



# MINUTES

Kane County Planning Commission  
& Land Use Authority Meeting  
Kanab Center Board Room  
20 N. 100 East, Kanab, UT  
**January 11, 2023**

CHAIRMAN:	Doug Heaton	
MEMBERS PRESENT:	Doug Heaton, Byard Kershaw, Gwen Brown, John Reese, Aaron Bonham, Matt Cox	
MEMBERS ABSENT:	Jeremy Chamberlain	
EX-OFFICIO MEMBER:	Commissioner Wade Heaton	
STAFF PRESENT	Shannon McBride, Land Use Administrator; Charee Shepherd, Zoning Administrator; Wendy Allan, Assistant Planning & Zoning Administrator; Rob Van Dyke, Attorney;	
6:00 PM	Meeting called to order	Doug Heaton
	Invocation	John Reese
	Pledge of Allegiance	Gwen Brown

## GENERAL BUSINESS

### 1. Swearing in of New Board Members

Chameill Lamb, Kane County Clerk, swore in returning Planning Commission members Byard Kershaw and Doug Heaton, and new member Matt Cox.

### 2. Election of New Chair and Vice Chair

**Election of a Chair and Vice-Chair to serve for the 2023 calendar year.**

Chairman Heaton opened up the nominations for chair.

John Reese nominated Doug Heaton. Gwen Brown seconded the nomination.

Doug Heaton nominated John Reese. Byard Kershaw seconded the nomination.

Byard Kershaw moved that nomination cease. John Reese seconded the motion.

**VOTE:** John received one vote. Doug received five votes.

Doug Heaton will be the chairman of the P&Z for the coming year.

The chairman opened nominations for vice-chair.

Aaron Bonham nominated John Reese. Seconded by Matt Cox.

John Reese nominated Gwen Brown. Seconded by Matt Cox.

Byard Kershaw made a motion that nominations cease. Seconded by John Reese.

**VOTE:** Gwen Brown received two votes. John Reese received three votes.

John Reese will serve as vice-chair for the coming year.

### **3. Open and Public Meeting Training**

Training was presented by Rob Van Dyke, Kane County Attorney.

### **4. Update on Commission Decisions**

Commissioner Heaton reported that the County Commissioners concurred with the Planning Commission on all recommendations from last month.

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

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

Chairman Heaton questioned the ability to vote as the chair. Shannon noted that county ordinance dictates that the chair can only vote in the case of a tie. Rob stated that the Planning Commission has the authority to set their rules of order however, that change would need to be changed by the approval of the County Commissioners.

### **5. Approval of Minutes**

**December 14, 2022**

**MOTION:** Byard Kershaw made a motion to **approve** the December 14, 2022 minutes. John Reese seconded the motion.

The Chair asked for any questions or comments.

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

### **6. Public Meeting – Conditional Use Permit: Infra Towers LLC**

**An application to amend a conditional use permit for Infra Towers, LLC, successor in interest to InSite Towers LLC. Submitted by Debbie DePompei.**

Shannon presented the project explaining that this permit was originally approved in 2019. They would like to extend this permit for another year. This is located in Duck Creek Village across from the hardware store. They have an agreement with surrounding property owners for the fall zone.

**MOTION:** Aaron Bonham made a motion to **approve** an amendment to the conditional use permit for a 100' Stealth Wireless Communications facility, located on parcel # 8-7-7-1C, based on the findings in the staff report. Seconded by John Reese.

**VOTE:** The vote was **unanimous to approve.**

**FACTS & FINDINGS:** This project is in compliance with: Utah State Code: 17-27a-506; Kane County General Plan: Pages 6, 7, 10, 15, 25, 29-30, 38, 43; and Kane County Land Use Ordinance: 9-7B-5 & 9-15A-(1-7): Conditional Uses

**7. Public Hearing - Zone Change/Ordinance 2023-02: Godfrey**

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

Shannon explained that the applicant pulled the project. They will be on next month's agenda requesting R-2 zoning.

