The Kitsap County Planning Commission met on the above-stated date at the Kitsap County Administration Building – Commissioner’s Chambers located at 619 Division Street, Port Orchard, WA 98366.

Members present: Robert Baglio, Linda Paralez, Mike Gustavson, Michael Brown, Tom Nevins, Jim Sommerhauser and John Taylor
Members absent: Lou Foritano, Fred Depee
Staff present: Larry Keeton, Jeff Rowe-Hornbaker, David Lynam, Maxine Schoales and Planning Commission Secretary Karla Castillo

6:01:32

A. Call Meeting to Order, Introductions

B. Adoption of Agenda

Agenda is adopted as posted.

C. Public Comments

D. Approval of the November 3, 2009 minutes

Commissioner Taylor motions and is seconded by Commissioner Sommerhauser to approve the November 3, 2009 minutes.

The vote:
Unanimous
The motion carries

E. Public Hearing/Deliberations/Recommendations: Amendment to Kitsap County Code Title 17 ‘Zoning’ regarding Accessory Dwelling Unit Innocent Purchasers:

Lynam gives an overview of the Ordinance that is being proposed.

6:04:02

Vice-Chair Baglio opens the public hearing for Title 17

Diane Goebel-Resident: I am an Associate Broker with John L. Scott in North Kitsap. I am a 30 year Kitsap County resident. We have seen some changes, I think our community needs are changing and I think dealing with the ADU is something I am hoping the County is going to change accordingly. We all know that ADU’s, I think that ADU’s are an asset to the County, I
believe that Bainbridge Island does to. It not only does it offer affordable housing to elderly parents, returning children, lower income workers, it offers an alternative to apartment living. Maybe you have covered this before, this is my first meeting here, rental income from the ADU's on a lot of different properties also can make a difference between homeowners staying on their property especially during today’s economical times or not being able to make the taxes and insurance or pay the mortgage. I recently listed a home with an ADU and when I ran through the multiple listing, I pulled up everything in Kitsap County regardless of price, Port Orchard north if it was listed with an ADU, 63 came up. My guess is there is more than 400 in Kitsap County, I think it should be treated as an asset, this is a good thing, it could be a win, win for everyone. We have affordable housing; the County will assess the properties at a higher value and therefore get a higher tax. If the property owners are willing to pay for the materials, pay for the labor and share the space, I think it is a fundamental real estate, that is a property owners right. I do have a copy of the latest ADU thing. One that I have listed right now, 10 years ago when the buyer bought it, so this innocent or pre how do diligent, I'm wondering about some of the verbiage in this ordinance. So 10 years ago this property was purchased, ordered a preliminary commitment for Title, there were no flags, it was bank owned so there was not a Form 17 provided at that time, but there were no flags that it was a problem. Ten years ago the ADU was really old and needed a lot of work to fix it up. The building was there in ‘71 I can prove that through assessor records. Somewhere between ‘71 and ‘80 it was turned into an ADU, in the 90's it was really old and needed all of these upgrades. So who turned it and when, it seems to me that the County would want to work, instead of going backwards on properties what we should all be working for is if its already there lets come up with minimum health and safety and then the County will win because it is a higher asset value, we provide housing we have a lot of people who cant afford to buy homes but do not necessarily want to live in an apartment. I think there is alternative housing is how these ADU’s should be looked at. I think it could be a win, win with the property owners, people looking for housing and the County, but with minimum health and regulations. I know of another one that is not my listing, the County had them pull out all of the plumbing from the kitchen, so we downgraded the property and nobody wins.

**Sommerhauser:** *Is the property you are speaking about inside the UGA?*

**Goebel:** Its Kitsap County, non UGA

**Baglio asks Goebel if she is in favor of the ordinance**

**Goebel:** One, it talks about Innocent buyers, I have a problem with that, its like value added when you have a property with an additional building, it should be a positive thing. Its value added, how do we enhance those things, so the County makes more tax out of it, its healthy and safe but we increase it. It should be a positive thing. I guess with this latest ordinance it says do diligence, I just think that, what exactly does that mean? You order a preliminary title commitment, if the building has been there forever. I am dating myself here, but 20 years ago in Real Estate there were properties that were grandfathered, I came across quite a few of those and now it seems like the County is tightening up and not working with the citizens as well as they use to. I think that is a bad thing.

