

Minutes of the Kane County Planning Commission
& Land Use Authority Meeting
76 North Main Street, Kanab
December 10, 2014

CHAIRMAN: Tony Chelewski

MEMBERS PRESENT: Tony Chelewski, Roger Chamberlain, Dale Spencer,
Dale Clarkson, Robert Houston, Hal Hamblin

MEMBERS ABSENT: Wade Heaton

EX-OFFICIO MEMBER: Commissioner Douglas Heaton

STAFF PRESENT: Shannon McBride, Land Use Administrator; Mary
Reynolds, Administrative Asst.; Kent Burggraaf,
Deputy County Attorney; Linda Little, County
Building Official; Tom Avant, County Engineer

5:30 PM Work Meeting

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

Motion was made by Dale Spencer to approve the November 12, 2014 minutes. Motion was seconded by Dale Clarkson. The Chair asked for any questions or comments and there were none. Motion passed unanimously.

Announcement: Mary Reynolds, Admin. Asst. told the Planning Commission members they had replacement pages from the codifiers [Land Use Ordinances] in their packets. There are instructions with the replacement pages to show which pages to pull out.

Robert Houston asked whether the (updated) version [of the Land Use Ordinances] was online on the county's website. Kent Burggraaf, Attorney, replied it was there,

but it would not print in the same format the members were currently receiving in their packets.

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

Chairman Chelewski called the commission into public hearing.

Administrative/6:01 pm
Public Hearing

Lot Joinder
Kerry R. Wilson, property owner, Navajo Lake Estates, Amending Lots 188 & N-2-Park; New Lot 188, Submitted by New Horizon Engineering, Brent Carter

Shannon McBride, Administrator, contacted Ken McFate [property owner in Navajo Lake Estates] via conference call so he could give input in opposition to the Lot Joinder. Mr. McFate has stated he will lose access to his property if the Lot Joinder is allowed.

Brent Carter, New Horizon: We have Lot 188 and N-2-Park; my client, Mr. Wilson owns those two lots and wants to join them together to create a [larger lot].

Dale Clarkson: What is the history of the park; was it, in fact, set aside? Should it remain set aside?

Brent Carter: No; it was labeled as a park on the plat in 1963, however, it was not dedicated to the public. Several years later, the recorder contacted the developer and told him it was not properly dedicated therefore, he [the developer] still owned it. She [the Recorder] created a legal description for it and he started paying taxes on it. It was always a private piece of property, but at that point it went on record as being one. That was [approx.] 20 years ago. [I don't know exactly when] the property owner started paying taxes on it.

Shannon McBride: Having a date on when they [started paying taxes] isn't important. We don't need to research it. It was recorded by the Recorder and [that is all that is pertinent, here]; it was given a legal description.

Tony Chelewski: The concern is that Mr. Wilson [isn't giving Mr. McFate] access to his property?

The floor was given over to Tom Avant, County Engineer, to answer the Chairman's question and to show aerial view photographs of the subdivision.

Tom Avant: I have the original subdivision plat of Navajo Lake Estates that was signed in 1963. The owner certificate says, "It is the intention of such owners to subdivide land into blocks, lots, streets and easements as shown by the accompanied plat and to dedicate such streets and easements to the public." It doesn't say [anything about] the park being dedicated to the public – just the streets and easements. Whatever the intent was, at that time, it was not conveyed in the dedication. That is why the Recorder has said the park was not conveyed to the people as a whole. In the dedication they have to dedicate to the people as a whole, the HOA, or the public, so they can transfer ownership. Otherwise the original developer retains private ownership. That is the legality of it.

6:09 pm Doug Heaton arrived.

Tom Avant (cont.): I spoke to Ken McFate today; he has concerns about being able to use Squawberry Drive [to access his property]. It is on the east side; Google Earth map shows the image. (Tom indicated where the county road was and which roads were private.) Squawberry Drive is dedicated as a county road [but not maintained], and it stops just short of the park. (Tom indicated where the park's boundary lines were on the map.) Pine Tree Lane stops at the park [boundary]; Park Drive also terminates at the park parcel. This loop [indicating a road on the map] where you can clearly see a road is actually [on] park property. The owner has agreed the corner would be a public easement because it ties two roads together. Squawberry Drive stops [at the park boundary line]; Ken [McFate] says he's been using this faded trail. (Look at it southerly.) I did an overlay, and where it crosses in front of the house is on lot 188. It is a fair amount south of the park parcel. It's probably 40 or 50 feet south [of the park property].

Brent Carter: I don't know what he [Ken McFate] is calling a road. Mr. Wilson has been cutting and clearing the property, making piles of slash and there's no established [road]; there is a trail, but it hasn't been used for years. There's deadfall all over it.

Kent Burggraaf, County Attorney, questioned where the county road was. Tom Avant showed it on the map; aerial view.

Tom Avant: You can see where Squawberry Road is – it use to be named Forest Drive. [Indicated where the road traveled through the forest and across the property line.] The overlay comes from Google (Earth); it is correct. It follows the contour of the land, [but it is] not a deeded right-of-way.

Hal questioned whether access could be gotten through what looked like a road. Tom showed where the actual usage was (what drivers used). Roger Chamberlain questioned the easement placement and Tom identified it.

Tom Avant: Ken [McFate] says he can't access his property with his (30 ft.) trailer via Squawberry Road any more. He says he hasn't been able to access it [his own property] along Squawberry Road since 1999. He has never been able to access it via Pine Tree Lane. He can't turn around in there. He would have to clear additional area in his lot [to turn around].