**8. Public Hearing - Zone Change/Ordinance 2023-01: Kanab 600 LLC**

**An application for a zone change, concept plan and draft development agreement for the Willow Reserve Estates Planned Unit Development (Ordinance 2023-01), a new subdivision east of Kanab, proposing 583 new dwelling units. Zoning within the planned unit development will include PUD Residential 1, PUD Multi-Residential and PUD Commercial 2, parcels 4-5-5-2 and 4-5-6-1, totaling 596.59 acres, located east of Kanab between Crimson Estates and Palomar Estates. Submitted by Greg Whitehead and Chad Staheli.**

Greg Whitehead presented the project. They are requesting a Planned Unit Development (PUD) zone change. The land is currently zoned R-1 allowing for one- acre minimum sized lots. He read Kane County Land Use Ordinance 9-20-1A, reviewing the purpose of a PUD with the Planning Commission. He indicated that their intent is a master plan rather than all one acre lots. He indicated this will be a 20+ year project to be built in phases with phase one being single family homes. He anticipates it will be at least 2 years before there will be houses built. He plans to have open space, trails, equestrian trails, ATV trails leading to BLM land, and a community sewer system. They will have regulation over short term rentals and will not allow auxiliary housing units. They have added a warehouse to the plan to house a fire truck and are working with the County and Kanab City to address fire issues in the area. They plan to incorporate Kanab City's outdoor lighting policy to help preserve the night sky. They did not change their original design because they want it to be a PUD.

John expressed concern about the increase of traffic on Mountain View Drive. Greg stated that they have done traffic studies explaining that as the build out expands there will be expansions to roads and new highway additions. He indicated that Mountain View Drive, especially in the immediate area, is going to be improved.

Doug questioned the minimum lot size. Greg stated that the townhomes will have a very small footprint. Single family residences lot size will range from 1/2 to 1 acre. They are creating

smaller lots in exchange for open space. Gwen noted that there are more ½ acre lots than larger lots.

Greg said that he is agreeable to increasing the setbacks on the borders to match the setbacks of the neighboring subdivision. He explained that there are larger equestrian lots along the borders. These lots that will allow owners to have direct access to BLM land and will range from 3 to 10 acres.

Gwen questioned why they did not make any of the recommended changes. Greg stated that the meeting today is to reiterate the purpose of the PUD. He noted that if the P&Z requires one acre lots there is no need to do a PUD and the number of allowed units would be more than what they are proposing. Greg indicated that the location of the multi-residential (MR) units is best suited near the commercial area so as to allow the residents easier access and cut down on traffic within the development. Gwen stated the MR units do not fit with the general plan and the rural feel of the area.

John questioned if there is adequate water and adequate pressure to support this development. Greg stated they are working with the Water Conservancy on the layout of pipes and storage plans. Mike Noel, Kane County Water Conservancy District (KCWCD), indicated that they have a water study in the works. He stated that this area will be served by the Johnson Canyon system. They have over 14 acre feet of water in that system and can serve 5000 lots. They currently have 500 connections. He stated that indoor water use is minimal. 80-90% of water usage is outdoor water use. The Water Conservancy is getting ready to do a study on the reclamation of gray water. He noted that wells are tracked on a monthly basis and even during the driest summers the well levels have not dropped. Amanda Buhler (KCWCD) explained how the connections are laid to address pressure concerns.

Shannon reviewed the PUD zone change requirements and her staff report. She explained that the reason the ordinance states to keep the MR in the interior of the PUD is to help maintain the rural feel of the area. She stressed that the PUD allows for exceptions to the ordinance and the P&Z has the right to negotiate with the developer on the concept plan and development agreement. She reminded the P&Z that a PUD allows a developer to leave open space in exchange for smaller lots.

Shannon stressed that she requires letters of feasibility from each entity. The details are not required until the concept plan is approved.

Doug asked about a sewer system. Greg stated that they are putting in a specialized sewage treatment system for the development. It can go from a sewer system to a reuse system to a potable system.

Chairman Heaton called the commission into **public hearing**.

Travis Legler: He is opposed to this development because it doesn't fit with the rural feel of the area due to the amount of density. He questioned if the developer has legal access to BLM land.

Rick Kessel: He is opposed to this development because this developer disregarded all recommendations from the P&Z.

