Kitsap County Planning Commission – March 2, 2010

M I N U T E S

KITSAP COUNTY PLANNING COMMISSION
Administration Building - Commissioner’s Chambers
March 2, 2010 6:00 pm

These minutes are intended to provide a summary of the meeting flow and content and should not be relied upon for specific statements from individuals at the meeting.

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: Lou Foritano, Robert Baglio, Linda Paralez, Mike Gustavson, Michael Brown, Tom Nevins, Fred Depee and Carol Smiley

Members absent: Jim Sommerhauser

Staff present: Larry Keeton, Doug Frick, David Lynam and Planning Commission Secretary Karla Castillo

6:01:28

A. Call Meeting to Order, Introductions

B. Adoption of Agenda

A motion is made by Commissioner Paralez and seconded by Commissioner Brown to adopt the agenda as posted.

C. Public Comments

D. Approval of the January 5, 2010 Minutes

Depee would like the January 5, 2010 minutes amended to reflect his statement regarding a timeframe should be given to the Planning Commission by the Commissioners when their appointment is up and if they will not be automatically re-appointed.

A motion is made by Commissioner Foritano and seconded by Commissioner Brown to approve the minutes of January 5, 2010 as amended.

The vote:
6 yes
2 abstain

The motion carries

E. Work Study: Innocent Purchaser ADUs: David Lynam, Kitsap County Fire Marshal, Manager of Fire Marshal and Code Compliance, DCD

Lynam goes over the timeline that they have gone through with this ordinance and gives an overview of the proposed ordinance and the changes that have been made.

Lynam discusses the proposal that was written by the Realtors Association. Lynam discusses why DCD does not recommend approving the Realtors proposal.

Discussion is held on the purpose of Section 3 G of the Staffs proposal and the difference between an accessory dwelling quarter and an accessory dwelling unit.
Discussion is held on if there is a termination date to this process. Lynam explains that in the new proposal applicants would have one year from the date the illegal ADU is discovered to bring it into compliance.

Clarification is made that the primary occupancy must be owner occupied in order to have an ADU.

Discussion is held regarding double access to the property and if there is a separate access to the ADU would it need to be removed.

Discussion is held on how a person is to bring a building up to current code when a home was built prior to 1977. Lynam states that they would only need to be able to prove that the structure is livable. If it can not be proven what year the ADU was built it would need to be able to pass a livability inspection.

Smiley goes over some grammatical errors that are in the ordinance.

Nevins questions the wording of mediation in the ordinance.

Gustavson suggests a wording change when it comes to the inspection process. The current wording states if the county inspection staff determines the structure to be habitable. Gustavson suggest we add or can be readily made habitable at the end of the sentence.

Discussion is held on if the County is doing anything to make the public aware of this ordinance.

F. Public Hearing: Innocent Purchaser ADU’s: David Lynam, Kitsap County Fire Marshal, Manager of Fire Marshal and Code Compliance, DCD