**Brown asks if the property is on sewer or if it has on-site sewage.**

**Goebel discusses the upgrades that have been done to the on-site septic on the property.**
Bill Palmer-Resident: I am here tonight, having reviewed the proposed ordinance on behalf of the Kitsap County Association of Realtors. Concisely stated we are against the ordinance and believe that the as you will see in my first paragraph that the ordinance is A) Not necessary; B) Its completely unworkable as proposed; and 3) It's the wrong approach to an issue that has yet to be verified as a problem worthy of an ordinance. There is a couple of false assumptions contained in the ordinance and the first one has to do with the fact that Kitsap County recognizes that unapproved Accessory Dwelling Unit’s exist throughout the County and believes that there are approximately 25. I hope to shout that if we are creating an ordinance for 25 situations that is nothing short of ridiculous. However, as the previous testifier the point she made there is probably a lot more than that. The question is have they been illegally created or were they created at a time when the ordinance allowed it and that goes to the next where as unapproved ADU’s may now be in the possession of owners who did not create them. How can you make that assessment unless you investigate every single one of them. The focus of the whole ordinance is to assume that all prior existing ADU’s were illegally created. However, if you track the ordinances as I have from 1977 through our current ordinance in 2006, you will find that ADU’s were a permitted use along with a Single Family Residence without additional permits by that I mean without a Conditional Use permit, a Special Use permit, Unclassified Use Permit as was the case prior to 1995, didn’t require any of these special permits in order to be constructed as an ADU. Now there were restrictions, one restriction in the ordinance was they had to have septic and public water, they had to satisfy that condition of the Health District, I don’t mean public water in the sense, I really mean (unintelligible). The other issue is quite obviously they were suppose to get a building permit and all that period of time, if they were going to construct anything that was beyond that size of roughly 200 square feet needed a building permit likely it got a building permit, maybe in some instances it did not. However in the instances when it didn’t get a building permit since it was a permitted use that is a building code compliance issue and not a zoning ordinance compliance issue. There is confusion in the ordinance to that point. I wanted to get to one of the main issues that is problematic in this ordinance. One is you are requiring people with an ADU to go through a Public Hearing process, I don’t know if that was the intent when the ordinance was constructed, but it clearly says and I point that out in my text, on the first page under section 2, sub 3 B, an ADU shall be subject to a conditional use permit in those areas outside an urban growth boundary. Well that is a fine provision for anything new but this ordinance is suppose to address the instance of a prior existing ADU, I’m sorry there is another basic problem that has manifest in this ordinance, if you got something going to Public Hearing you cant have a director granting a variance. First of all variance criteria don’t really comport with state law relative to variance criteria, again this is something I have addressed in writing. You can’t have a director doing that if it is going to public hearing. That mean you have to deal with an administrative appeal to the Hearing Examiner at the same time you are going to the Hearing Examiner to get approval on an ADU. Why go to Public Hearing on an ADU that has prior existence and likely prior existence in compliance with the code that was in effect at the time is was created. Now you certainly do have instances where somebody built something without a building permit, somebody maybe even built something that did not comport with the laws in effect at the time. For example there are two instances in the ’81 and the ’95 code where the restriction on size. In the ’81 code the restriction of size was 40% of the habitable main area of the house; in ’95 it was changed to a flat 600 square feet and now its something different in our ‘99 and ‘06 code. I believe this in short this ordinance is totally unworkable, it needed to go through a bedding process to work out the problems and decide which approach was really the best approach to address the issue, what are the illegals and are they in fact illegal by reason of non compliance with the zoning ordinance or are they illegal by reason on non compliance with either Health District or building code standards. Until we know that, why are we even creating an ordinance to address something that is that
nebulas? We don’t have the statistical data to back it up. There are instances where there is a
code compliance issue but this is like taking a shotgun to kill a fly. We don’t know what the
real problem is because we don’t have the statistical data to know that. The ordinance I just
flat don’t think its workable. Who in their right mind is going to submit an application to go to
public hearing for an existing ADU? If they came to me I would tell them they are crazy to do
that. We have already and I think Larry Keaton will be glad to testify, its already a ridiculous
assumption to even take new applications to the Hearing Examiner for ADU approval. I think
we have only had one denial out of all of the application that have gone forward for new
approval. So why are we even doing that? If this ordinance was intended to be
administratively approved it doesn’t do that and you also have something in there in the
conditions and I spell it out in my written text having to do with a Land Use Binder that is
suppose to be recorded in the Auditors office. What in the world is a Land Use Binder? Its got
to be defined in an ordinance if its something that has to be filed in the Auditors office so
people have an understanding of what they are obligating their property or how they are
obligating their property or whether they should obligate their property. Those are just some
highlights of stuff that is in there.