Jeff Roth: He is concerned about the dark sky. He feels that Mountain View Drive needs to be developed

from Dreamland Safari Tours to the first entrance of the development. He would like to see larger lots. He is concerned that development will begin before there is fire protection in place.

Matt Fisher: He is strongly opposed to this development. He feels there are many questions that still need to be answered prior to approval. He is concerned that the developer is not willing to negotiate. He is also concerned about developing a Public Infrastructure District (PID) that will affect new property owners. He urged the P&Z to vote against this project.

Doug: He is opposed to this PUD.

Paul Fuhrmann: He is concerned about the high density of this development. He is opposed to this project in the scope and scale it has been presented. It contradicts the vision statement and land use goal #1 in the County's general plan.

Martin Ruther: He is opposed to this project. He shared concerns about water, electricity and law enforcement. He questioned why affordable housing always has to be multi-residential units.

Lee Moffit: He is opposed to this project. This project will affect all of Kane County including its residents, its government, and the City of Kanab. He encouraged the P&Z to follow the County's general plan.

Dave Jones: He feels that this is a city outside of the city. It is not rural and does not belong in the county.

Vince Vincent: He feels there needs to be conditions on the lighting to preserve the dark sky. He recommends no lights on posts.

Dan Cripe: He is a former deputy sheriff. He has seen development destroy areas in a county. He stressed that the infrastructure needs to be put in prior to building out this development. He stated that Mountain View Drive is already dangerous.

Tom Carter: He sold his water right to the KCWCD. He objects to the developer using the Vermilion Cliffs water system. He is opposed to this development.

Anna Davis: She stated that most neighboring property owners are adamantly opposed to this project as it does not fit in a rural area. She recommended holding the developer to one acre lots and no multi-family or commercial zoning. She is concerned about who will do the cost estimate for the required assurance bonds and if inflation will be taken into consideration.

Brian Konoske: He owns property next to this development. He stated that most people who bought in Palomar Estates and Crimson Estates thought the vacant land would one day be subdivided in a similar fashion, with lots of various sizes, single family homes, and respect for the general plan and the character of the area. He is not opposed to development but is concerned about construction going on for the next 15+ years. He does not feel that the developer cares about the community. His research shows that they will most likely get the approvals and then sell it off prior to building it out. He would like to see thoughtful development that respects the general plan.

Sujantha Ramakrishna: She stressed that Mountain View Drive needs to be improved prior to building out the development. She pointed out that there is no Commercial 2 zoning in the area. She noted that County ordinance states that variances from the PUD ordinance are intended to be rare, yet, in the development there are 6 requests for variance from the ordinance and item #2 states TBD.

Janae Chatterly: She is the Kanab City Planning & Zoning Administrator, speaking as a public citizen. She questioned who is going to maintain the infrastructure once the developer leaves. She believes this project needs more planning.

Hilda Crutchfield: She noted that the developers have already zoned this property to R-1. She questioned why the developer did not ask for PUD zoning to start with. She does not believe that what they are presenting is what will actually materialize. This development does not fit in the area. She is opposed to this development.

Larry Crutchfield: He noted that the developers knew what the property was zoned when they bought it. He said that no one has talked about the proposed short term rentals. He also noted that there is commercial land across from them where they could build their gas station. He is for private property rights but a zone change is not a right.

Andy Gant: He noted that when the project was first proposed the county asked them to get their zoning prior to coming back with the PUD. That is because a PUD requires a complete picture of what they are proposing and that is very costly. He stated that the developer has done everything that the county has requested.

Mike Noel: (speaking as a private citizen) He said that when he was on the Planning Commission 30 years ago they developed a plan that the ranchers and farmers fought. He feels the developer has the right to develop their property as they see fit. He is in support of this project.

Anson Clarkson: He is in support of this subdivision. He feels that there is a need for more homes to allow families to return to the area.

George Reese: He feels that everyone has property rights, including the rrounding property owners. He said that if this is allowed reasonable regulations will begin to change. He feels this is all about the dollars.

Pat Moffitt: She has a lot of legal experience in property rights. She stressed that a zone change is not a property right and that the people who bought in that area have property rights. She stated that she has a right to expect that with the land she purchased she will be able to enjoy certain use rights. She further stressed that if a radical change is made it will infringe on the other persons property rights.