Chair Baglio opens the public hearing

William Palmer- Land Use Planning Consultant: The Kitsap Association of Realtors hired me to take a different approach to the ordinance because of problems that they saw and I saw with the ordinance that was before the Planning Commission last fall and the ordinance you in fact if I recall approved last fall. Before I get too far into my comments I want to pass out some information (Palmer passes out information). This is essentially the same ordinance that you got in your packet but the Kitsap Realtors Government Affairs Committee wanted a couple of changes that I have prepared and I will get to that shortly. I’m not going to highlight all of the problems that I saw with the Counties ordinance last fall but I felt that it was flawed still believe its flawed, still believe the proposal that the staff has presented to you tonight is flawed. I will talk about that in a minute but I want to talk more specifically about what we saw and our issues relative to the Accessory Dwelling Unit’s. One fact that I know the staffs aware of and they highlighted it only in an obtuse way is that you have currently in the code a requirement that ADU’s in rural areas go through a Conditional Use Permit process and supposedly that
requirement is a compromise for the Hearings boards order that Tom Nevins referenced a little bit earlier when the Counties Comprehensive Plan underwent a challenge back in 2006-2008. I will get back to that issue in a minute. The fact is if you were to look at the applications that went forward with a Conditional Use Permit application process which under current code has to go to the Hearing Examiner, the Hearing Examiner has approved all but one and I believe if I recall a discussion with Larry Keeton at the DCD Policy Advisory Group meeting that the Hearing Examiner had agreed to or has already met with the Board of County Commissioners to indicate that basically you doing this for drill and your costing the public a lot of money. Well that was last year that kind of notice went out and this year effective January 1st a set of fees for processing an ADU application and a lot of other things to. The letter I gave you is an unsigned letter that has not yet been presented to the BOCC although it is addressed to them and it’s a letter that I intend to present to the Board, coincidental with the time period that they consider the ADU ordinance whether it’s the staff’s or the ordinances drafted by the on behalf of the Realtors for consideration tonight. Now I’ll cut to the chase about the letter and you can read the whys and wherefores but bottom line is if you are going to need to whether its for the kind of issue that Mr. Gustavson presented you have to do something to take care of family members or you need that money that comes from your ADU to help make the payments on your house or you just want to provide a rental unit to help someone else out. Regardless of that if you have to go through the process it will cost you a minimum of $6700.00. Now that’s if you do it yourself, you employee no professional expertise and you don’t have to comply with the Counties Storm drainage ordinance and therefore have to do what’s called a Site Development Activity Permit. If by chance you have to improve your driveway and come under the guidance of the new design guidelines for the storm drainage ordinance which are a great deal more onerous then they were here before, you are very likely to be in the $17,000.00 range in order to get that ADU approved and then you get the building permit process on top of that and when you consider the fact that it takes, its taken me for an application I represented last year it took about 9 months to get an ADU through the Public Hearing process and currently if you then follow it on with the building permit process assuming its not a mobile home or manufactured home that will take another 6 to 8 weeks. That’s the permit process for single family dwelling if by chance it’s a mobile home or manufactured home the process is a little more expeditious it will take you 4 to 5 weeks just to get you through the building permit process for that. I know that first hand because I have a client that has been waiting now over 8 weeks to get his building permit he previously got a manufactured home permit on the same lot and it took him 5 weeks just to get that permit approved. Several reasons for that I don’t want to get into that but it can take that long. So you could be well into 11 months to 1 year to get an ADU approved and you’ve spent a whole lot of money and money that most people don’t have. You consider your own budgets and whether you can afford $6700.00 just for application fees and your time to represent the application. Bottom line that represented a problem that needed to be addressed and since the County is already in the process of dealing with ADU all be it innocent purchaser ADU this is a good time to address the issue and the proposal the Realtors are putting forward does have the provision to make ADU a permitted use in all residential zones and there is an exception for Rural Resource and Rural Wooded and an administratively approved Conditional Use Permit process and that for those zones and there is reasons to consider that but just one other further comment about the cost if you didn’t have to go to Public Hearing and only went through an ACUP process to get your ADU approved you only save about $1000.00 so $5700.00 to $16,000.00 would be the range its not much of a savings, its an issue that should concern us all particularly the people that have to spend that kind of money who typically don’t have deep pockets and maybe precluded from being able to take advantage of something the code permits simply because they can’t afford it. So that one of the reason for allowing them permitted out right in all zones another reason has to do with the
term under the growth management act which is affordable housing but realistically it should
be housing that is affordable to people and to me looking at it from a professionals point of
view the County has done a pretty lousy job in providing for the circumstance for the people
who really can't afford the kind of housing prices that we have today and even today that ADU
gives the people an opportunity to provide housing that is a little more affordable and even as
I said a minute ago to allow them to perhaps keep the house they already have because they
can get another source of income, I'm going to ignore any beeps for time because there is a
lot to cover. There is another issue that I had a problem with. When it came to reviewing the
Counties proposed ordinance last fall and the old concept and you heard it again tonight from
Mr. Lynam the concept is well, we are going to provide relief to the guy that bought a piece of
property the previous owner is long gone there is an ADU on it there has got to be a way that
process or that circumstance can be reconciled with the Counties code and so staff came up
with a whole laundry list of ways to do that and there's a problem with the way that decision.
The issue is, that was not addressed in the ordinance that was presented to you last fall and it
is not even addressed in the ordinance that the staff put forward tonight and that is that you
have a lot of different codes primarily four different code situations in the history of Kitsap
County the ordinance that was in effect roughly between 1966 and 1977 and then the period
current code situation. Each one of those periods there were different code requirements
some similar but some quite different and so if you don’t account for the fact that even as an
innocent purchaser that a person inherited something that maybe was really permitted
consistent with code back in 1985 if he finds himself in possession of that why does he have
to go through any significant process or at least if he does have to go through some process
to justify what he has it, should be based on the code that was in effect at that time, that’s not
what I found in the Counties ordinance, ok but the ordinance really only next problem the
ordinance only really dealt with the circumstance of the guy that bought it and didn’t create it.
Well I’m sorry but there are a number of people out there that created these ADU’s didn’t
know they were doing it in contradiction to a code. Maybe didn’t get any permits which are
certainly the case for some of them but when you look at that situation when it comes in as an
enforcement issue are you going to say I’m sorry you created get rid of it. Why should I get rid
of it if I created it at a time when the code allowed me to do that without a special permit? Well
maybe you didn’t get a building permit well that was probably required but just because I didn’t
get a building permit doesn’t mean that the ADU is non compliant with the zoning ordinance
so you have the issue of what’s the standard by which we judge an ADU are we judging it
because it didn’t meet Health District standards which have been in effect but different
standards since the 60’s are we judging it because they didn’t get a building permit and
because they didn’t get a building permit there non compliant with the zoning code. Those
issues were not addressed in the staffs presentation of their ordinance nor were they
addressed adequately in my mind in the context of the Innocent Purchaser as to the challenge
to prove that the ADU even though he didn’t create it was created at a time when the code