Ken McFate: The road on Forest/Squawberry has been blocked [with garbage and rocks] since 1999. Lot 188 used to be mine; Mr. Wilson approached me about buying it and I said yes, on condition he left it [access] open so I could get in and out of my lot. He agreed to do that.

Tom Avant: That was an agreement you had at the time of sale, correct?

Ken McFate: Good question, yes.

Tom Avant: So he [Ken McFate] is saying he sold this piece to Mr. Wilson, with the agreement he could go in and out of there. We couldn't find anything recorded to that fact; was it ever recorded or was it a verbal agreement?

Ken McFate: It was a verbal agreement.

Tom Avant: I don't think that is anything we can enforce. That is an agreement between you and Mr. Wilson.

Mr. McFate referred to Tom Avant's reference to Squawberry Road as a county road. He said he had been told the opposite and the county would not maintain it.

Tom Avant explained the county does not accept and maintain a road – even if it’s a dedicated public road – until it meets county standards. Mr. McFate indicated it was a public road ever since he bought the property; the original owners took him up Forest Drive to show him the property. He indicated the original owners used the road [as a public access] and when he purchased it in 1991 he used it and has continued to use it, until Mr. Wilson began blocking it with debris. Tom Avant clarified it was never maintained as a county road.

Ken McFate said previous owners [verbally] said it [the park property] was to remain a park and they tried to give it to the county, but the county refused. He said all three roads met [at the park]. He was promised he could use the access. Without Squawberry Road, his property is worthless to him. It’s been a problem for several years; he parks his trailer in the National Forest campground and then sits in a chair on his lot. He has been on the property every year (to check it) except 2008. It’s been a problem getting up through the public access roads since 1999. He [Mr. Wilson] has told the Sheriff he could do what he wanted with his property and Ken strongly disagrees.

Mr. McFate said he liked the idea Mr. Avant made in regards to the county condemning the road. Tom Avant clarified what he said regarding “condemning”. He said that amounted to a “taking” and the county wouldn’t do that. Mr. McFate argued he had a witness and recording to what Tom said.

Shannon McBride: At this point it doesn’t matter if the Engineer said that; those things would require going through a [different] process. Let’s stay focused with the matter at hand. If you want to [initiate] a condemnation or a taking, that isn’t something that can happen at this meeting. Let’s go forward and not argue about what was said behind the scenes.

Ken McFate: The roads were put in there for a reason and should remain. Its public access [as well as] emergency access; if fire or EMS need to get in and they are halted because someone put logs across the road then we’re going to have a problem, and everybody listed in this meeting is going to have a problem. Then there will be a civil lawsuit. I hope I am not the one up there requesting fire or medical. You should seriously look at that – how that’s being changed or how that will affect fire or medical to get in there. Leave [the] 50 feet of road there. No one’s going to build on it; no one’s going to build in the park because it’s a marshy bog. It’s useless.

Kent Burggraaf, Atty.: [Talking to the planning board members] Squawberry Lane is a public road, but not accepted as such because it doesn't meet standards. What is being proposed today as a Lot Joinder doesn't affect that – it keeps the status quo. If there is some sort of trail or road that crosses lot 188 or the park lot, we don't have enough evidence to say, and it is more of a civil issue. It doesn't actually affect what you're doing tonight. In that regard, it doesn't change Mr. McFate's right (or non-right) to what is or isn't there. Mr. McFate would not be losing his right to litigate the road. We are dancing around the issue of whether there is or isn't access and that's not involved in your decision tonight. That access doesn't change with a Lot Joinder.

Ken McFate: I think the point is how the property was originally built and what the intention [was]. We know what that is. The county sent me a map a couple of months ago and it had all three of those roads converging. Not until the most recent one on November 14th did that change.

Kent Burggraaf: The way it is being proposed tonight doesn't affect rights of access. The joining doesn't take away your right to access; if there is a dispute about that it doesn't get resolved tonight. As far as the park issue is concerned, I met with Mr. Avant and he has done some thorough research. We don't have any restrictions recorded on that parcel. If one or more of the property owners want to litigate [to keep the property] reserved as a park and have public access, it is not a question we answer tonight. [The property] is in private ownership; private ownership has the right to do a Lot Joinder. It would be through a civil action by the subdivision property owners to decide what the access (or non-access) should be.

Ken McFate: It was only after the county denied taking the property for free that it went into private ownership. I need access to my property from Squawberry [Lane] across the trail [the park].

Kent Burggraaf: It's not an issue this commission addresses – the access issue. I don't know that we acquired a public prescriptive easement. Even if we do have a prescriptive easement it still doesn't affect whether he [Mr. Wilson] can join the lots. They could join the lots and have access across it, if that was established at some point, or they can do it separate and still have whatever access is there, if it is there.

Ken McFate: Mr. Avant told me a couple of days ago the public road is going to remain open, and the three roads are going to be joined together.

Tom Avant: No; the roads were never deeded to be joined together. You may have a prescriptive right to the road but not a deeded right. Tonight's issue is about deeded issues. Those roads have never been deeded to meet. There may be prescriptive access, but not deeded.

