



MINUTES

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

CHAIRMAN: Doug Heaton

MEMBERS PRESENT: Doug Heaton, Gwen Brown, John Reese, Matt Cox, Aaron Bonham

MEMBERS ABSENT: Jeremy Chamberlain, Byard Kershaw

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 Doug Heaton
Invocation Matt Cox
Pledge of Allegiance Aaron Bonham

GENERAL BUSINESS

1. Update on Commission Decisions

Commissioner Heaton reported that the commission approved the Ponderosa Limited Zone change and the ordinance changes as recommended in last month's meeting.

2. Approval of minutes February 8, 2023

MOTION: John Reese made a motion to **approve** the February 8, 2023 minutes. Gwen Brown seconded the motion.

The Chair asked for any questions or comments.

VOTE: The **motion passed** unanimously.

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

VOTE: The **motion passed** unanimously.

3. Public Meeting – Conditional Use Permit Amendment: Binyamini

An application for an amendment tot a conditional use permit for a commercial recreation area consisting of 24 glamping sites, a mobile food court, electric bike rentals, ninja course and an RV spot for the host, on parcel 3-5-33-2A, located on Grande Vermillion Ave. east of Kanab. Submitted by Ori Binyamini.

Ori Binyamini stated that he has already obtained a conditional use permit (CUP). It requires that he build a privacy fence around the project. He explained that he has built the privacy fence across from the residential area. He stated that the south side of the property is very low and a fence would not be beneficial. He requested permission to build a berm and then build a fence on top of the berm during the second phase of the project.

Shannon did not offer any recommendations and stressed that this is a P&Z decision.

Ori clarified that phase one will consist of 7 units on the north side. Phase two and three will extend the glampground to 24 units. He will build the fence during phase 2. It was clarified that the CUP was previously approved and he is requesting a berm in place of a fence to help reduce highway noise.

MOTION: Aaron Bonham made a motion to **approve** the amendment to the conditional use permit issued on parcel 3-5-33-2A (zoned Commercial 1) for building a levee in place of solid fence and placing a temporary wire fence. Seconded by Matt Cox.

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

FACTS & FINDINGS: The above amendment application complies with the Kane County Land Use Ordinance, 9-15A-1-6: Conditional Uses and the Kane County Land Use Ordinance 9-7B-1 through 9-7B-7, Commercial 1 and the permitted uses; which allows the use of commercial recreation and entertainment facilities through a conditional use permit. The CUP has the conditions to mitigate safety issues and must be implemented at the time of the building permit application. No single tent will be over 774 square feet. This glamp-ground is accessed off of Grande Vermilion Avenue and Vista Avenue.

4. Public Hearing – Zone Change/Ordinance 2023-10: Carter

An application for a zone change from Residential 1 (R-1) to Commercial 1 (C-1), parcel 8-6-22-1, located on Highway 89 north of Tod’s Junction. Submitted by Brent Carter.

Brent Carter requested a zone change to commercial. The property is located on Ranch Drive along Highway 89. He stated that he does not have plans to develop it at this time.

Shannon showed the surrounding zones and noted that staff has not received any opposition to this project.

Gwen expressed concern because it is surrounded by residential property. Doug noted that it is located next to the highway.

Chairman Heaton called the commission into public hearing.

Wade Heaton-(speaking as a member of the public) He lives in this area. He stated that this is in a residential area and is the entrance to the Elk Ridge Subdivision.

Chairman Heaton called the commission out of public hearing

John expressed concerns about the water table in the area.

MOTION: John Reese made a motion to **recommend approving** the zone change for parcel 8-6-22-1, R-1 to C-1 & Ordinance O-2023-10 to the County Commission based on the facts and findings as documented in the staff report. Aaron Bonham seconded the motion.