allowed that kind of structure to be adjacent or on the same property as a primary residence.
The ordinance that the Realtor’s put forward take a stab at those issues and tries to deal with
them in a little different way then the staffs ordinance and we did have some difference of
opinion even thought the staff has reflected some of the things that the Realtors had put forth
in their version of the ordinance. There were some issues that we dealt with that are
substantially different than the staff. I’ve written several zoning ordinances in my career as a
Land Use Planner, I’ve been involved in a number of zoning ordinance amendments, and I’ve
been through the process with Critical Areas Ordinance and a variety of different ordinances
in addition to basic comprehensive planning. I have yet to find in any ordinance including
Kitsap County’s present ordinance that if you introduce the term variance, that term has a very
specific definition and meaning under Kitsap County’s code and most codes in the State. I
have not found yet that under any circumstance can a Director grant a variance an
Administrative Variance. When you use the term Variance under State Law that has some
meaning you have to judge whether there is a hardship involved, the hardship not because
somebody built something that they shouldn’t have and are now trying to get it rectified or
that they built according to code and are now trying to get it rectified. The variance procedure
and analysis starts with is there a hardship related to physical characteristics of the property. If
you can’t meet that standard then the next standard that you have to meet is that well
everybody else in the neighborhood has violated the same setback that I am violating there is
many examples of that throughout the County and there are a couple other criteria but these
are very specific and one of them says it can’t be economic. Just because it’s a hardship from
an economic standpoint doesn’t make the variance a hardship but that’s what State Law says
that’s what’s carried in our code and to introduce another ordinance that says the Director has
the opportunity to grant an Administrative Variance, I take great exception to that and I even
question legal council that would say that is possible. I certainly would like a second opinion
on that from some other legal source. Ok, so I don’t think the Director can do that, I don’t think
the just the question earlier about mediation in the discussion that we had at our Policy
Advisory Group meeting one of the points that our chairman of that committee Jim Tracey who
is an attorney and also a certified Arbitrator-Mediator by the bar association his comment just
as recently as this past Friday is that he has never seen a situation where mediation works. If
you are looking at a disagreement between two property owners I can almost guarantee you
that mediation is not going to work. I won’t dwell on that issue because it’s something that is
going to be coming up in the context of Title 21 which is our Land Use procedures ordinance
and its the whole issue of whether or not you can appeal to Board of County
Commissioner’s or go to court or go through a mediation process before you do either one of
that. Whatever we do with this ordinance it isn’t going to cause that to go away, it’s just
something else we need to talk about but not here. Those are some of the basic things under
pen this ordinance proposal and one of the things that we don’t have in our ordinance that is
different from the staffs is that we don’t have time period with one exception. The time period
that is in our ordinance has to do with the expiration of the ordinance once it is replaced by
something else ie.. an amendment to the zoning ordinance and as I read the staffs proposal
its not necessarily it’s a stand alone separate ordinance but its related to the zoning ordinance
but it doesn’t necessarily amend it. I think there is a problem there to but our ordinance
doesn’t have that time period in there. The theory behind it is that complaints that are filed
that’s the main reason they find out about these situation where there is an ADU that is being
used that isn’t perhaps hasn’t got all of the validating permits. So they go through an
investigating process whenever that occurs that’s the time period when to deal with the issue.
You don’t really need one year to resolve it because first of all when you have a code
compliance officer show up on your door step and say you have a problem, your given a time
period in which to address the issue usually its 10 days to respond to the cease and desist
order and that after that it’s a time period worked out between staff and the property owner
and if it come to a situation that they can’t agree then legal process can be started. There is
actual provision in the zoning ordinance for how to deal with code compliant issues to go
forward in court. So we didn’t really feel that there was need to put a timeframe in here as was
in the staff ordinance last fall and is in there today. I do have some problems one of the with
the Staff ordinance. I will certainly take any question you have with the Realtors provision. I
did want to touch on one change that the Governmental Affairs Committee made as a result of
a discussion yesterday. That is found on the 4th page on the Realtors proposal we have a in
section two we had an item 48 and that was struck and replaced with a slight change of
wording on 4-4. The Realtors were concerned with using the word disclosure, it may not of
had a particular meaning in 1985 but circuit year 2000 it has particular legal meaning today
and they don’t want to get caught up in that kind of for potential legal challenge and so that is
why disclosure is replaced with (unintelligible) provided at the time of sell. There are some similarities between a couple of things that the staff did in their ordinance and this one. We made a distinction which is found on page 4-3 that an ADU has to pass a basic life safety inspection conducted by a qualified professional of the owners choosing or by a qualified representative of Department of Community Development that language is quite distinctive from what you find in the staffs ordinance. Mr. Nevins identified what I thought was a conflict between the staffs proposal under 3-B, M-1 the applicability of this ordinance shall only apply to the property and the property owners who can establish the following criteria in sub I property owners in possession of a parcel during the effective period of the ordinance. Well what is the effective period of the ordinance? That’s when it’s adopted. You read that language and try to reconcile that with the language on the last page that talks about the year’s period of time in item 7 from when a non compliant ADU is discovered have a year’s time to submit an application for approval of an ADU. I think there is a problem there; it does need to be reconciled. Item 6 right above that has to do with a Land Use Binder now there is a provision in the zoning ordinance for Land Use Binder a fact is it is not defined, nowhere in the definition section of the ordinance. If you’re going to talk about a Land Use Binder somebody needs to know what that is besides a person residing in Community Development I think that’s a problem. I think the its instance when the Director just a little ways above that is authorized to require mediation, I think that is introducing a liability to the County that they don’t need. I have already talked about the life safety inspection and the variance issues but by and large I thing the approach the Realtors have taken is the right way to go. I do want to come back and address the one issue that Mr. Nevins brought up which has to do with the compliance order with the Hearings Board since the Hearings Board issued that compliance order there have been a couple three supreme court cases that have been decided one of which is a Thurston County case which clearly establishes that County’s have deference in how they deal with local issues that have come before them. I also have here Supreme Court decision that Hearings Boards cannot grant make bright line rules. If you go into the Growth Management Act and you try to find out what the definition of what a Rural Area is you’re not going to find very good guidelines on how to define rural areas. Now the Hearings Board tried to issue some bright line rules one was in the Vashon case and the other one was in the Skagit County case as I recall. Those bright line rules tried to define the distinction between Urban and Rural as anything greater than 5 acres in density was 5 acres in density or greater was rural and anything less dense than that was urban. You have to go back to Kitsap County’s Comprehensive Plan at this point and you’ve got to ignore in my opinion, ignore the compliance order of the Hearings Board in light of the Supreme Court decisions and look at our Comprehensive Plan and I challenge you to find that there is a requirement in our Comprehensive Plan that says that if you have an ADU that you have to go through a Conditional Use process even as through the compromise that was struck so to speak with the Hearings Board compliant order. You wont find it, what you will find is that our Comprehensive Plan allows for a variety of rural densities partially in recognition of the fact that you have a lot of lots that are a great deal smaller than 5 acres and certainly smaller than 10 acres and you do have ADU’s. ADU’s do not automatically expand or increase or double the density.