Ken McFate: They were always used that way. I don't have access to my property. When I was shown this property [the access] was there. I thought it was alright, until Mr. Wilson came into the picture. If you move today to join these together and no longer call it a public road, I won't have access to my property and it pretty much becomes useless to me. If you take a blade up there and clear it so I can drive through it who is going to front that cost? Who stops Mr. Wilson from blocking the road with all his garbage? If you've never used this 'condemnation' before, like the lady in the county office told me, maybe this is the first time you need to do it. You need to keep open access, for: 1) fire and medical to get in there; and 2) for a current property owner to get in there, like it has gotten me in for the past 30-plus years. It seems simple to me. The Commissioners should see that. Every Commissioner I have talked to understood that. If I sell my property someone will build on it, [so] the road problem has to be solved.

Tony Chelewski: We have to move on because the road situation isn't part of the Lot Joinder. You're going to have to pursue that through a different avenue than this meeting tonight.

The Chair called the Commission out of public hearing.

Mr. McFate continued to speak against the Lot Joinder and was told the board was out of public hearing and could no longer take his comments.

Kent Burggraaf: One other thing I suggest; it's a minor change to what is being proposed. Where you see Squawberry Lane [on the plat] there is a notation that says the road has never been constructed. That is probably descriptive of how it currently is and it shouldn't be on the plat. If you approve this [Lot] Joinder, approve it subject to striking that language.

Dale Clarkson asked for clarification of the red line on the plat map. He was told that was the Forest Service boundary. He was shown which road was Squawberry Lane and what properties were proposed to be joined. He asked if the land [next to] Squawberry Lane would remain as a future public roadway and was told it was already a public road [but not maintained]. It has been recorded as it currently sits. He also questioned the double blue line on the map and was told it was a current existing road. Tom Avant explained that Pine Tree and Park are roads inside the right-of-ways and they [Mr. Wilson, et. al.] are recording a public easement in the southwest corner of the park.

Ken McFate offered more comment but was told, again, they were out of public hearing and they could not recognize his comments.

Robert Houston asked for clarification that no matter what the board did this evening, the issue with the road was a civil matter; the answer was affirmative. It was further clarified the roadway [access] was also a construction issue in which it would have to be enhanced [to be used].

Hal Hamblin: If they want roads into the property they [property owners] will have to get together and build their own roads, bringing them up to county standards. Technically, the county cannot do anything [at this point].

MOTION was made by Robert Houston to approve the Lot Joinder for Kerry R. Wilson, property owner, Navajo Lake Estates, amending Lots 188 & N-2-Park, New Lot 188, and remove from the amended plat the notation the road was never constructed. Hal Hamblin seconded the motion. The Chair asked if there were comments or questions and there were none. The Chair called for the question and the motion passed unanimously.

Chairman Chelewski called the Commission into public hearing.

Administrative/6:02 pm
Public Hearing

Lot Joinder
Frain & Laree Pearson, property owners, Navajo Lake Estates, Unit 2, Lots 185 & 190; New Lot 190, Submitted by Brent Carter

Brent Carter: This property is south of the other one [Kerry Wilson, Lot 188]. They have full access to their property – they actually have two accesses.

Brent showed board members where the access roads to the Pearson property were located. He showed them the trail on the map that had been referred to as a road and where it went [onto] Forest [Service property]. He said there was no way to fit a truck or trailer there right now. It was Brent's opinion no one had used the trail in the last five years. It was impossible to get through at this time. He said Mr. Wilson has put debris in the area; the downed vegetation on the Forest [Service property] is never removed. There were no easements or power lines [to be vacated].

Kent Burggraaf reminded the board that if approving [this Lot Joinder] the motion needed to include the verbiage to strike the language on the plat that said the road was never constructed.

The Chair asked if there were any comments or recommendations and there were none. The Chair called the Commission out of public hearing.

MOTION was made by Hal Hamblin to approve the Lot Joinder for Frain & Laree Pearson, property owners, Navajo Lake Estates, Unit 2, Lots 185 and 190, New Lot 190, and strike the language/notation on the plat that the road was never constructed. Motion was seconded by Robert Houston. The Chair asked if there were comments or questions and there were none. The Chair called for the question and the motion passed unanimously.

Chairman Chelewski called the commission into public hearing.

Administrative/6:03 pm
Public Hearing

Lot Joinder
**Gawin & Kristine Horrocks, property owners,
Zion View Mountain Estates, Lots 148, 149 &
172, New Lot 149; Submitted by New Horizon
Engineering, Brent Carter**

Brent Carter: [There are] easements and they will be removed [vacated].

Shannon McBride: I have posted signs for it [vacating] but we still need the letters [of consent]. You can handle this like you did last time; approval can be contingent upon receiving letters of consent to vacate the easements.

Kent Burggraaf: The motion should include recommendation of approval of the lot Joinder [to the Commission] with vacating all easements and receipt of the letters of consent to vacate.

The Chair asked if there were any comments or recommendations and there were none. The Chair called the Commission out of public hearing.

MOTION was made by Robert Houston to recommend approval to the Commission of the Lot Joinder for Gawin & Kristine Horrocks, property owners, Zion View Mountain Estates, Lots 148, 149 & 172, New Lot 149, contingent upon vacating of the utility easements and upon receipt of the letters to vacate. Motion was seconded by Roger Chamberlain.

The Chair asked if there were comments or questions and there were none. The Chair called for the question and the motion passed unanimously.

Chairman Chelewski called the Commission into public hearing.