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

FINDINGS:

- Parcel 8-6-22-1 meets the requirements to be zoned C-1. The parcel is currently zoned R-1.
- The applicant requests the parcel be zoned C-1 which requires a zone change.
- If the zone change is approved all uses contained in the C-1 uses table will be allowed.
- Surrounding parcels are zoned Residential.
- Kane County Land Use Ordinance 9-1-2: It is Kane County policy to refuse to participate in spot infrastructure improvements which benefit only a localized area yet burden the taxpayers at large.
- The parcel would gain access from Highway 89.
- All property owners within 500 ft. of this parcel have been mailed a public notice. Notices are posted on the state and county websites
- 9-7B-1: PURPOSE: The purpose of the commercial 1 (C-1) zone is to protect areas located in or near residential zones to meet the day to day needs of area residences. Development standards are intended to protect adjacent residential zones, promote orderly development and avoid the creation of traffic volumes which cannot be accommodated by the existing transportation network. (Ord. O-2022-42, 7-26-2022)
- 9-7B-3: SITE DESIGN REGULATIONS:
- All site design elements for the above listed conditional uses are subject to review by the planning commission, who shall apply the standards and provisions found in chapter 15 of this title.
- A. Objectionable Factors: All uses shall be free from objectionable odor, noise, dust, smoke, vibration or other such factors; and
- B. Advertising Signs: All advertising signs shall comply with the provisions of chapter 16 of this title. (Ord. O-2022-42, 7-26-2022)
- Kane County General Plan, Vision Statement, Pg. 3: Given these basic premises, the Kane County Commission will use this Plan to guide land use decisions for the county. Where decisions regarding property rights versus property values are being made, deference shall be given to property rights. This Plan will assure that present and future residents and visitors to Kane County will be housed under safe, sanitary, and attractive conditions. Land uses in the unincorporated county will reflect the intent of the Commission to expect intensive, urban-scale uses and to provide self-supported basic services without county financial support.
- Kane County General Plan, Industrial and Commercial Land Use: Industrial and commercial land uses are usually located at major highway intersections and near established communities. Much of the existing commercial and industrial activity has been annexed into adjacent communities.
- The parcel is located at an intersection, surrounded by Residential 1 (R-1), Residential 2 (R-2) and AG zones and abuts Highway 89.

5. Public Hearing – Zone Change/Ordinance 2023-09: Zion Mountain Development Inc. An application for a zone change from Residential 5 (R-5) to Commercial 2 (C-2), parcel 1-9-15-2D1, located at the junction of Highway 9 and North Fork Road. Submitted by Kevin McLaws.

Chris Heaton, Iron Rock Group, explained that this property is at the corner of North Fork Road and Highway 9 and will house the East Zion Visitor’s Center. The surrounding area is zoned commercial.

Shannon stated that this is consistent to the overall plan for the area.

Chairman Heaton called the commission into public hearing.

(No Comments)

Chairman Heaton called the commission out of public hearing.

MOTION: Matt Cox made a motion to **recommend approving** the zone change for parcel 1-9-15-2D1 from R-5 to C-2 & Ordinance O-2023-09, to the County Commission, based on the facts and findings as documented in the staff report. John Reese seconded the motion.

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

FINDINGS:

- Parcel 1-9-15-2D1 meets the requirements to be zoned C-2. The parcel is currently zoned R-5.
- The applicant requests the parcel be zoned C-2 which requires a zone change.
- If the zone change is approved all uses contained in the C-2 Uses will be allowed.
- Surrounding parcels are zoned AG, Commercial 1 and 2.
- Utah State Code 17-27a-308. Land use authority requirements -- Nature of land use decision.
 - (1) A land use authority shall apply the plain language of land use regulations.
 - (2) If a land use regulation does not plainly restrict a land use application, the land use authority shall interpret and apply the land use regulation to favor the land use application.
 - (3) A land use decision of a land use authority is an administrative act, even if the land use authority is the legislative body.

Effective 5/12/2015

17-27a-505. Zoning districts.