Ben Clarkson: He is disappointed that there were not more changes made to the plan. He would like to see the commercial stay north of Mountain View Drive. He is concerned about increased traffic on Mountain View Drive.

Chairman Heaton called the commission out of public hearing.

Shannon noted that a PUD is in ordinance but the developer is asking for exceptions to the ordinance, such as the MR being placed on the border.

Shannon stated that according to Utah State Code the general plan is a guideline for the county. The County's ordinance and Utah State code are requirements.

Matt asked what the process is to ask the developer for some changes. Shannon explained that a recommendation to the commissioners must go forward to the commissioners. The P&Z also has the option to ask for more information or for revisions to the plan and/or development agreement before a recommendation is made. Shannon stressed that revisions can be requested without making a recommendation to the commission.

John quoted the County's general plan that states "Kane County endeavors to provide for residential neighborhoods of a rural character which provide for a limited number of livestock. Ultimately, this rural residential attribute contributes to the benefit and enjoyment of the residents and provides a sustainable opportunity for households to continue agricultural pursuits for their families and community. Furthermore, it provides innumerable benefits for the community and the environment in the form of open space conservation and aesthetic enjoyment" (pg.11) and "Unincorporated land uses will remain at densities which can be adequately serviced and which retain the qualities of a rural, open setting with uses not typically found in a town or city. Intensive, urban-scale uses will be directed to municipalities where basic services can be accommodated" (pg. 13). He feels that east of Kanab is a rural setting and that the P&Z needs to make recommendations to help the PUD fit into a rural setting.

Gwen expressed frustration that the developer disregarded the previous recommendations. She stated that growth is not needed and if allowed it should be managed. She noted that the developer has the right to develop their property however they choose within the boundaries of the zone at the time of purchase and in keeping with the general plan and ordinances but a zone change is not a right. She stressed that MR housing does not belong in a rural setting. She also feels that commercial should be along a major highway.

Aaron is in favor of PUDs but feels that this one needs some revisions. It was clarified the P&Z can ask for revisions before recommending the project to the county commissioners.

Matt shared concern about the management and maintenance of the infrastructure. Doug explained that the county is not responsible for infrastructure improvements. Commissioner Wade Heaton clarified that the county does not accept new residential streets. He stressed that all new development will pay their own way, including improvements on the road.

Doug stated that the best way to get good fire and medical service is to increase the numbers to have more people to share the cost. He feels that the biggest concern shared tonight was density.

John feels that the PUD is a good idea but the P&Z needs to give some suggestions to help it fit with the general plan. He suggested less MR units and moving them inside the development.

Byard spoke of the fire prevention situation. He stated that a fire shed is a good start but it does not provide the truck or the services.

Commissioner Heaton stressed the need to not resist the idea of a community in the rural areas of the county. He suggested the P&Z looks at this development as a new city center. He agreed that this does not fit the area unless they look at it as the start of a new municipality. Gwen stressed that the public is here tonight because they don't want to live in a city.

Doug reiterated that the biggest concern is density. He said the question is if a person's property rights extend beyond the boundaries of one's property. He stated that if you want to control your view you should buy your view. He posed the view that public rights and private rights cannot coexist. He went on record to say that he will defend the private right.

Chairman Heaton asked the Planning Commission for their recommendations to the developer.

Matt expressed concern over the governance of the utilities and roads. He feels that HOAs do not work. Commissioner Heaton explained that the developer intends to create an SSD to oversee the infrastructure. Rob explained that a Public Infrastructure District would aid in the funding of construction of the infrastructure. Once the infrastructure is in place it will need to be deeded to a governing body. State law requires any sewer system that operates for multiple units to be owned by some type of governmental entity such as the Water Conservancy. The roads and trails would be owned and maintained by the HOA.

Gwen recommended removing MR, requiring the setbacks be according to ordinance and define the TBD in the development agreement. She would also recommend removing the commercial zoning and not allowing  $\frac{1}{2}$  acre lots. Aaron would prefer the  $\frac{1}{2}$  acre lots in exchange for the open space. Doug feels that there is a need for multi-residential units. Aaron suggested moving the multi-residential further into the development.