Gary Anderson: I am the President of the Kitsap County Association of Realtor’s. First of all the people that sat on the Citizen’s Advisory Committee were very talented and very knowledgeable people and I appreciate your consideration of the work that they did on this effort, they devoted a great deal of time and the approach that they took was one of fairness, one of trying to solve a problem in a fair way for the people who are in this situation in a real world sense and also in a way that wasn’t going to provide an avenue for somebody to land on from the Department of Community Development. Having said that I’m just going to
address the issue that is the reason that they want to throw out our proposal, which is that we prefer it be a County wide proposal and there are a number of reasons for that. We just feel that the opportunity to provide affordable housing is probably the overriding reason. I appreciate very much that Mr. Gustavson made about the fact you know we have had this ordinance on the books for many years and ADU’s in the rural area don’t seem to be a problem and probably never will be. The cost is prohibitive for the average person to do it, you try to find a way to do it, to take care of a family member and that is the main reason that they would do so. In the purest sense it seems to me that the ADU ordinance should apply to the rural areas. I mean if we have an urban growth area that has densities of 4-9 units per acre 3600 square foot minimum lot size your not going to get an ADU on that but if you happen to have a half of an acre of ground and you stick and ADU on it what’s going to happen you are going to separate it off and sell it and it is no longer an ADU. So the ADU ordinance doesn’t seem to me to apply to the Urban Growth Area as much as it does the rural area and that’s where it needs to be justified.