Legislative/6:10 pm
Public Hearing

Kane County Land Use Ordinance
Proposed changes to Chapters 6 & 7.

Shannon McBride: Last month you approved the [definition for] residential facility and we are continuing where we left off. [Regarding the definition for RV] I have looked through other [county] ordinances to compare similarities. Each one (like Iron or Washington County) have different zones, whereas, they can differentiate between Forest Rec [and Agriculture]. Our [ordinances] no longer [recognize] Forest Rec as a zone; we have Residential-1/2 acre so it is affecting people out East. The [other county] ordinances weren't much help, because they have more zones. In Residential they don't allow RVs. You can't live in one unless you are building a home. I have two [situations] right now that Kent has to direct me through because I have been telling people they can live in their RV for six months, then they must move it off the lot. I start tracking it when it is first reported to me. Now I am being told I cannot enforce it if the RV is not removed.

Shannon McBride cont.: One of the problems is [the rabbit kennel in East Kanab]; Annie's permits are up. I have already received three phone calls saying tomorrow [Thursday, Dec. 11th] is the last day [for the conditional use permit] and she doesn't have a building permit. [Property owners] want the RV moved off the lot; they are

tired of it. Ray Wells is the other situation [with the woman living in the park-like model]. Both situations are in Vermillion Cliffs Estates. According to how the ordinance is written now, as Rob and Kent interpret it, they can store the RV after they've lived in it for six months, but not live in it [instead of moving it]. That makes it hard because I have a gentleman who will sign an affidavit, telling me they have seen people living [in their RV after six months], but unless I go after [their work] hours I cannot verify that. I have been trying to come up with something [clearer]. I created this ordinance so people on [Cedar Mountain] have the right to [use] their RVs – I don't want to take the right away even though it was a right they didn't originally have. But I have no enforcement; this is the hard part for me.

Shannon explained the situation with the woman who lives in her RV that is designed to look like a park model. She has continued to live in it past six months, and after being red-tagged, shows no willingness to comply.

Shannon McBride: I can understand why Ray Wells is upset about this. He is a business man who owns an RV Park. The first thing he said was 'You are taking away from my business and you are detracting from my property values.' We will probably hear from the public next month; they'll want to come in here [and talk about it]. The easy solution is to just have the RV removed. That will make the neighbors happy, but we need to have the language in the ordinance to do it. We have several people who are complaining about these issues. It has been problematic and we need to solve this.

Discussion ensued about how long an RV would have to be removed from the property if this revision was approved. The answer was six months in any given year. But if they stored it for six months, the attorneys say people could live in it again when the six months was over. The neighbors want it gone [forever]. The question was posed whether the RV had to disconnect from utilities once it was stored [for the six month wait].

Kent Burggraaf: In the sense that Section Four (9-6-4) indicates it is a nuisance, then yes, they would have to. It is problematic. The way the ordinance is laid out, they can live in their RV for six months; it doesn't say they have to remove it. They can store it for six months, but not live in it. Hypothetically, you can have someone who owns two RVs on their lot. They can live in one for six months, then store it; then move to the other one for six months (and store it). It could go back and forth. The language being proposed won't fix all of the issues. Ryan [Maddux, Building

Official] brought up a good point that you [could] have one lot [owner who] only stores their RV and doesn't live in it. But another person has to remove their RV because they lived in it. There is an issue of parity, [here]. We need proposed solutions. Rob Van Dyke [county attorney] brought up how loose [the language is] whether it [RV] has to be removed. He recalls that language was intentional – leaving it broad. You can change it if you want.

Robert Houston asked if the rules applied to someone who had 400 acres and put an RV in the center of it. And he asked if the ones [in question] were in subdivisions.

Shannon McBride: [That would make it an] Agricultural [zone], which changes the rules. Anything more than 10 acres is less restrictive. It is the little one or half acre lots we are having trouble with. Some are in subdivisions and some aren't. [For instance,] Cedar Mountain didn't allow it in the past. When I researched it back to the 70s the ordinance said cabins could only be [used] seasonally. I actually tried to create the right so it would help these situations out because many of the RVs had been there [for a long time]. As [another] example, in Iron County you cannot live in an RV at any time. We didn't want to do that on Cedar Mountain because they had been doing it for decades. Our solution was this ordinance but now it is creating a problem. Most of them [lots] on Cedar Mountain don't have homes built so you know they are using them for their [living accommodations]. In Vermillion Cliffs Estates that's not the case. They could get a conditional use permit when they were building a home because there was a need to live in the RV. But on Cedar Mountain they are not building homes on the lots; it is being used for recreation and seasonal [enjoyment]. Under Forest Rec you could have done that, but we changed [Forest Rec] the zone; that is [part of] the problem.

Doug Heaton: Do people with CC&Rs have the ability to solve their own problem?

Kent Burggraaf: Yes; they have the ability if they come to a consensus.

Charlie Saba, member of the public: If it doesn't cause a health or safety hazard why is the county interested whether they stay in it six months, eight months or less?

Robert Houston: Because in a subdivision there are nice houses all around it. It affects property values.

Shannon McBride: It is our job to protect property values. RVs belong in a camp ground and weren't created to live in year round.

Tony Chelewski: Regarding the rabbit issue – the lady hasn't done what she said she would do. There has been no improvement whatsoever; promises weren't kept.

Robert Houston: She agreed to the things [we asked of her]. That's what upsets me. She said she would have this [completed]. We asked her very specifically, and she said she'd do it.

