

**ISLAND COUNTY
PLANNING COMMISSION MINUTES
OF
REGULAR SESSION – VIDEO ONLY:**

DATE: FEBRUARY 8, 2021

APPROVED AS WRITTEN



Darin Hand, Chair

APPROVED WITH NOTED
CORRECTIONS

Darin Hand, Chair

**ISLAND COUNTY
SUMMARY MINUTES
COMMISSIONER'S HEARING ROOM, COUPEVILLE, WA
FEBRUARY 08, 2021**

Meeting was called to order at 2:00 p.m. by Darin Hand, Chair.
(Recording timestamp: 00:00/0:00:26)

ROLL CALL:

(Recording timestamp: 00:00:26/0:01:21)

District 1 - Margaret Andersen (Vice Chair), William Criswell, Kristi Lovelady

District 2 - Darin Hand (Chair)

District 3 - Beth Munson, Steve Schwalbe, Tracy Hunsaker-Gilroy

Planning & Community Development Staff Present:

Meredith Penny, Long Range Planner; Grant Johnson, Associate Planner, Jonathan Lange,
Assistant Planning Director

APPROVAL OF MINUTES: (Recording timestamp: 00:01:47/00:06:40)

Chair Hand initiated approval of minutes.

Commissioner Busig motioned to approve minutes for January 11, 2021.

Commissioner Gilroy seconded but, requested to have top two paragraphs of page 2 in January 25, 2021 minutes stricken and only have time-stamp recording, since there was more discussed than is written.

Commissioner Andersen moved to accept the minutes of January 25, 2021 amended to remove the top two paragraphs on page 2, since there was more discussed during the meeting than is being indicated. Commissioner Gilroy seconded. All in favor. One abstention, due to not being present.

ELECTION OF OFFICERS: (Recording timestamp: 00:06:40/00:08:59)

Chair Hand initiated nomination for Planning Commission Officers for 2021.

Commissioner Andersen nominated Darin Hand as Planning Commission Chair. Commissioner Gilroy seconded.

Chair Hand nominated Steve Schwalbe for Vice-Chair. Commissioner Gilroy seconded.

Commissioner Hand accepted his nomination for Chair. All in favor for nomination.
Commissioner Schwalbe accepted his nomination for Vice-Chair. All in favor for nomination.
Officers Elected for 2021.

ITEMS FROM THE PUBLIC (not on the agenda)

(Recording timestamp: 00:09:10/0:16:52)

Commissioner Gilroy thanked Commissioner Andersen for her work as Vice-Chair for 2020.

Dean Enell – Langley, WA – Spoke on the Comprehensive growth plan; addressing various questions in reference to ADUs

DIRECTOR'S REPORT – None. (Recording timestamp: 0:16:56/0:17:15)

PUBLIC HEARING - (Recording timestamp: 00:18:47/1:06:00)

Chair Hand turned the meeting over to Penny for briefing.

Penny briefed the Commission and the public on the ADUs Updates by starting on what is currently allowed and then what is proposed. A brief snapshot was given regarding the number of guest cottage issued per year, and the zones they were issued in.

Chair Andersen referenced some of the comments sent to the Commission by email.

She said that per her recollection of the summary, the current code does not limit the number of attached ADUs but does limit the number of detached to 35. She asked if the code change would limit ADUs to 35 whether they are attached or detached.

Penny stated, no. There will still be a limit to 35 detached ADUs per year. We are not proposing to provide a limit on the number of attached ADUs at this time.

Chair Andersen stated that there may or may not be an increase on attached ADUs, but we are not counting them. An attached ADU is a residential unit that has a kitchen. She stated, she sees no change from current code to proposed codes.

Penny answered, not in terms on the limit of numbers.

Chair Andersen also reference questions relating to the distance from the primary residence to the ADU detached as being 100 feet. She said her notes indicate that we put the requirements in the proposal because of a case law that occurred in a San Juan County case. She asked Penny to explain in detail as to how the 100 foot limit happened and why the case law imposed it.

Penny explained. (Recording timestamp: 00:27:16/0:29:50) **38**

Chair Hand stressed that the Findings of Fact and legislative intent is what the Commission is going to be decided on, and that if there any questions or concerns regarding the document should be brought up by the Commissioners.