Richard Brown: Realtors’ know how to solve problems and that is what we were trying to do when we got involved in this ADU ordinance. We came in front of the Planning Commission several times, there was discontent on the Planning Commission from my perspective and that it didn’t really solve the problem of giving people who have non conforming uses in the their properties identified and get that taken care of. So we looked at what the County had done and all that did is taken the public farther away from the solution rather than to the solution. Let’s say that I am a realtor and I have a family with 3 children and a grandmother and I need some land to put her on because I can’t afford the $5000.00 to put her in a nursing home and she can’t afford the $8000.00 interim living facility. Now some of you people up there are getting fairly old you better start thinking about how we are going to solve this problem. This problem is a huge problem and it isn’t an urban problem it’s a problem that compasses the entire county. So why are we worried about going in the rural area? Well some people say no more rural development that’s what they are saying, that’s why we have this problem. As far as the phony deal the Prosecuting Attorney came up with her little thing here, I don’t believe that. We got to solve the problem. The $6700.00 doesn’t solve anything what does that really solve. We started out with the Planning Commission and the public to solve a problem and you said you wanted to solve a problem so the Realtors got together. We didn’t go behind the Planning Staffs back we asked for a meeting we went down we sat down with them, we laid out what we thought the problems were. We went back (unintelligible) and the Board of Realtors and we say we have this problem we want to solve it, lets work together to do it and there are hundreds of ADU’s out and there are a lot of Realtors I think there were 60 or some number like that were in the computer. So we started solving the problem we then sent it on to the DCD advisory board which is made up of Planners, Jim Tracey former Planning Director; Ron Perkerewicz former Planning Director; Bill Palmer former Planning Director; Homebuilders and Ron Ross and a few others. We said here it is look it over, give it recommendation now you have half of the history of the County that has bought onto the thing. Why don’t we try to solve the problem instead of taking the County’s solution which is to make a bigger problem.

Palmer discusses the differences between the Realtor’s proposed ordinance versus the County’s ordinance.

Gustavson and Palmer discuss the section on Special Use Provisions.
Paralez summarizes how she is interpreting the Realtors proposed changes to the ordinance.

Vivian Henderson: Questions on the one year language and what happens if the problem is not solved within that year?

Lynam responds to the question

Henderson: This County is not family friendly, first of all we told people most people like to live in sprawl Linda, most of us live in sprawl we like a little elbow room, we like a yard big enough for a swing set and we like to have people over for BBQ's. The County doesn't say you cant live in rural areas they just say if you have enough money and live long enough we might get you permitted to build a house in rural areas but what they are really suggesting is that you move into town, they want you in the urban areas where you have a 5 foot back yard which is not big enough for a BBQ. A front yard that is not big enough for any kind of landscaping. This County is not family friendly and it is becoming more obvious. We started KAsPO 10 years ago and this was the first fight we started was the ADU's and we believe you are not family friendly with this or anyone who is against ADU's because families are important and they need to be provided with being close to their loved ones so they can be independent and still retain that family connection. I support everything you can do to encourage and tolerate and welcome families to stay with families.

Ted Matthison: Today we did look over the Realtors document and we just happen to have a board meeting for KAPO today. By the way KAPO is the largest property ownership group in Kitsap County. Our board of directors unanimously we support by and large the whole Realtor document but especially the ones, we finally get an equitable solution to the existing ADU's. We have been trying to do that for over 5 years and the Realtor document does provide I think an equitable solution. We would also love to see real work on Rural ADU's and the reason for that is ADU's are a little bit different than re zoning the entire County there ADU's therefore a specific need. So we really hope that you would address the Realtors suggestions and except them and at least include them in your recommendations.

Theresa Osinski: I don't have a lot in depth knowledge of what the Realtors have prepared and I'm not prepared to tell you tonight that our board has taken any position on this issue. What I do want to emphasize it is essential that you and your positions help to guide the Commissioner's in understanding the importance of the issues that are brought before you, the complexity of those issues and that sometimes they are not in a vacuum. So what's before you today really what staff was asked to bring to you maybe that is more limited than what the Realtors have proposed or what KAPO has suggested, but what they are suggesting to you is that there is a bigger problem and that problem really should not be ignored, its not going to go away. I am not going to say that you all are getting older but I will say that we all know demographically and we keep hearing it that this community is going to become more and more a retirement area. Folks are coming here to after they have sold their big home in Seattle they want to come here and enjoy life but at the same time they need somewhere they can afford to live and continue to be apart of our community. ADU's are legitimate option so whether what's before you from the staff tonight is truly the limits of bounds of whether you can go forward with this to the Commissioners. I would urge you just like Ted Matthison just did and Vivian did before him to use your role to recognize that you have been asked by Commissioner's to sit upon the diocese and help them consider these issues. Don't limit your suggestions to them that what's before you is the limit of the issue. Please emphasize to them this is a matter that really does deserve greater consideration, broader consideration. As DCD
looks a rural issues this year this is an issue that could be apart of that discussion and I encourage you to encourage them to to not forget that ADU’s need to be talked about when you talk about rural issues.