- (1) (a) The legislative body may divide the territory over which it has jurisdiction into zoning districts of a number, shape, and area that it considers appropriate to carry out the purposes of this chapter.
 - (b) Within those zoning districts, the legislative body may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, and the use of land.

(c) A county may enact an ordinance regulating land use and development in a flood plain or potential geologic hazard area to:

(i) protect life; and

(ii) prevent:

(A) the substantial loss of real property; or

(B) substantial damage to real property.

(2) The legislative body shall ensure that the regulations are uniform for each class or kind of buildings throughout each zone, but the regulations in one zone may differ from those in other zones.

(3) (a) There is no minimum area or diversity of ownership requirement for a zone designation.

(b) Neither the size of a zoning district nor the number of landowners within the district may be used as evidence of the illegality of a zoning district or of the invalidity of a county decision.

- **Kane County Land Use Ordinance 9-1-2:** It is Kane County policy to refuse to participate in spot infrastructure improvements which benefit only a localized area yet burden the taxpayers at large.
- The parcel would gain access from Highway 9 and North Fork Road.
- All property owners within 500 ft. of this parcel have been mailed a public notice. Notices are posted on the state and county websites.
- **9-7C-1: PURPOSE:** The purpose of the commercial 2 zone is to provide for heavy commercial areas not appropriate near or in Residential Zones to meet larger commercial uses. (Ord. O-2022-42, 7-26-2022)
- **Kane County General Plan, (KCGP) Vision Statement, Pg. 3:** Given these basic premises, the Kane County Commission will use this Plan to guide land use decisions for the county. Where decisions regarding property rights versus property values are being made, deference shall be given to property rights. This Plan will assure that present and future residents and visitors to Kane County will be housed under safe, sanitary, and attractive conditions. Land uses in the unincorporated county will reflect the intent of the Commission to expect intensive, urban-scale uses and to provide self-supported basic services without county financial support.
- **KCGP, Pg. 7 Industrial and Commercial Land Use:** Industrial and commercial land uses are usually located at major highway intersections and near established communities. Much of the existing commercial and industrial activity has been annexed into adjacent communities. However, there are exceptions to this trend. For example: Best Friends Animal Sanctuary is located approximately 10 miles north of Kanab in Angel Canyon, an unincorporated section of Kane County; Canyon Lands Resort Community Zone (Amingiri) is located at the eastern boundary of Kane County; and Buffalo Ridge is located at the boundary of Zion National Park. They are all Planned Unit Developments and Kane County encourages this trend to continue. Kane County will allow development within the perimeters of county land use and zoning ordinances with the understanding that infrastructure improvement, development and maintenance will be at the expense of the subdivider and/or land owners who enjoy the benefits of such improvements. Kane County will not allow development that requires county-financed or maintained services. Landowners who require such services will be required to finance, install and maintain services without expecting or receiving county-provided services. The installation of water systems and fire hydrants does not imply or require county provided road maintenance or snow removal.

- **KCGP Pg. 15 Commercial Land Uses Goal #1:** Encourage and provide for commercial uses in locations with infrastructure in place to serve the public. Objective: Develop commercial uses compatibly with the use and character of the surrounding area. Policy: The Land Use Ordinance and associated zoning map will determine the standards for commercial uses at appropriate locations.
- **KCGP Pg. 28 1. Kane County will not become a provider of municipal-scale services, but will assist in such development if serviced by a special service district:** Kane County's unincorporated areas cannot be expected to provide municipal-scale services. Residential or commercial zones which require large investments in infrastructure such as roads, water, waste disposal, schools, etc. cannot occur on a land base where such services are not available. Kane County recognizes this distinction, and will not allow development that requires county-financed or maintained services. Landowners who require such services will be required to finance, install and maintain their own services. Kane County will discourage development in unincorporated areas unless such development is serviced by a special district established for that purpose.