6:18:19

Commissioner Gustavson arrives

Brown: Let me ask under section 2. 3m in sub section 7a. it says “Examined county
tax records or parcel records and was not put on inquiry notice that the accessory
dwelling was unpermitted”. Did this cause you concern?

Palmer: That the examined text was not put on the inquiry notice. No, because in theory it is
covered by do diligence but the point that I raise about do diligence that means one thing to
one person and something else to a third person. The issue of trying to even accomplish do
diligence is problematic. For example when you go to the Assessors office to look at historic
records you are going to find that if a property has more than one accessory building may or
may not have anything to do with an Accessory Dwelling Unit, if there was more than one
building and one of them happen to be an accessory dwelling Unit you will not find that
information necessarily in the assessors records. Certainly not in the data the Assessor
makes available online since 2000. There are some historic records that might shed some
light on it but even that is problematic, according to some of the ones I have had to research.
It is not a conclusive way to complete your do diligence.

Gustavson: During our work study the panel asked staff, would it make sense to
merely establish a date cut off for existing ADU’s just say they exist and therefore they
have standing. What is your opinion on that?

Palmer: In my persuasions, I think something akin to that would be a much better approach to
solving the problem. The instances when, unless you are prepared to go out and look at every
instance where there is an ADU and just say did they get a building permit were they required
to, when it was created. Unless you are prepared to do that you don’t know what the nature of
the problem is so given the fact the code prior to May 1998 version of the zoning ordinance. If
it was allowed out right as it was during that time period then you really only need to ask two
questions. Was it either 40% of the habitable area of the house or is it 600 square feet in size
anything over that there is a problem anything less not a problem. The criteria could be fairly
simple and should be done by a letter rather than a 400.00 dollar application process and a
public hearing.
Richard Brown-Resident: The board of realtors’ probably feels more strongly about this particular item than it has on items in years and we feel at this time at least and we will have another government affairs meeting tomorrow with the board. This ordinance should not be adopted in this form. First of all realtors hold themselves out by Washington State law to be attorneys. We have to (unintelligible) all of the information that is possible in order to sell something to someone, that is why form 17 was created by the State of Washington to disclose everything about the property. Prior to 1977 we wouldn’t have known anything, so how are we suppose to figure it out now when you can’t find it anywhere and it exists. So because it exists with a third purchaser how did that third purchaser know that it was not compliant at sometime because the law did not affect anything until after 1998. In 1977 the only thing that was concluded is that if you went in and got one that you went to the Health Department and went in and got a building permit. So we believe there are hundreds of these things and that substantially could create hundreds of problems if not dozens or a lot of lawsuits. The ordinance is poorly written. It should go back to some people who understand what happened in 1977 and 1978 and forward. One of our problems at the county right now is we have no history or knowledge of anything happened with the current staff. I am not blaming them for that; I’m just saying we don’t have it. So we need to bring in people the realtors are bringing in Palmer because he has a knowledge of it, you have Perkewitz, you have Tracy, you have Jim Swensen sitting at home doing nothing that was here when I started 40 years ago I don’t know he wasn’t here then. I am really concerned, I haven’t figured out what we are trying to do are we trying to create a problem or are we trying to solve a problem. If we are trying to solve a problem, what is the problem? When grandma came to live with her son and he built an addition to the back of the house and now he is retiring and grandma died what do we do with the house? Do we hold the realtor and the homeowner currently responsible for the problem or can he rent it out? What are we going to do as a community? In 1995 the County said “we want more Accessory Dwelling Units because we have a housing crisis” now we are saying lets fine the people 400.00 dollars and do away with them and by the way if its rural we don’t want to handle them anymore, well everything was rural back then. The other problem I had there was a lot of language in there that says you can only have one lot. Well what if you live in Manchester that is still rural and you put a house up on lot 35 and then you put an addition on lot 36 because you own 4 lots that are 65 feet wide but what you do it says you can only use one lot. We need more research into this. I think it needs to go back to the drawing board.

