before recommending approval. He said it is up to the P&Z to decide if they want to send it to the county commission with conditional approval or wait until they have a final review before forwarding it on. Byard preferred to have things correct before sending it to the commission. Gwen agreed.

Rob stressed that because the Planning Commission (P&Z) is a recommending body they should only be addressing exceptions to the ordinance in the development agreement. He clarified that the final draft of the development agreement is made after the Commissioners have approved the requested ordinance exceptions. Terry clarified that they are requesting conditional approval.

Gwen stated that the requested number of pets needs to meet ordinance requirements. Terry is agreeable to that request.

Rob suggested the Planning Commission focus on the requests for a third party engineer review, submitting the preliminary plat for a subsequent phase as soon as a final plat is approved, and vesting of the current ordinances for all phases of the project.

Brennan asked about the submittal process and the checklist for the preliminary plat application. He feels that they have checked all of the boxes on the checklist and now they need to work out the details of each of the items. He feels that many of the details could be worked out as they are moving towards final plat. He stressed that they have checked all the boxes on the application and stated that a preliminary submittal is not a perfect plan. They will continue to make changes and work through things as it moves through the process, having everything “nailed down” on the final plat.

Shannon explained that the new state code is requiring the subdivision process to change to make it less restrictive; not requiring them to go to the commissioners for approval. If the project is vested in the current ordinance they will be required to go through the current subdivision process for all subsequent phases. She advised the applicant that it would be in their best interest to NOT vest in the current ordinance. Tom asked the P&Z to consider that if they vest the project

in the current ordinance any subsequent changes to the R-1 zone, including uses, would not apply to any of the lots in this project.

Tom reiterated that the applicant has submitted what is on the list but those items are still in the review process and he cannot recommend approval until the items on the checklist are correct and have been finalized.

Gwen clarified that the items that need discussion are the request for a 3rd party engineer, vesting in the project in the current ordinance, and continuing the next phase before the previous phase is completed.

Brennan read section 3B(iv), “In the event the Parties cannot agree on a competent engineer, then the two proposed competent engineers shall pick a 3rd engineer, which 3rd engineer shall then resolve the dispute. The Parties agree that this dispute resolution process shall take not more than ninety (90) days.” explaining that this would only come into place if they have a dispute with the county engineer in the which a 3rd party outside source could come in and review the dispute and make a decision within 90 days. It was clarified that the project engineer and county engineer would agree upon a 3rd party engineer independent of the current project.

Gwen again stated that she feels it would be best to have all corrections made before sending it to the County Commission. Mason asked Shannon about her recommendation in the staff report to postpone the project to the next meeting once all documents have been submitted and revised. Shannon advised the Planning Commission that it is up to them to decide if they want to recommend conditional approval or postpone the project.

Rob stressed that the P&Z needs to be clear as to what they are approving and recommending. Shannon reiterated that if it is approved conditionally she will not forward it to the commission until everything has been approved by the county engineer. She reminded the P&Z that the development agreement is not binding until it is approved by the commissioners.

Doug expressed the opinion that the 3rd party engineer clauses is a protection to the developer so that someone with an agenda cannot hold the project up. Mason further expressed that if there is a substantive problem the 3rd party engineer would most likely come to the same conclusion as the county engineer. Gwen reiterated that it would be cleaner to have the corrections completed prior to sending it forward to the commission.

Gwen asked for a discussion on vesting the project in the current ordinance. Terry stressed that they are wanting to invest in the current ordinance.

Gwen asked for comment regarding the over lapping of phases. Doug asked if there was a limit to how many phases could be overlapped. Rob clarified that the developer is requesting to submit an application for a subsequent phase upon approval of the current final plat. Byard asked if the developer will be building the homes. Terry stated that is yet to be determined. Tom noted that the overlapping of phases is common and as long as the developer is bonding there is no risk to the county.

Mason expressed concern about the 3rd party engineer. He cannot conceive a situation in which a 3rd party engineer would be necessary. Tom noted that, as long as the developer has bonded for the project, a 3rd party engineer would not pose a risk to the county. Rob stressed that the county already has a process in place for appeals.

MOTION: Doug Heaton made a motion to **recommend approval** to the Kane County Commissioners, the Willow Reserves Estates Subdivision preliminary plat with the **DRAFT development agreement**, based on the findings documented in the staff report **with the conditions that we deny the 3rd party engineer clause, that the developer is allowed to invest the entire project with current ordinance and to layer the application process.** Mason Haycock seconded the motion.

FRIENDLY AMENDMENT: Doug Heaton amended his motion to include that **the developer will remove the items they agreed to in our discussion tonight.** Mason Haycock seconded the motion.

VOTE: The vote was **unanimous to recommend approval** of the motion, including the friendly amendment.

FINDINGS: The Willow Reserve Estates Preliminary plat and development agreement application conforms to the standards in the Kane County Land Use Ordinance and may be heard by the Land Use Authority. The application and preliminary plat complies with Utah State Code unannotated §17-27a-601, 603, 604, 604.5, 606, 607 and 608. The preliminary plat complies with the Kane County Land Use Ordinance, Title 9, Chapter 21C and D, Subdivision Regulations. All requirements for rights-of-way and easements conform to the standards in the Kane County Land Use Ordinance requirements and the Kane County Standards Specifications and Drawing Details for Design and Construction, which requires 66 foot rights-of-way. The private roads will be the required 50 ft. wide rights-of-way. All notices are in conformance to the standards and notice requirements of 17-27a-201 & 202. A notice for the public meeting was posted in two public places; notices were mailed out to all affected entities and posted on the Utah State and Kane County websites as a public meeting.