6. Public Hearing – Ordinance 2023-07: KCLUO Chapters 4 & 7

An ordinance revising Kane County Land Use Ordinance Chapter 4 Zones and Chapter 7 Article D State Lands.

Shannon presented two suggestions for adding a time frame for how often a property can come back for a zone change and asked the P&Z to determine which was best. They decided on the following: 9-4-4D RULES FOR LOCATING: Disapproval of a zoning amendment application shall prohibit the filing of another application to rezone the same parcel of property, or any portion thereof to the same zone classification within one year of the date of the final disapproval of the application, unless the Planning Commission finds that there has been a substantial change in the circumstances or sufficient new evidence since the disapproval of the application to merit consideration of a second application within a one-year time period.

Shannon presented proposed section 9-4-4E: Each zone change request by an applicant, seeking a change from a less dense zone to a denser zone, shall provide proof of all requires utilities. No Zone Change application will be processed or granted without meting said utility requirements. Some areas of the county are not suitable for some zones due to scarcity of utilities, or lack of compatibility of the land for the requested zone. Required proof of utilities shall be submitted to, and approved by, the county prior to zone change approval, with all letters, applications, studies, plans, contract terms and conditions, acceptable to the county in its sole discretion.

This suggestion stems from developers trying to get zone changes for developments in areas where utilities are not available. Shannon explained that there are areas of the county that are not suitable for commercial development. She suggested that this will help developers do their due diligence prior to requesting a zone change.

Commissioner Heaton suggested requiring some due diligence or granting a zone change that would revert back to the original zone if a project was not started within one year of the zone change.

Aaron suggested requiring will serve letters. Commissioner Heaton expressed concern that the utility companies would become the gate keeper on the zone change rather than the P&Z. He suggested granting the zone change and give them a time frame for submitting a project. If they

do not meet that time frame the zone would revert back to the original zoning. Rob said that would be permissible if there is reversionary language in the ordinance.

Gwen expressed concern that requiring so much up front would put more pressure on the P&Z to grant a zone change. Matt noted that the property owner should do their due diligence prior to purchasing the property. It was pointed out that even if the zone was changed a project cannot move forward without feasibility letters.

Gwen would like to know what the project is at the time of the zone change. Commissioner Heaton voiced concern about blending the zone change and the project process.

Chairman Heaton called the commission into public hearing.

Brent Carter - He stated that the zone change and the development are two separate processes and should remain separate. He does not like the idea of a zone reverting back to its previous zone.

Matt Fisher – He asked for clarification on the statement “lacks compatibility of the land for the requested zone.”

Patty Kubeja - (speaking as a member of the public) She asked if it would be possible to add a disclaimer to let the applicant know that a zone change does not guarantee there are utilities in the area. She does not feel it is a good idea to have the zone revert back.

Lee Moffit – He stated that most projects have a time frame of when they must commence spelled out in ordinance. He feels that the proposed changes are in line with this.

Chairman Heaton called the commission out of public hearing.

Aaron cautioned the P&Z about putting too many restrictions on a zone change.

Shannon noted that the P&Z has already taken a stance with previous zone changes such as Mineral Springs. Commissioner Heaton asked legal counsel if it was permissible to delay a zone change request and ask for more information prior to making a decision. Rob acknowledged that the P&Z can delay a decision on a zone change as they request more information and suggested they have something in ordinance to spell that out.

Shannon explained that staff tries to inform the public about challenges they may face in regards to utilities and easements. She suggested giving staff the discretion to request feasibility letters if the area warrants it. She stressed that the health department does not allow the hauling of water for commercial purposes.

Doug questioned if utilities should be mandatory prior to the zone change. He questioned if it is a problem for someone to get a zone change and then the project does not materialize.

Rob stated that the concept being proposed is legal. He will work with Shannon on the wording.

MOTION: John Reese made a motion to table section 9-4-4E to next month. Seconded by Matt Cox.

VOTE: The vote was **unanimous to table** this item.