Shannon McBride: She said she would get a building permit and she hasn't; I checked. I want to help her, but when I asked her 'Are you sure you don't want a year?' she said she would have it [done] within six months. Now it puts you guys between a rock and a hard spot. If you look at the email [from the complaining parties] they quote the [P&Z] minutes, and the motion is in there. They are going to hold you to what you agreed to.

Hal Hamblin: This problem we have had on Cedar Mountain, aren't most of those secondary residences?

Shannon McBride: Yes, but a lot more are becoming permanent. We have the [county] assessor here to answer that.

Linda Little, County Assessor: We have a lot more non-primary [residences] than primary [on Cedar Mountain].

Hal Hamblin: What about stating in the ordinance if [the RV is being used as] a primary [residence] they are limited [for an extended length of time], but if it's secondary, they aren't – they have a [designated] amount of time? Couldn't we [issue] a conditional use permit on it?

Shannon McBride: No. What if kids want to live with parents, for six months, and that becomes their primary residence for that time? That's how we came up with the time frame; hopefully within six months they could find a job and get on their feet. It would then be their primary residence, and it creates another dilemma.

Hal Hamblin: But it would be the secondary residence of mine [as a property owner] and I'm letting them live in it. Is that a problem? I'm saying if she [the person being

red-tagged] can prove she has two residences in Kane County she could probably live in it for six months. That's if we had that in our ordinance, otherwise if she doesn't have a secondary residence she can't live in it [permanently].

Kent Burggraaf: It would probably depend on how we worded it. Instead of saying secondary residency, [we would say] as long as it was on the property that wasn't [used for] the primary residency.

Hal Hamblin: Would that help solve our problem?

Kent Burggraaf: It potentially would, yes.

Linda Little: I wouldn't give primary residence [designation] to a lot that just had a travel trailer on it. I would never give primary residence on a lot that didn't have a permanent structure.

Kent Burggraaf: That's an assessment issue.

Shannon McBride: How would we define primary residence? I have to enforce it so I have to know how it is defined.

Tony Chelewski: I have a question in regards to Annie's [rabbit kennel] situation. If we have her remove the RV, [and] she moves to an RV Park, what about all the stuff left behind? How are we going to take care of that? Those people who are complaining are going to complain more, because of the sheds and tarps and misc. stuff.

Kent Burggraaf: There is an enforcement mechanism in the ordinance. [First] it's red-tagged, and you try to get them to sign an agreement to comply. If they don't, then you give them an administrative citation, [which] starts the clock ticking for potential fees being added on. If they don't comply at that point, it's turned over to the attorney's office to pursue court action. One of the alternatives is if they do sign an agreement it gives us contractual authority that protects us if we have to go in and remove whatever the problem is at their expense. If you have somebody that can be documented that they actually lived in the trailer for more than six months there's a case for a red tag, [then you try] to get them to do an agreement, issue a citation if they don't comply, and use the court system to compel [them].

That's already set up, but [in terms of] building a case if it ever did end up [in court] it is important that we require a written statement. It's not enough to call anonymously, and say [complain] there is this problem. If we're building a case, [in order] to enforce the ordinance we need to know who the individuals are, and they need to give us a sworn statement so we know enforcement is needed. You would need to decide if we have enough to take it to the final extreme, but if there is the potential of resolving it amicably [you should].

Tony Chelewski: In Annie's situation, there are two trailers west of her that are just as ugly as her facility. We aren't hearing anything about them from those people, are we? They have junk piled up in the back yard; when I go [past it, along Hwy. 89] three or four times a month, I look at it every time.

Kent Burggraaf: The issue with Annie is an RV problem; the bunnies that she was granted a conditional use permit on [is different]. You had the discussion afterwards that defined some of those issues. [Based on the discussion afterwards] technically [the bunny use] is a permitted use.

Doug Heaton: What would happen if we required Annie to remove her RV to a trailer court? She could drive out twice each day to take care of her bunnies?

Kent Burggraaf: That is correct. Currently, [the bunny issue] is a permitted use. That became clear during the discussion [after the conditional use permit was granted]. If we had the discussion in reverse, then I would be advising [differently]. Don't even hassle her about the conditional use permit since that [was considered] a permitted use. If she removed the trailer she can still use the location because it [was] a permitted use.

Shannon McBride: We went through the conditional use permit and gave her conditions [on taking care of] the bunnies; that is what the public is calling me on - the danger to the bunnies. They have seen the weather reports. I go by the conditions [stated] in the conditional use permit. Are you saying I need to tell the public who were in that meeting, that we can't really enforce that conditional use permit? Even though we approved it?

Kent Burggraaf: Because of the discussion the Commission had afterwards, related to [this situation] which defined small animals, and because of the stance the Planning Commission took as far as interpreting that, it made the conditional use a

permitted use, so [the conditional use permit can be revoked, however] it can't be enforced. It would be a 'taking' to make her remove [the] bunnies. The conditions put in place are not enforceable. You could revoke the conditional use [permit] on the grounds she didn't act in accordance with the permit, but she still gets to keep those bunnies there. Why waste the time doing that if she still gets to continue?

Hal Hamblin: She gets to keep them there because the Commission voted that small bunnies and rabbits were alright? If we do that to the public – say we are revoking it, because our conditions didn't get met – the finger gets pointed over here because we allowed it. Maybe that satisfies the public, but we're trying to do our job, here, and [she] didn't follow it [conditions of permit].