Chair Baglio closes the public hearing

G. Deliberation/Recommendations: Innocent Purchaser ADUs: David Lynam, Kitsap County Fire Marshal, Manager of Fire Marshal and Code Compliance, DCD

Nevins: I would like to suggest some language for the last little section on the qualifying, effective period. Section 7 just above section 3 where it says expiration and change it to state; “qualifying property owners shall have one year from the time this ordinance is adopted to discover a non compliant ADU and submit and application for an approval of the ADU”.

Depee completely disagrees with Nevins. He explains that there are a lot of people who don’t even realize that they have an illegal ADU.

Discussion is held on the purpose of the ordinance.

Baglio: What is the intent of this? It says that it is temporary yet the way that it’s stated here it sounds like it does go on for some period of time and the one year restraint is only from when you find out that you do have an ADU that is unpermitted.

Lynam: Yes, our original intent was to have a temporary measure that is open for a couple of years and then it’s closed. I think it would be best if we modified the language to state it’s a limited ordinance.

Baglio suggests that it should be defined if it’s going to be limited or temporary how long this is going to remain in affect.

Nevins expresses concern over including this language and how it might encourage people to continue to build unpermitted ADU’s if there is no end date to this ordinance.

Baglio questions if you have an ADU that pre dates 1977 how would this affect them.

Lynam explains you would need adequate sewage and water by the Health District standards.

Baglio would like to know why it has to be a County employee that inspects the ADU to be deemed habitable and can not be a qualified professional.

Lynam explains the Counties job is to introduce somebody that has nothing to gain what so ever in any regard or perception whether or not this safe to live in and in compliance. That’s our job to have that neutral party.

Discussion is held on the fees to bring an ADU into compliance.

Lynam discusses the role of the Health District in this.
Keeton discusses the problem that this issue is becoming. Keeton explains how this ordinance has come into effect and reminds everyone that we are trying to establish a system that is less expensive for these innocent purchasers who are innocent in all of this. Keeton expresses that we need to come to a solution on this problem.

8:01:30

A motion is made by Commissioner Depee and seconded by Commissioner Gustavson to table the discussion until the next meeting.

Nevins disagrees and proposes that we deal with the issue and not table it.

Paralez would also suggest we move it forward.

Gustavson points out that there are some differences between what the Realtor's have brought forward and what the staff has and he would like to see some of those differences resolved. He would like to see the issues resolved and a combined agreement come forward for the Commission to vote on.

Foritano believes we owe it to all to move forward on this.

Depee agrees with Foritano, he would just like some more time to get a better document.

The vote:
3 yes
5 no
The motion fails

A motion is made by Commissioner Nevins and seconded by Commissioner Paralez to move this Staff recommendation forward to the Board of County Commissioners subject to amendments agreed upon.

Paralez: I would just suggest that those amendments are not amendments but just corrections and spelling edits that have been given. I don't think there are actual amendments.

Nevins: I would just like to be generous and loosen up my language on the qualifying under M-7. The concept here is to, I will just give the language first “Qualifying property owners shall have two years from the time this ordinance is adopted to discover a non compliant ADU and submit an application for approval of the ADU.”

Discussion is held if Nevins is proposing to amend the motion or if this is on the current motion.

Clarification is made on whether a motion can be amended prior to the original motion being voted on.

Nevins repeats and clarifies his original Motion.
A motion is made by Commissioner Nevins and seconded by Commissioner Paralez to move this staff document forward to the Board of County Commissioners for adoption, subject to whatever amendments we may agree upon.

The vote:
5 yes
3 no
The motion carries

A motion is made by Commissioner Nevins to amend to the language under M-7 to read “Qualifying property owners shall have two years from the time this ordinance is adopted to discover a non compliant ADU and submit an application for approval of the ADU.”

No second
Motion fails

Foritano and Keeton discuss how we are going to address or incorporate the work of the Realtors now that we are beyond step one.

Gustavson asks Keeton that if they recommend the Staffs proposal to go to the BOCC will they be taking a second look at it along with the Realtors proposal.

Keeton states that he will make the BOCC aware of the other proposal prepared by the Realtor’s.

A motion is made by Commissioner Gustavson and seconded by Commissioner Depee that the staff reviews both documents and where it seems appropriate to recommend from the Staffs perspective that those changes be made to the Staff report.