Discussion is held about where Mr. Brown is getting his numbers from.

Paralez: If we were to suppose that you grandfathered in something that had not been permitted and had not had a building permit and had not had a subsequent inspection and had not had health investigation, that the first thing you would want to do would be to make sure it is habitable and that there is no subsequent damage being done to the environment through an ineffective sewage system or inadequate water supply or whatever. That if there is quote a problem to be defined in my mind it would be the health, welfare and safety that regulations are written for and that if something was quote illegal your first concern would be it might not have been constructed properly, it might not be functioning properly, I don’t know that but if it wasn’t permitted, that would be my first concern. Is that the problem you see?
Brown: First of all what was legal? Legal was 7500 square feet and then it became 9600 square feet, is it now 5 acres, is it now illegal or is it legal at the time I built it and the requirement was that I would have 150 feet of drain field and now I need a Aerobics System with 300 feet of drain field. Do I now spend the $35,000.00 to put it in?

Discussion is held about the Septic Systems just functioning properly and being installed correctly versus the Health District requiring updated systems that will cost the homeowner more money to upgrade.

Sommerhauser questions who has the liability if someone buys a property with a questionable ADU on it and moves somebody into it and then something happens?

Brown discusses the steps that are taken when a property is bought and states that everyone involved in the real estate transaction would be liable.