Kent Burggraaf: When I said the 'Commission' I meant the Planning Commission. It was your discussion I am referring to. It was actually in the same meeting.

Hal Hamblin: I wanted to see the six foot fence [constructed around it] and the other things [stated in the permit] and it turns out it wasn't enforceable all along?

Kent Burggraaf: If my recollection serves me, you were considering Chapter 6 or Ag that involved the number of animals [small livestock], but you had the discussion after you granted the conditional use permit, which you then sent on to the County Commission. They went along with your interpretation [but then modified the ordinance to address the issue differently in the future].

Dale Clarkson: There may be hundreds or thousands of people in Kane County living in RVs. I would hate to see the pressure on Shannon to carry out some of these ordinances. I would rather see the ordinance done away with so there is not a six month restriction that the RVs [must be moved]. In today's world, a lot of people have them and it's acceptable [to live in]. It gives them the freedom to use their land without us getting into their business or dictating to them [what they can do on their property].

If we take it out of the ordinance so [Land Use Authority] isn't on the hot seat to enforce these things, we [could] encourage people to deal with it themselves. We spend 90 percent of our time dealing with gripers who want to make changes to situations they should deal with on their own.

Robert Houston: Is what you're saying is, if you sold that lot next to your house and somebody wanted to move an RV in there and live in it permanently, you wouldn't have a problem with that?

Dale Clarkson: Number one, I don't think they would, economically; and I don't think it's going to be that much of a problem. Again, I am talking about the whole county. I know there's one or two who are objecting; and an RV is not the ugliest thing that could go in next door. Some of these things need to be done on an individual basis and I wish they could be done in that neighborhood by people [who can prove] it is a nuisance there – not that it's a nuisance for the entire county. [They should] deal with it specifically on that [basis], whether it's a car that hasn't been moved in years, or sheds [and] other things that are ugly and undesirable. I just don't think any of those things really impact the value of the existing property.

Doug Heaton: We can't come up with a solution of one-size-fits all. In a perfect world I'd like to see the county leave it to the local community. Let the CC&Rs deal with it. There are some half-acre lots where people just don't want the [RVs] there. I'd like to see the ordinance [remain] loose, and let the local community solve the problem as they see fit. Some communities just don't care.

Dale Clarkson: At one time we had CC&Rs in the Kanab Creek Ranchos, but we found it more difficult to police it. Even with CC&Rs you can't enforce it.

Robert Houston: That's the other part of the equation. You shouldn't make a rule you can't enforce.

Shannon McBride: The city ordinance doesn't allow RVs [to live in] in the Ranchos. You have to remember Cedar Mountain didn't originally have that right. In other counties they don't allow it. The [RVs] were not meant to be for permanent living. It does affect property values. It is a lose/lose [situation] if we don't do this properly. You're looking at this as 'taking rights away' but this actually gave rights that were never there [in the first place].

[In the past, people] always had to come in for a conditional use permit. The [woman] who is living [east of town] doesn't pay taxes. Ray Wells pays taxes; he has that property value [at risk]. How is she helping the Vermillion Cliffs Estates by keeping that RV in there? [Property owners] have a right to protect their property values. [Having RVs on lots] does affect property values; there is a difference

between Cane Beds and [Kanab property]. People know you can have [RVs] in the Cane Beds so the property values are not as high as lots in Sedona Valley, for example. If we are going to depend on CC&Rs then [that] should have been [addressed] in the beginning and we should have been enforcing that. We could all lose if we don't do this very carefully.

Dale Clarkson: You mentioned we are giving them rights they didn't [originally] have. I would go back many years and say the rule shouldn't have been put there in the first place. [We] don't give them the right – it's their property to do with what they want. We, as a political group, started making up rules that said you have to do this or you can't do that. [The ordinance] shouldn't have been there in the first place. We shouldn't have taken away the right in the 70s; they should have dealt with it on a local basis. It's difficult to craft out [ordinances] that meet different neighborhood requirements.

Hal Hamblin: I think we have to be careful, though. I think we need rules and regulations to protect our properties. This board should protect the majority of Kane County residents and their property rights. We aren't trying to restrict those on 10+ acres; we are restricting on half acre or one acre (in residential zoning). I don't know if we can solve this tonight.

Shannon McBride: We need to solve this tonight because the matter is at hand.

Hal Hamblin: What does our county attorney recommend?

Kent Burggraaf: This comes down to more of a policy issue. I recognize Shannon's frustration with enforcement. I am hoping we resolved the mechanism for enforcement because the way the ordinance is written actually works (if that's what you want). We don't have a Cane Beds scenario in our current ordinance because [the ordinance states] they are limited to living in the RV for six months. Enforcing it will be based on [written] complaints. My recommendation is if you can't come to a consensus, it actually currently functions through the enforcement provisions. From a legal stand point, it isn't broken.

Doug Heaton: We have a statutory responsibility to protect people's property values.

Shannon McBride: Yes; it is in state code. If you want to leave [the ordinance] as is, then do so. I have been telling people [their RVs] have to be removed after six

months and then stored. The attorney has let me know I can't enforce it. The words I put in [as a suggested revision] will have to be removed and I will have to stop saying the RV [in question] has to be removed after six months. I would have to have signed statements [declaring] the complainants saw people living in it; then I could go forward.

Robert Houston: Will that make your job easier or harder?