Commissioner Gilroy stated that she believes that due to the many changes involved, the proposal has not been studied enough, and that she would like to table the effort until each one of the changes has been discussed, and get a vote a on each one of them. For example she says, there is a change to size, and it's a significant change that she believes needs to be talked about. She asked, why there a change the size, then asked, is it to make it more appealing to developers to build, or is it to make the unit more affordable to buy? She stated, she suggest the change in size is to make it more affordable for builders to build, but they are usually larger builders. We have plenty of small builders that can builder smaller homes to make it more affordable to the buyer.

She said she believes the size was brushed over, and it will affect imperviousness, it affects the ability to use the unit not only as an ADU, but also as a Bed and Breakfast therefore, having both an ADU and a BNB in the same unit. She said she feels that it is encouraging BNBs, and although she would love to go to a BNB on Whidbey, she doesn't believe they are ready to allow this all over the island. The other thing about size, is the additional garage(s) accompanying the ADU(s), creating again more imperviousness, and increasing of an extra 400 square feet for garages and we don't even have a limit on the garages.

She stated that if there is going to be any increasing on size and number of ADUs that we need to do that on Camano. We do not have NMUGA (Non-Municipal Growth Areas) or UGAs (Urban Growth Areas) on Camano, we have RAIDS that were built back in the 1990s, and believes we are missing an opportunity on Camano to be able to have some additions such as ADUs like we are allowing in Freeland. If allowed, we are should have them located immediately adjacent to Commercial. She said she believes it's a huge topic that needs the Board of County Commissioner's input as to what is needing to be accomplished or if we are trying to resolve affordable housing, we need to do it where the infrastructure is allowing for it, such as the roads, water hookups, are readily available like facilities such as grocery stores, libraries, and hobby shops which are immediately available for affordable housing.

Commissioner Lovelady stated that she listened to both the comments, and is still a little unsure as to what type of growth is expected to occur in rural areas that isn't there in the code today. She asked Penny to clarify what the delta is between what is allowed today, and what the changes might allow in rural areas. She said she is not seeing it as a square footage factor as much as it is how many additional units we expect to see in those rural areas. If we are not very certain about we're changing, there could be some significant additional growth in rural areas. What's happening with the attached growth, is there no cap, is it the same as it is today?

Penny stated that the main changes that are occurring with the ordinance.

Commissioner Lovelady reiterated Penny's explanation by stating that there is no change in rural areas with respect to how many additional attached ADUs could occur.

Commissioner Criswell made a comment as a builder, indicating that they have an in-house draftsman at Eagle Building, who has been incredibly frustrated trying to get even a two-bedroom (ADU) into 1000 feet. As a builder we build within the parameters, and what the people want. So, if we are trying to build a starter family home, we are going in the right direction. We have to give them room to live, and the extra 200 feet make all the difference in the world. It has nothing to do with money, or profit. It's about developing a living space that actually works.

Commissioner Schwalbe agreed with what Commissioner Andersen and Commissioner Lovelady indicating the attached ADUs are unlimited and finds it disturbing. He said he believes it should be the same as detached at 35. A lot of comments were received about 100 feet and understands the explanation Penny gave with San Juan County, but it seems arbitrary to him exactly what the county respondents provided to the Commission.

What has not been discussed was the ERUs regarding water. There were a couple people talk to them about ERUs and their limited per year, and if we start assigning ERUs for the units of water for each unit, we are going to come up short. Someone is going to buy a piece of property and it's not going to have an ERU attached it, and that's going to be a problem. He said he is familiar with this, as it happened in Cambay, CA and they have a lottery system to get water rights, and that's a huge issue. He said from his perspective, he thinks if we offer the opportunity to have ADUs attached and detached there is no additional ERU allowed. The property owner would have to assume any additional water/sewage costs for whatever ADU installed, and would not get another one.

Commissioner Andersen commented on the comments made by Commissioner Schwalbe, indicating that the code does not change existing issues around purchasing a property that may or may not have access to water through their local service or district, and the code doesn't manage what the service district does. If the water district has planned for and has access allocated in some fashion, this code does not address that. If the water district does not have water access for a myriad of reasons, this code does not address that. That is why in our Findings & Fact # 9 we added the point that says: The Planning Commission finds that the proposed amendments do not alter the existing housing development requirements for public health and water system compliance. So we don't pretend to go around that section or issue of development.