Mike Eliason-Resident: Couple of things to clear up first. Commissioner Sommerhauser’s question, I want to note for the record that Richard Brown’s response on liability was that of an individual practitioner and not on behalf of the board. I think any question on liability need to be addressed by attorneys or courts and that wouldn’t be something that any of our members would address. Second issue is Commissioner Gustavson talks about grandfathering in setting a specific date and letting everyone through. I think the problem with that is, if you look at the terms that are used that are composed by staff, do diligence, burden of proof ect..these are not really pie in the sky provisions. There is a court case in 2005 in Snohomish County that address these, there is a court case that has to do with subdivision of property and there has actually been several of them and it went to court, courts ruled on them and then it went to court of appeals. That’s when these terms interpretation of the States Statutes were decided so I would imagine that is why staff has applied those to ADU’s . I couldn’t find any case law related to ADU’s in the state specifically with grandfathering but there were quite a few that had to do with subdivisions and these were terms that were brought up and addressed by the court and I think the problem becomes as a county still has to determine there has to be some do diligence if you were to allow everyone through all at one time, just to grandfathering process, the court ruling have held, that the (unintelligible) is on the applicant to show that there was do diligence, that there was a marketable property that was purchased and that they didn’t have constructive notice that there was a defect at the time. One of the provisions here could be problematic though because it is requesting a title report with no exceptions or restrictions concerning the ADU be part of that process and I am recommending that be deleted or modified because I have not seen any title reports that have contained that and I have talked to other real estate professionals that haven’t found those either. It doesn’t mean they are not there, I’ve just never encountered any and I don’t know of any of our member that have. It would be nice if you could change that provision to “no actual prior notice to the applicant” but again I think that is going to have to be if you decided to pursue that your legal affairs department the Prosecutors Office is going to have to determine whether you can fit that criteria based on the case law and the same thing with burden of proof. Then on 4B I know you cleared up a previous problem you had section 1 labeled twice that has been changed; in section 4D you need to delete the word “the” it shouldn’t be there. On the expiration date I have concerns about the 2 year time period; I appreciate the staff trying to expand that because the original proposal was 1 year. If there is anyway you could change that one year from the date of discovery of non compliance it would be very helpful. The problem that you get is if you are trying to address the concerns of the two Commissioners of allowing this to continue on through a multi year process. I think we need a little bit of a balance here.
Ron Ross-Resident: I represent Kitsap Alliance of Property Owners but I am also a realtor and have been working with the department relative to ADU’s and we use the Attorney Phil Havers. Phil wanted to be here tonight to testify, there was an illness in the family he had agreed to come here, he had emailed me something and asked me to turn that in so I am going to turn his email in. He is against it, the concept of it is good, but what we have to do is address the issue of what we want to deal with is the Innocent Purchaser. Its not all of the illegal ADU’s that people have created them to gain extra money; they have no right to have it in my opinion. That's if they have created it deliberately after the law was passed and it was easy to do because the Counties Department did not require Occupancy permits and the first one that I really went to battle on was for the Rohns. They bought a house that was built in 1990; there was another house on the property that was built in 1911. The (unintelligible) family lived in the house that was built in 1911 and got permission from the County to build a new house and the County said we will let you build that on the lot provided that you take down the old house. Will you sign that on the building permit? He said yes I will tear down the old house; I have no problem with that. He doesn’t finalize the building permit; he doesn’t get an occupancy permit. He moves into the new house and rents out the old house for 10 consecutive years. Mr. Rohn and Valerie his wife come along and buy the house in the year 2000 and then in the year 2006 the County says that's an illegal ADU, we have to have you tear it down its subject to $513.00 dollar a day fines. They are innocent purchasers and they are the people I want to see protected. Diane Goebel had mentioned there were 61 illegal ADU's, she also told me that. Two days later I went and made a little look at things myself and I find another one the day after she had told me, two more came in the next day. One of them is on a house that is listed at ($1,495,000,000) one million four hundred ninety-five dollars and under the remarks it says extra out buildings and a permitted ADU. So I go to the county to see if it is permitted, it is clearly not a permitted ADU. This goes out to hundreds of agents. How do people really know if it is or isn’t? I think the owner does honestly think it is a legal ADU. Another one that I have found, this one is listed at $455,000.00 it’s owned by a bank. The bank has forclosed on it and its listed with additional dwelling unit. They didn’t call it an ADU but people don’t know what these are and they think its value added when they have the extra living unit in their place. There is no way of monitoring exactly when it was built or anything. What I think the county should do if you want to make an ordinance against them, let the county notify all of the people who have illegal ADU’s to bring them into compliance. Of course that can’t be done because the county has no record of where the illegal ADU’s are nor does the public know that they have an illegal ADU. So if you establish that they have one year to come into compliance or two years to come into compliance, you aren’t going to solve the problem because the public does not know that they have bought property illegally, they didn’t buy it illegally it has what is now considered an illegal use on it. It is very unfair, if the County the right thing some five or six years ago could have been longer than that, with subdivisions that weren’t made proper years ago and I did it myself I tried plotting property and had to many problems with the County, I took 5 acres and made 13 lots out of it leaps and bounds description it was legal at the time, its not legal now and those lots could be considered created illegal because its not the legal way to do it now. The homes that were built on those lots, to tell those people they can’t do it or for somebody to have a lot that they bought years ago and didn’t build on it and tell them they can’t build on it. So the county did the right thing they made an innocent purchaser rule. We could do the same thing with this and that’s what I would like to see the County do, don’t solve the problem for the people in office, now were working for the staff now that doesn’t solve the problem in the long run. It can’t be something that expires, we talk about the house having to be up to code. Code today I think calls for 2x6
outside walls my house was built in ‘37, I have 2x4. There are so many code changes that to require that they be brought up to code is such a farce.