The vote:
7 yes
1 abstain
The motion carries

A motion is made by Commissioner Nevins and seconded by Commissioner Gustavson to delete the last line in section 4 until we have a mediation process in place.

Lynam discusses that if we take this line out we will be taking away a tool that the Director may be able to use in the future.

Foritano agrees with Lynam why take the tool off of the table even though the success rates vary at least leave it there as an option.

Baglio would like to leave it up to the discretion of the Director versus mediation.

The vote:
3 yes
5 no
The motion fails

8:26:59
H. Work Study: Emergency Ordinance 448-2010, adopting interim Stormwater regulations to provide relief from flow control standards for some qualifying projects that disturb less than one acre: Dave Tucker, Assistant Director, Public Works

Frick gives an overview of the Emergency Ordinance and how it came about. Frick goes over the checklist that goes along with the approval of the emergency ordinance.

Discussion is held on the Emergency Ordinance and what is being required.

I. Public Hearing: Emergency Ordinance 448-2010, adopting interim Stormwater regulations to provide relief from flow control standards for some qualifying projects that disturb less than one acre: Dave Tucker, Assistant Director, Public Works (Est. 15 min)

Chair Baglio opens the Public Hearing

Theresa Osinski-Home Builders Association: A lot was said and I have lots of things I want to say and some of this repeats what you already heard from Doug. First and foremost I really can’t emphasize this enough I am before you today because Kitsap County failed to accept an exemption that was authorized. I don’t like the word exemption because its not that anyone is getting a free pass, anybody who knows anything about development in this county in this state knows that there is no free pass. There is no free lunch and Stormwater is extremely expensive so what I like to call it is an alternative but what is important for you to understand is that alternative wasn’t just authorized by the Department of Ecology who most of us would say is not particularly fast and loose with its regulatory authority. This alternative was actually authorized by the Federal EPA, all the way to the top the Feds said less than an acre disturbed go ahead and let them do what they have been doing under their current County or municipal code. Ecology said good enough let them do what they are currently doing and I believe the reason Ecology did that is because we already have very restrictive very protective Stormwater codes and were also talking about really small pieces of property difficult pieces of property but not unimportant ones because not only does this code a fact new development, switch gears a minute it affects redevelopment and under GMA the goal is to have most of your development focused in your urbanized areas much of that development has already been done. Much of that development was done before even the pre NPDES phase II permit. So they are not even necessarily protecting the storm and the quality of the water and the flow that they could be doing if they were using the pre August code. So its really important that you understand this is an opportunity to encourage redevelopment of already developed properties and unfortunately Kitsap County missed that, they missed the opportunity to do that and to just let the right thing happen, let the economics work, let developers come in and not only look at new opportunities but to redevelop existing ones. So I really just felt like you needed to understand that. Wasn’t a local idea, wasn’t a state idea it was approved all the way to the top of the Federal level. You may hear people say well that exemption may go away in the future, I’m not here to talk about the future I’m here to talk about right now and right now it was an opportunity that was missed. The good news in this story that the County Commissioners did hear us and they said lets see what we can do. So what you have before
you is when we were getting down to just a few weeks before they had to implement the code 
that they had adopted in August we sat down and looked at trying to figure out a way to solve 
the problem. So what you have in front of you is a solution to that problem and it’s certainly 
better than no alternative at all. So I’m not going to tell you that I’m here to oppose it because 
I’m not. So I just felt you really needed to understand that this isn’t about exemptions this isn’t 
about free rides and Stormwater is very expensive and even in this alternative the alternative 
is getting it flow control but it accepts all of the water quality issues that were presented in the 
NPDES Phase II permit. So that’s important as well and not a minor issue and should be 
acknowledged specifically to what is in front of you I would ask that you think carefully about 
the points that appear on the checklist. These aren’t the points that had been recommended 
by the Engineering community, I’m not an Engineer, I’m not an expert I don’t develop land but 
sat through lots of meeting on this discussion and the points are important because the goal 
here really is to get us to where these Commercial and Industrial lots can access this 
alternative whenever possible and one idea I would suggest is that in the chart it shows 
infiltration at 15 points and Robert might have a different suggestion here but I would say at a 
minimum you want to have dispersion at 15 points as well, maybe that’s not the right one but I 
think to suggest that infiltration has 15 and you have 5 points for bio retention, 5 points for 
permeable pavement and 5 points for dispersion. I think that is missing the point here, if you 
are an Engineer looking at a small lot I think we need to do something about one of those 
other potential LID options. If it’s not going to pencil it isn’t going to pencil at 29 points. We are 
trying to give these people an alternative. Quickly, with regard to the residential because Doug 
did bring it up and its not before you and it isn’t on the table for discussion because of the way 
the BOCC adopted this Emergency Ordinance I do feel compelled to say that the Home 
Builders Association was disappointed that Residential lots were excluded expressly from this 
alternative approach. Well it may be true that rarely will there be a time when a residential lot 
might have qualified to apply for this alternative, it is unfortunate the county did not see to 
allow that as an option should that event occur because why wouldn’t you. One might argue 
well it’s so rare ok my argument is if it’s so rare and you got this guy out there that wants to 
build this little house on this little lot and it’s a flag lot who knows what the problem is but he 
has some problem and he can’t infiltrate and he can’t disperse whatever the case. Why would 
we not want to give him that chance? So I am disappointed at that its not in front of you but I 
left like I needed to say on behalf of the HBA that were always looking for ways to encourage 
the reasonable responsible development of land owned by individuals and this is something 
that could have potentially been helpful to that little guy trying to build his one little house and 
unfortunately again it was a missed opportunity but that is not before you tonight. What’s only 
before you is Commercial and Industrial Use and my one suggestion is I would encourage you 
to look at the points on the checklist and I hope you understand that you have in front of you a 
solution to a problem that could have been avoided from the beginning had we had good 
information about the allowance of an alternative but that alternative has been endorsed all 
the way to the Federal level.