4. Public Meeting – Subdivision: Duck Creek Improvement Exchange LLC
An application for the Koti Subdivision preliminary plat, creating 2 lots, parcel 8-7-6-4B, located on Meadow Ranch Drive, Duck Creek Village, Utah. Submitted by Brent Carter, New Horizon Engineering, holding power of attorney.

Brent Carter, New Horizon Engineering, explained that his client would like to divide their property into 2 lots. Each lot is over 1 acre. Meadow Ranch Drive is the easement that will service the lots. As part of this subdivision they will dedicate their portion of Meadow Ranch Drive to the county. They will add a fire hydrant, second water meter and power to the new lot.

Shannon stated that both she and the county engineer recommend approval.

MOTION: Mason haycock made a motion to **recommend approval** to the Kane County Commissioners, the preliminary plat for the two lot Koti Subdivision, on behalf of Jared Plewe. Byard Kershaw seconded the motion.

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

FINDINGS: The KOTI subdivision, Phase 1, application and preliminary plat complies with Utah State Code unannotated §17-27a-601, 603, 604, 604.5, 606, 607and 608. The KOTI subdivision, preliminary plat complies with Kane County Land Use Ordinance, Title 9, Chapter 21C and D, Subdivision Regulations. All requirements for rights-of-way and easements conform to the standards in the Kane County Land Use Ordinance requirements and the Kane County Standards Specifications and Drawing Details for Design and Construction, which requires 50 foot rights-of-way. The **private** road will be the required 50 ft. wide rights-of-way. All notices are in conformance to the standards and notice requirements of 17-27a-201 & 202. A notice for the public meeting was posted in two public places; notices were mailed out to all affected entities and posted on the Utah State and Kane County websites as a public meeting.

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 Doug Heaton.

VOTE: The **motion passed** unanimously.

5. Public Hearing – Lot Joinder: Chapman

An application to amend a subdivision plat for a lot joinder, joining lots 17, 18, 19 & 20 becoming new lot 19, consisting of 2.04 acres, North Fork Estates #2, and vacating (9) 7.5 foot utility easements. Submitted by Brent Carter, New Horizon Engineering, holding power of attorney.

Brent Carter, New Horizon Engineering, explained that his client would like to join 4 lots together and eliminate the easements between the lots.

Shannon stated that Garkane has started charging for their termination agreements and South Central will not give a termination agreement because they do not service the area. Shannon explained that there is a statement on the plat as to why they are vacating easements without the termination letters.

Acting Chairperson, Gwen Brown, called the commission into public hearing.

(No Comments)

Acting Chair Brown called the commission out of public hearing.

MOTION: Mason Haycock made a motion to **recommend approval** to the Kane County Commissioners amending a subdivision plat for a lot joinder, and vacating (9) 7.5' utility easements, in the North Fork Estates Subdivision, Unit 2, lots 17, 18, 19 & 20 becoming new amended lot 19 consisting of 2.04 acres, on behalf of Douglas and Barbara A. Chapman, based on the findings documented in the staff report. Byard Kershaw seconded the motion.

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

6. Public Hearing – Ordinance 2024-11: KCLUO Chapter 1 & 21

An ordinance revising Kane County Land Use Ordinance Chapters 1 & 1 to become compliant with Utah Code 12-27a-604.1.

Commissioner Wade Heaton explained that in the 2023 legislative session there was a bill passed that requires counties to designate an Administrative Land Use Authority. He suggested that could be the Land Use Authority (Shannon) or the Planning Commission. It cannot be a legislative body (County Commission). The Administrative Land Use Authority will review all administrative applications and apply county ordinance. Commissioner Heaton stressed that the Planning Commission and County Commission will be responsible for setting the ordinance that the Administrative Land Use Authority will apply.

Rob added that this new state law is intended to take the administrative decisions out of the politicians' hands. Rob explained that our subdivision ordinance has been purely administrative, meaning that if it complies with ordinance the property owner can subdivide the land. Rob informed the P&Z that the Administrative Land Use Authority could be the Planning Commission, the Land Use Administrator, the County Engineer, or some newly formed board. He stressed that it cannot be the County Commission. Once this decision is made Rob and Shannon will move forward with revising the county's subdivision ordinance to comply with state code.

Wade advised the Planning Commission that the intent is to remove administrative decisions from those who are feeling political pressure. Doug noted that the administrator would only be applying the ordinance as it is written. Doug suggested that the current Land Use Administrator should be designated as the Administrative Land Use Authority.

Acting Chairperson, Gwen Brown, called the commission into public hearing.

Tom Avant – Owner of Iron Rock Group. He stated the he has worked with the county for over 30 years. He stated that Shannon is the best Land Use Administrator he has worked with.

Rob noted that the decision being made now could be changed later if necessary. He also mentioned that they could designate different Administrative Land Use Authority for the different type of land use applications.

Acting Chair Brown called the commission out of public hearing.

MOTION: Doug Heaton made a motion to **recommend** to the county commissioners that the Land Use Administrator become the Administrative Land Use Authority for the purpose of executing administrative action regarding land use. Byard Kershaw seconded the motion.

VOTE: The vote was **unanimous to recommend this ordinance.**

Mason Haycock made a motion to adjourn. Byard Kershaw seconded the motion.
Meeting was adjourned at 7:44 pm.

Land Use Authority Vice-Chair
Gwen Brown

Assistant Planning & Zoning Administrator
Wendy Allan