6:52:50

Keeton-Director, Community Development: The first part, the problem right now that exists for the Department of Community Development and anyone in the County with an ADU. If it’s legal it’s gone through the Conditional Use Permit it’s not a problem. There may be 4000 ADU’s out there and maybe 1500 of them went through the Conditional Use Permit process maybe not, it depends on when it was built. The problem we have is first of all is there is no Innocent purchasers section in the Counties code for anything other than subdivisions. The intent of this ordinance is to allow an innocent purchaser piece to come into place. The second part of the problem is that, despite what people up here think, Mr. Ross is right. When Mr. Grohn came in and they bought their property and the met with us and staff spent hours to get the Grohns into compliance; it was because the Grohns had bought a piece of property, it had an ADU, they thought it was purchased correctly and because the department hadn’t done what was supposed to do years ago, they were being penalized. And the question is, ‘How do you solve the problem?’ The only way you can solve the problem under current code, in a rural area, is you have to go before the Hearing Examiner to get a Conditional Use Permit. The intent of this ordinance change is to allow them not have to do that. While the $400 fee or whatever it ends up being, it’s really intended to help people like what Mrs. Goebel was talking about. We’ve been trying to work her problem and her problem can’t be worked under current code because in order for the gentleman who owns the property to get an ADU, regardless of when it was created, under current code you got go through a conditional use. So if there’s better language and I thought Mr. Eliason’s comments about the jurisdiction or get rid of the two years…that’s great language. That’s really what we are trying to do here. We are trying to find a way to solve a problem when it pops up for a citizen who is an innocent purchaser. When you asked the question, Mr. Gustavson, about letting anybody just…we did, it was in 1998. There was a requirement starting in 1998 to get a Conditional Use Permit. Some have done it, a lot more probably haven’t. The boundary line has already been established. It’s really how do you get the people who are innocent purchasers back into compliance.

6:55:49

Taylor asks why we can use amnesty, take DCD out of the picture and mandate that they have to comply with Health and Safety.

Keeton: That’s fine, you’ve got a septic system and you have water. If this was a family member living in the ADU and you want to put your family at risk; that’s great. The problem we see and where we get the complaints isn’t from who have rented ADU’s, who have been forced to leave the ADU, or neighbors who complain about them on the property. That’s how we get notified; we are not out looking for them. So when you start talking about the public going in there on a rental property, should they have to meet the health and safety standards; well they meet the Heath District standards, but is the building have to comply. I agree with what they are talking about, which code should be in effect, it depends on when the thing was built; it should meet the code at the time, unless it’s truly a safety code that you cant get around. So we’re not looking at trying to make them re-build the ADU. We’re trying to figure out how to get them into compliance in a timely way so they make use of the property the way the want. If this isn’t written the right way then we’re looking for language to make it that way.
Sommerhauser asks to clarify inspection process being for the time that the building was built. He asks what happens if the building date cannot be determined?

Keeton states that if it was built prior to 1972 as long as it meeting health and safety; the structure is inhabitable, then we are going say they were an innocent purchaser and we move forward.

Sommerhauser clarifies that the department is amenable to the change that Mr. Eliason offered on the timeframe.

Keeton: Yes, it’s probably the best language.

Sommerhauser: That would have the ordinance remain in existence when somebody identifies that they’ve got an ADU.

Keeton: For a long period of time, it’s more than two years.

Sommerhauser: How do we work the other end of that to start getting people to realize that they need to do something? Do we have the Assessor notify you when the see an ADU?

Keeton states that he will talk to the Assessor about that. He states that it’s really a way to fix a problem for people who identify it and need to get it solved.

Discussion is held about the Assessor’s documentation of structures on parcels.