Shannon McBride: It's putting [the burden of responsibility] more on the public.

Robert Houston: To me that is a good compromise. It's not going to make the neighbors happy, though. They just have to go one step further. [If] ten of them sign an affidavit to say she's still living in it give it to Kent; it's in his court.

Kent Burggraaf: It doesn't come directly to me; there are a couple of other steps outlined, which can hopefully help it get resolved amicably. But eventually we can compel it through court action.

Robert Houston: If they [complainants] came to me, I'd say, yes you're right, but you need to sign this affidavit and we will start the process to have it removed.

Kent Burggraaf: Have it removed or have it stored [as stated in the ordinance]? We can enforce it under the [current] ordinance. They have to either remove it or store it. If we can get them to sign an agreement to remove it, they have the contractual obligation. If they violate the contract we can [pursue it through the courts]. If the RV is just sitting there, and no one is living in it, like Ryan [Maddux] pointed out, you are taking one right away from them that they [the neighbors] still maintain themselves.

Discussion ensued about defining the time frame of "six months within a calendar year." Is it January to January or could people hypothetically move out in December [2014] and back in January 1st [2015]? Shannon McBride stated the time frame began when she documents the complaint, and it is six months from that date.

Linda Little: To clarify, in order to start the process people have to actually come in and sign a complaint? [Yes.] That will eliminate half of them. They won't do it. They want us to do it.

Robert Houston: I think there will be enough people to do it. But here is another question; it seems we are trying to have the same rule apply to two different situations. What is the problem with leaving a different zone up there [Cedar Mountain], and having a different zone down here [east of Kanab]? What is the problem with doing that?

Shannon McBride: It can be done, but we have to notify everybody. When you change a zone you have to notify everybody the zone change affects. It would cost the county a lot of money to go back and reverse how it was before now. We've [done it] with the Monument, and we have to rezone the forest this year. [However,] it is a lot harder [to do] now because counties kept going back and forth and someone took it to the State, and they said we have to stop this. People don't like their zones being changed. I still have people calling asking when did [the zone] get changed from Forest Rec to Ag? They want to be notified because [in the past] the zone was changed without notification. It's called a blanket zone change and they [the public] doesn't like blanket zone changes.

Dale Clarkson said that gave a good argument for leaving the zone [unchanged] and leaving the ordinance as is. He said Land Use should process the complaints and have it go through the proper steps. He suggested the Planning Commission take six months to study the issue and see if the attorney wants to charge the violators as the enforcement process allows. He wants to see how this issue progresses.

Robert Houston: As I understand it, if I come in and file [sign] an affidavit, that doesn't mean the motor home is going to be moved. It could sit there until hell freezes over. Right? [Agreed.] So, why am I going to come in and do that?

Kent Burggraaf: Part of our process in dealing with the situation, if we red-tag [an RV owner/user], encourage them to contact [Land Use], they can enter into an agreement for compliance. If they don't comply with it, it gives us a contractual right to go in and do what we need to. This is an agreement like anything else. What I recommend [Land Use] does is the agreement [should state] they will remove it. If [Land Use] cannot get a consensus on removing it, renegotiate it, asking them to sign papers for them to move out. I think we can go forward with [a signed agreement to have it removed] to make people happy. [Land Use] doesn't have to stand on that alone; it can fall back to the "or" [position] where they need to store it in accordance with our ordinance.

It's a contractual agreement they will have with us. [Land Use] can come to the attorney's office to [determine] the substance of the complaints, and add provisions into the agreement that we initially proposed. My guess is that most property owners will [accept] that agreement. We can then get provisions in [the agreement] contractually that we don't get from the ordinance. Whenever we want them to clean something up as well, they would be obligated to do so. If we feel we have a strong case [Land Use] can include that in the agreement. [The agreement] could be somewhat standard, but for special circumstances it could be modified. It's a step in the process; they could reject it and we would go to the next stage.

Doug Heaton: We're border lining here. It's a scenario where we'll be testing out the waters. I would prefer to make it that if the neighborhood wants to kick the person out I want to place the responsibility on the people who want it done. I know it has to be done; I just don't want to be the one who does it. If we leave it alone, and they really want her out [rabbit kennel woman or lady in the park-like model] they can make it happen. I don't care if the RV stays or goes, but I want them [neighbors] to be responsible. I have the ultimate come-uppance; this isn't the last time we'll be accused of abusing somebody. I don't want to bear the responsibility for that. I don't want to tell people they aren't rich enough to live in my neighborhood.

Linda Little: The person who is living [in the RV] has clearly violated the ordinance. The other property owners have a valid complaint. I sympathize with them; but I think it's their responsibility to go through the process. They [property owners] need to ban together so they have enforcement power.

Robert Houston: There are two problems with that. You have 150 people out there who can't get together and agree. And we led them to believe we would fix the problem. We told them she had conditions to meet. So, this one [the rabbit kennel] is different. If we could take all the subdivisions out there and make them re-file, and make it very clear the CC&Rs are going to control all of this, our problems are solved. But we have to deal with the ones that are still there.

Doug Heaton: I think we are absolved of kicking her out as long as they want to come in and force the action. We have selective enforcement. Our policy says if we want to enforce this we need three people to come in and sign [a complaint]. We'll protect their property right if they are willing to take a stand to evict the person or have the [RV] removed. That would give me more peace of mind, but not a lot. We

have taken an inalienable right and said this is no longer coming from God its coming from the government.