**MOTION:** Matt Cox made a motion to **recommend approval** to the Kane County Commissioners of the Willow Reserve Estates Planned Unit Development application along with the preliminary concept plan and Ordinance O-2023-01 establishing the underlying zoning, and the DRAFT development agreement, based on the findings documented in the staff report. Byard Kershaw seconded the motion.

**AMENDMENT TO MOTION:** Byard made a motion to disperse the MR within the PUD. Matt Cox seconded the motion.

**VOTE on Amendment.** Byard, Aaron, and Matt voted aye. Gwen voted nay. John abstained. The motion to disperse the MR passed.

**AMENDMENT TO MOTION:** Aaron Bonham made a motion to amend the motion to move the commercial zoning to the immediate vicinity of the current commercial zoning. John Reese seconded the motion.

**VOTE:** The vote was unanimous. The motion to move the commercial zoning passed.

**AMENDED:** John Reese made a motion to insure that water, sewer, roads, recreational facilities and fire protection will be governed by a governmental entity. Matt Cox seconded the motion.

**VOTE:** Gwen abstained. All others voted aye.

**VOTE ON MOTION** with 3 amendments: Byard, Aaron and Matt voted aye. Gwen and John voted no. The motion to recommend approval with the three amendments passed.

**FINDINGS:** The Willow Reserve Estates (WRE) Planned Unit Development (PUD) application conforms to the standards in the Kane County Land Use Ordinance and may be heard by the Land Use Authority. If approved with the conditions listed at the end of this staff report, the application conforms in all material respects with the Kane County Land Use Ordinance and relevant state law. The WRE PUD is asking for zoning approval through Ordinance 2023-01, Preliminary Concept Plan and the DRAFT Development Agreement as required in Kane County Land Use Ordinance (KCLUO) 9-20-3M conforms to the standards in the KCLUO 9-20-1-7 and 9-21-A-I, and Utah Code Sections §17-27a-201, 202, 206, 208 and §17-27a-608, 609. Utah State Code §17-27a-102 gives Kane County authority to hold public hearings in its legislative discretion which furthers the purposes of the Utah State Code, Kane County General Plan and Kane County Land Use Ordinance.

#### **9. Ordinance 2023-03: Revising KCLUO Chapter 5**

**An ordinance revising Kane County Land Use Ordinance, Chapter 5; revising the RU-40 uses table and clarifying Agricultural Protection Areas.**

Charee explained that this ordinance outlines the procedure for applying for an Agricultural Protection Area (APA). This will protect farmers and ranchers from neighbors who move in and then decide they don't like the effects of agriculture on their property.

Shannon explained that the second part of this ordinance addresses the Rural Zone uses table. She shared that the rural zone is already close to a resort zone. She asked the P&Z to review the uses table and see if they would like to make any changes.

Aaron suggested adding cabins, not to exceed 1500 square feet, with the same density limitations as camping and glamping. The P&Z also decided to add restaurant, spa, educational shop, and shooting range with all of the above items requiring a conditional use permit.

Charee informed the P&Z that it was just discovered that the APA already exists in Title 2 of the county ordinance. She recommends putting it in Title 9 also because the application goes before the Planning Commission, it deals with land use and the public will find it easier in Title 9.

Chairman Heaton called the commission into public hearing.

Pat Moffit: She is in support of these changes.

Chairman Heaton called the commission out of public hearing

**MOTION:** John Reese made a motion to **recommend approval** of Ordinance O-2023-03, amending Chapters 5, Article B and adding Article C of the Kane County Land Use Ordinance, including the recommended changes, to the County Commission. Aaron Bonham seconded the motion.

**VOTE:** The vote was unanimous to approve.

## **10. Public Meeting - Land Use Training**

**Training presented by Shannon McBride, Kane County Land Use Administrator.**

Shannon gave a list of land use governing ordinances and documents and showed the P&Z how to reference those documents. She also gave them some basic training materials.

Aaron Bonham made a motion to adjourn. John Reese seconded the motion.  
Meeting was adjourned at 9:28 pm.

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Land Use Authority Chair  
Doug Heaton

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Administrative Assistant  
Wendy Allan