7:04:35

Public Hearing is closed

A motion is made by Commissioner Sommerhauser and seconded by Commissioner Taylor to recommend approval of the ordinance as presented with two changes; end date language of section 5 to “All complete applications submitted prior to one year from the date of discovery of non compliance shall be reviewed under this subsection”; also delete the first sentence in section 2 and the last change is that staff would be directed to consult with the Health Department as relates to what standard they would inspect against, when they are brought in to somebody attempting to bring an ADU into compliance and that discussion be at least part of the briefing paper given to the Board of County Commissioners when our recommendation is sent forward to them.

Nevins expresses concern that this ordinance might solve the problem for some but it does not solve the root of the problem.

Brown asks for clarification on the references to the Kitsap County Health District in the ordinance and if the intent in the motion is to have them deleted entirely.

Sommerhauser clarifies his intent is to insure that when the Health District is involved that the Health District doesn’t try to force someone to come in for a house that was built in 1990 and an ADU that accompanies, that we try to force them to come up to a 2009 sewage system when the 1990 sewage system is what we are suppose to be
inspecting to. I don’t want DCD to force people to come up to today’s standards when
the house was built in 1990 and I don’t want the Health District to either.

Brown feels that any reference to the Health District should be taken out of the
Ordinance entirely.

An amendment to the original motion is made by Commissioner Brown and seconded
by Commissioner Gustavson to delete any reference to the Health District.

Discussion is held on how you would know if a sewage system is working properly and
safely if the Health District was not involved at all.

Clarification is made that if a person has a 1970 septic system that is working properly
the Health District will pass it but if they have a failing system then the Health District
will make the owner bring it up to code. The problem is making sure the Health District
does not require them to bring it up to today’s code.

Lynam clarifies what DCD’s intent is. DCD’s intent is to have habitable structures out
there. DCD cannot affect Health District Laws. Lynam states that the Health District has
been very helpful with these cases and does not believe it is going to be as onerous as
it seems.

Discussion is held regarding taking the Health District out of this ordinance and how it
would not keep the Health District out of the process. The property would still need to
hold up to health and safety regulations. Lynam states he would have to consult legal
on this subject.

Baglio feels that we should have the specific language from the Health Department at
least expanded on and brought to us again. He feels it should at least state that it has
to be in compliance with the ordinance at the time the building was constructed.

Commissioner Brown would like to withdraw his amendment to the motion, with
instructions that would accompany our recommended approval, that between our
recommended approval with the two changes and it would go forward to the
Commissioners that between our approval and it getting there it would go through
Health Department review.

Lynam agrees that is something that staff would be able to do.

Commissioner Brown and Commissioner Gustavson withdraw their amendment to the
motion.

Sommerhauser repeats the original motion.

A motion is made by Commissioner Sommerhauser and seconded by Commissioner
Taylor to recommend approval of the ordinance as presented with two changes; end
date language of section 5 to “All complete applications submitted prior to one year
from the date of discovery of non compliance shall be reviewed under this subsection”;
also delete the first sentence in section 2 and the last change is that staff would be
directed to consult with the Health Department as relates to what standard they would
inspect against, when they are brought in to somebody attempting to bring an ADU into
compliance and that discussion be at least part of the briefing paper given to the Board of County Commissioners when our recommendation is sent forward to them.

The vote:
3 yes
4 no (Taylor, Nevins, Gustavson, Baglio)
The motion fails

Taylor recommends that this be given back to staff to have them work out the little issues and bring it back.

Nevins does not believe this ordinance discourages people from creating illegal ADU’s

Gustavson feels that there needs to be more input from the people who are out in the field dealing with this issue.

Taylor would like to see someone from the Health Department come and talk about the ordinance.

A motion is made by Commissioner Baglio and seconded by Commissioner Gustavson to make the changes regarding the time limit but take it back to the staff to have them work on the issue of the septic and bring it back in front of the Commission before it goes in front of the Board.

The vote:
6 yes
1 no
The motion carries

Clarification on if there will be another Public Hearing on this issue. Keeton clarifies the next opportunity for Public Testimony on this subject would be in front of the Board of County Commissioners.

7:34:20
Break
7:43:19
Reconvene


Discussion is held on how the Commission would like to hear these applications. It is decided that they will hear the Work Study, Public Hearing, Deliberations and Recommendations for all five applications together.