Shannon explained the revisions to the SITLA section. Shannon reminded the P&Z that SITLA is not required to work with the county. SITLA chooses to require their applicants to go through the county process. The county used to treat SITLA land as Commercial 2 zoning. Last July or August the ordinance was changed to say we treat SITLA land as AG zoning. If this is not changed back to C-2, most of the SITLA projects, like glampgrounds, will be denied based on the AG zoning. Shannon feels it is best to encourage SITLA to work with the county so that the county has a say in the projects.

Rob stated that SITLA land was previously considered C-2 and the P&Z changed to it AG. He said that the P&Z was concerned about having C-2 parcels scattered throughout the county. He stressed that if SITLA land is considered AG, Shannon's staff report will not include much useful information and she would have to recommend denial of the project. That report is given to the county commissioner who would then decide who would develop and issue the recommendations. Rob noted that considering it AG zoning is not workable for the staff and considering it C-2 zoning does not match the policies the P&Z supports.

Rob stressed that SITLA land is not zoned. The zoning is only relevant for Shannon's staff report. Rob indicated that from a reality perspective the zoning will have an effect on the market. He feels that if we consider the land C-2 it sends a message that Kane County is open for business at the lowest level of restriction. Rob feels that the change was mainly a pull back on messaging.

Matt suggested not having Shannon do her report on a fake zone and simply develop recommendations for the project. It was suggested that the ordinance be changed to say that the "Land Use Administrator shall develop recommendations based on Chapter 15 Conditional Uses."

Chairman Heaton called the commission into public hearing.

Pat Moffit – She questioned the zoning of developed SITLA land being zoned to AG when transferred to private ownership.

Brent Carter - He stated that a zone is to protect the neighbors. He would like to see SITLA play by the same rule as surrounding properties.

It was clarified that a SITLA parcel will be zoned AG when changed to private ownership and any existing project would be grandfathered in.

Chairman Heaton called the commission out of public hearing.

John noted that most SITLA property is used as agricultural land and feels that SITLA projects should be reviewed with the neighboring property in mind.

Rob suggested using language that says “the Land Use Administrator develops recommendations as if it was zoned Agriculture based on Chapter 15 Conditional Uses.”

MOTION: John Reese made a motion to view SITLA land as an AG zone but allows Shannon to use the Conditional Use chapter to do her report. Seconded by Aaron Bonham.

VOTE: The vote was **unanimous**.

MOTION: John Reese made a motion to **recommend approving** O-2023-07 as voted on tonight to the county commission. Aaron Bonham seconded the motion.

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

**7. Public Hearing – Ordinance 2023-08: General Plan
An ordinance introducing the General Plan Revision Process and revising the
acknowledgement page.**

Shannon stated that there is outdated information in the general plan. She would like to begin the process of revising the general plan. She has revised the acknowledgement page and added a section on updating the plan. She will pursue public input as part of the process through surveys and workshops. She stressed that this will be a long process.

Chairman Heaton called the commission into public hearing.

Matt Fisher - He questioned why many of the contributors were eliminated from the acknowledgement page. He is concerned about section E in the plan update.

Shannon explained that she removed many of the contributors because they will not be involved in the revision process. She also explained that the verbiage in section E came from state code and cannot be changed.

Matt Fisher questioned if we need to include a plan update section. Shannon explained that plan update is a recommendation and could be removed if the P&Z does not want to include it.

Matt Fisher suggested the plan update include some paragraphs addressing public input.

Chairman Heaton called the commission out of public hearing.

MOTION: Matt Cox made a motion to **recommend approval** of O-2023-08 to the county commissioners. Aaron Bonham seconded the motion.

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

Matt Cox made a motion to adjourn. Aaron Bonham seconded the motion.
Meeting was adjourned at 7:44 pm.

Land Use Authority Chair
Doug Heaton

Assistant P&Z Administrator
Wendy Allan