That's the problem for me and that's the world we live in. We need to be careful we don't make it worse. Let's leave the ordinance the way it is, but you [planning commission] decide whether they should move [the RV] or not, or it can stay if the person moves out.

Kent Burggraaf: One way of resolving that, instead of adding the paragraph that [the Land Use Administrator] has added in, you can strike it. [Kent referred to the text on the screen and which sentences/sections could be struck. He read aloud what the ordinance currently said.] The [proposed added paragraph creates] a problem for people who want to store it.

Roger Chamberlain: We need to be able to store it; it's our property.

Shannon McBride: I have never had anyone complain about someone storing an RV. It's always when they are living in it.

Doug Heaton: If [the] ordinance said you are allowed to live in it for six months and if you go beyond the six months and someone complains, you have to remove the RV.

Kent Burggraaf: According to Section 4, in Chapter 6 you can store it after you've lived in it. You can store it [on your property] if you aren't living in it. Some of the RVs on the mountain are used in the winter for snowmobilers. Removing them ends up being a problem [during the winter]. It's hard to get them back in once you've moved [them]. The way it is written in Section 2, you can have a recreational vehicle [as long as] it's occupied seasonally. If it's been occupied [longer] it has to be removed [or stored]. One option is to remove it, or vacate it and remove it after six months, or leave it unoccupied and store it according to Section 4. Whether you live in it one day or six months, you have to go with one of those options; one of those options is you can leave it unoccupied. Maybe you want to tweak the six month occupation thing. A lot of cities say you can only live in an RV and have it parked on a lot for a specified number of days. Then it has to be removed from that lot. There are a lot of ways we can tweak this. It works the way it is, but if you want to go a different direction you can.

Doug Heaton: If a neighbor stayed in their RV one day a month, it wouldn't bother anyone. It's the full-time resident that bothers people.

Linda Little: If it's their actual residence that should be different than the [occasional] user. The ones on the mountain are using it [seasonally], not living in them.

Dale Clarkson: It's clear this is not a cut and dry issue. I think they should occupy [the RV] six months according to our ordinance, and then store it. I recommend we leave the ordinance as is at the present time.

Kent Burggraaf clarified the ordinance had approved changes from a previous meeting, which weren't currently reflected. The motion should state the planning commission approve the previous changes, and exclude this proposed change.

The Chair asked if there were any comments or recommendations and there were none. The Chair called the Commission out of public hearing.

MOTION was made by Dale Clarkson to approve the changes made last month, suggested by the attorney, and not modify the ordinance further via the changes discussed in this meeting, and recommend approval to the Commission the proposed changes to the Kane County Land Use Ordinance, Chapter 6. Motion was seconded by Roger Chamberlain. The Chair asked if there were comments or questions.

There was a brief discussion with Robert Houston and Kent Burggraaf regarding last month's modifications because Robert Houston was absent in last month's meeting. Kent explained the changes which included suggestions from the codifiers. Doug Heaton suggested making a friendly amendment to split the issues up.

Motion was made by Robert Houston to make a friendly amendment to split the issues and Dale Clarkson seconded. The Chairman asked for the question regarding changes outlined last month to [the definition of] residential facilities and the motion passed unanimously.

Motion was made by Dale Clarkson to not accept [Land Uses Administrator's] recommendation for changing the ordinance. It was seconded by Roger Chamberlain. The Chairman asked for the question and Tony Chelewski, Roger

Chamberlain, Dale Spencer, Dale Clarkson, and Hal Hamblin voted aye; one opposed – Robert Houston.

Chairman Chelewski called the Commission into public hearing.

Shannon McBride: The only change to Chapter 7 is adding the language “tour and tour guides.

Charlie asked about a different chapter, and wanted people noticed if changes occurred.

The Chairman called the Commission out of public hearing.

Motion was made by Hal Hamblin to accept the changes to Chapter 7 as discussed, and recommend approval to the Commission for the changes proposed in Kane County’s Land Use Ordinance, Chapter 7. Roger Chamberlain seconded the motion. The Chairman asked for the question and it passed unanimously.

Chairman Chelewski called the Commission into public hearing.

Legislative/6:015 pm
Public Hearing

Kane County Resource Management Plan
Proposed revisions to Section 5.

Mary Reynolds: The revisions made to the Resource Management Plan are edits only. Punctuation and grammar were corrected and I rearranged paragraphs. Nothing substantive was changed.

Kent Burggraaf: Under your prior motion, you don’t have to approve this one. She hasn’t changed the content. It’s minor. If you are satisfied [with the section] you can accept the changes [made] to the flow. A motion doesn’t need to be made. Authority [for strictly editing] was given last month. Based on your prior approval, everything is O.K.

Chairman Chelewski thanked Commission member Dale Spencer for his service, telling him it was a pleasure to serve with him. Roger Chamberlain stated he put his papers in for an LDS mission. If all goes well, he won’t be available to serve on the planning commission for 2015. Hal Hamblin reiterated he would not be available in

January, 2015 due to surgery. Shannon McBride asked Dale Spencer to stand and receive applause.

MOTION was made by Hal Hamblin to adjourn the meeting. Motion was seconded by Dale Clarkson. The Chairman asked for the question and the motion passed unanimously.

The meeting adjourned at 8:05 p.m.

Land Use Authority Chairman,
Tony Chelewski

Land Use Administrative Assistant,
Mary Reynolds