Maxine Schoales gives and overview of all five open space applications (Wolterdorf, Royal Valley, LLC, Bothwell, Hoag and Grant). Staff recommends approval on all five.
Discussion is held on the Woltersdorf application. Nevins voices concern over the property being an agricultural use and it being put into open space. Schoales clarifies that the application was looked at as Current Use Open Space and not as a farm.

Vice-Chair Baglio open the public hearing for all five open space applications.

Vice-Chair Baglio closes the public hearing for all five open space applications.

Sommerhauser (Referencing Wolterdorf application) Comments on condition number one “cutting of vegetation”, condition number six “clearing of vegetation” and condition number eleven “there shall be no dumping of chemicals, liquids, or waste”. He believes that we need some different language to apply if we are going to be dealing with Agricultural properties. (Referencing Bothwell application) He is unsure about condition twelve referencing wildlife.

Gustavson questions the classification of a Nature Conservancy and how the might effect the Hoag property that is adjacent to a Nature Conservancy.

Clarification is made that the entire Hoag Property is already in Open space and that this application is to add the last piece in to Open Space.

Sommerhauser (referencing Royal Valley) Condition eleven talks about adding chemicals into the soil, this is a baseball field and will probably be fertilizing the grass.

A motion is made by Commissioner Paralez and seconded by Commissioner Brown to approve all five applications as presented.

A motion is made by Commissioner Sommerhauser and seconded by Commissioner Gustavson to amend the original motion to amend the conditions as discussed.

Sommerhauser would like to withdraw the wildlife condition number twelve on the Bothwell application.

Clarification is made on what conditions are needed to be deleted from the applications for approval. Waltersdorf application removal of the bolded portion of item four and item six in its entirety.

The vote on the amendment:
Unanimous
The motion carries

The vote on the motion:
Unanimous
The motion carries

Point of order is called by Commissioner Gustavson
Gustavson expresses concern over the Public Hearing and Deliberations and Recommendation all on the same night.

Nevins does not feel that it should hold up the process if a person submits written testimony all in the same night. There is an expectation that the information will not be thoroughly researched when given such short notice.

Sommerhauser believes that if he needed to ask for a delay he would and believes each Commissioner would do the same.

G. Public Hearing/Deliberation/Recommendations: Removal of the County Fee Schedule from Section 21.06, 14.04, 14.08 and adopt Fees by Resolution: Larry Keeton, Director, DCD

Keeton gives an overview of the changes that are being presented and gives a brief history of how the fees were originally put in the ordinance.

8:10:58

Vice Chair Baglio opens the public hearing

8:11:16

Vice Chair Baglio closes the public hearing.

A motion is made by Commissioner Sommerhauser and seconded by Commissioner Gustavson to approve the removal of the County Fee Schedule from Section 21.06, 14.04, 14.08 and adopt fees by resolution.

Sommerhauser: One of the things that I think needs to be on the record. That this is changing of the fees to resolution and even when that resolution comes forward is an independent process that has not been part of the budget process. That Larry isn’t looking to make his budget well, he is looking to fix fees based on data on what it takes to do the work.

The vote:

Unanimous

The motion carries

H. For the Good of the Order: Vice-Chair Baglio

Discussion is held on the December schedule.

Keeton discusses and gives and update on the Shoreline Master Plan.

Time of Adjournment: 8:32:52

EXHIBITS

A. Ordinance for Accessory Dwellings in Possession of Innocent Purchasers
B. Bothwell Open Space Application
C. Grant Open Space Application
D. Hoag Family Ltd. Open Space Application
E. Royal Valley, LLC Open Space Application
F. Woltersdorf Open Space Application
G. Staff Report: Changes to KCC Titles 21 and 14; removing fees from ordinance
H. Changes to Title 14
I. Changes to Title 21

MINUTES approved this _______ day of _______ 2009.

___________________________________________
Lou Foritano, Planning Commission Chair

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Mary Seals, Planning Commission Secretary