Discussion is held on the fairness of the ordinance to the person who has a difficult 3 
acre or 4 acre parcel.

William M. Palmer: I want to second a couple of comments that Theresa made. I happen to 
be a person who is convinced that a prior to August storm drainage controls were perfectly 
adequate and not demonstrated by anybody to be deficient or to create problems that could 
have been avoided with more stringent regulations; having said that I am also disappointed 
that our BOCC didn’t vigorously oppose the imposition of standards that nobody justified the 
need for; having said that I just wanted to make one or two comments about cost and pick up 
on something that Theresa said relative to exempting residential. You got a category
residential that typically goes on small lots and that’s called multiple family and they have similar impacts to commercial developments, you are not exempting those but your causing the only addressing the Commercial but one last point about the cost according to the numbers I reviewed with those escalated costs that Robert Baglio talked about you could be upwards of $17 a square foot on a site that you may have only paid $5 at best $10 a square foot so now you are at $22 to $27 a square foot to develop that property and you haven’t even added the water cost and all the other things, its absurd and its simply means that development isn’t going to happen here.

Dan Defenbaugh: I believe there was a comment made earlier about pre colonial and surface water run off being very minimum. If you stop and think about it if there was no surface water runoff on these sites in pre colonial times we would not have creeks, streams and rivers.

Chair Baglio closed the Public Hearing

J. Deliberations/Recommendations: Emergency Ordinance 448-2010, adopting interim Stormwater regulations to provide relief from flow control standards for some qualifying projects that disturb less than one acre: Dave Tucker, Assistant Director, Public Works

A motion is made by Commissioner Foritano and seconded by Commissioner Brown to accept Emergency Ordinance 448-2010 as written.

Nevins states that he will be voting no on this. He believes it is an economic burden and it is exempting one group of properties.

Baglio question Keeton if the checklist can be modified in the future, if they find it to be cumbersome.

Keeton believes the checklist may be able to be amended.

The vote:
7 yes
1 no
The motion carries

K. Findings of Fact: Emergency Ordinance 448-2010, adopting interim Stormwater regulations to provide relief from flow control standards for some qualifying projects that disturb less than one acre: Dave Tucker, Assistant Director, Public Works

A motion is made by Commissioner Paralez and seconded by Commissioner Foritano to adopt the Findings of Fact for the Stormwater Ordinance.

The vote:
Unanimous
The motion carries

L. Director’s Update: Larry Keeton, Director, DCD
Keeton gives an update on the Local Planning Training that is coming up on March 17, 2010. Keeton gives an update on the Department.

M. For the Good of the Order: Chair Baglio

Time of adjournment: 9:35:19

EXHIBITS

A. Executive Summary: Un-permitted ADU’s and Innocent Purchasers
B. Draft Ordinance prepared by Kitsap County Staff: Establishing a Temporary Program to approve existing Accessory Dwellings in possession of Innocent Purchasers.
C. Draft Ordinance presented by the Realtors Association: Establishing a Program and Procedure to approve Accessory Dwelling Units countywide
D. Emergency Ordinance 448-2010
E. Western Washington Phase II Municipal Stormwater Permit, Section 3.1
F. Email from Scott Diener to Planning Commission regarding guidance to Title 12 Interim Code.
G. Findings of Fact: Adoption of Emergency Interim Ordinance 448-2010

MINUTES approved this _______ day of _______2009.

___________________________________________
Robert Baglio, Planning Commission Chair

___________________________________________
Mary Seals, Planning Commission Secretary