Although we had an unlimited number of attached ADUs, this code changes one issue. If you have an attached ADU, you cannot have a detached ADU and vice versa, other than in Freeland.

Penny agreed, except in Freeland where you can have both.

Commissioner Andersen added, we are not promoting increase density beyond the code. The idea of adopting the 100 foot distance from the primary residence is interesting, because this is exactly what the GMA and Comprehensive Plan is trying to address. In other words, you don't virtually subdivide by putting two residences on any kind of acreage with privacy by spreading them out. Because what you do is go from a cluster of buildings to developing more of the property.

As much as it may be objectionable to a homeowner who wants to put a detached ADU in, the homeowner should probably consider subdividing, because that is in effect what they are doing, and this code is not promoting that. The 100 feet is supported by her.

Commissioner Andersen addressed Commissioner Gilroy indicating that the subject has been talked about since 2019, and the code proposal does not resolve affordable housing, it does not address planned residential development or development by contractors who can put in more density. This is fact allows a homeowner to put an ADU in to allow taking care of their children coming back, or their in-laws, or their mother just by slightly increasing the size. I don't know what more we can talk about that is worth tabling it.

This does not address homelessness, this does not address multi-unit development such as what Freeland did. This allows a homeowner to have an ADU under these new definitions. It is our job to put this forth to the Board of County Commissioners for approval. We have been working on this for two years and she does not see what more can be done as a Planning Commission to change anything including our own discomfort.

Commissioner Gilroy responded by stating that Commissioner Andersen was correct. She said unfortunately her perspective on this is: How can it be abused, and how can we protect the neighbors from the abuse of the permission that we are granting and in studying the regulation just seems that there are abuses and maybe she should just be concentrating in Freeland where we really are allowing both the attached and the detached, and how are we protecting the property owners there. She said she sees a lot of complaints come into her office about drainage, how are we protecting downhill property owners from increasing imperviousness. These things are real, and so I have these concerns, I recognize that it's intolerable to have to deal with it at a public hearing or at work sessions because there are so many different issues.

I think, ultimately the Planning Commission is going to put this forward to the Board of County Commissioners, and we believe strongly that we're doing the right thing. My request of this Commission is; Is this the right thing? And is it not also right, to allow for the rural, next to commercial on Camano, to have the same privilege as we are allowing Freeland. Camano doesn't have any other areas that won't encourage sprawl, that can be developed with additional ADUs.

For whatever reason, Camano doesn't have a UGA, it doesn't have an NMUGA. Are we forgetting about Camano? If you come over to Camano, and you look at Camano Gateway, the rural village, it's commercial, and right next door to it you're only entitled to one home, so would it be an answer to some affordable housing desire, to allow for both like we are allowing in Freedland. That at least gives Camano something to answer is affordable housing needs. Right now, Camano's affordable housing needs are not being addressed, except by Snohomish County and the City of Stanwood. I don't think Island County can rely on Snohomish County to address its needs for affordable housing on Camano.

She asked to hear from her Camano Island Commissioners on the subject rural next to commercial should be addressed.

Chair Hand called on Commissioner Munson to see if she had anything to say.

Commissioner Munson stated that she understands what Commissioner Gilroy is saying, and that she agreed that it would be nice to have that opportunity, and doesn't think that it would impair concerns about density simply because there are water issues and septic at stake, every parcel will be different, but she does support the comment.

However, she said that she allows concurs with Commissioner Andersen and we need to move on with proposal and not open up another set of issues which can probably be addressed at future date.

Commissioner Lovelady stated she understood Commissioner Gilroy's comments, but suggests it would be a different discussion because she didn't believe ADUs are the avenue to get to where she want to go. Maybe taking a closer look with Planning Department on mixed use zoning would be more appropriate. That will be a real focused discussion on how to best use the local resources and add density to areas where there is already infrastructure. This ADU thing you find that you end up with a patchwork of mismatched land uses over the long term. I think you want a more focused, comprehensive, community development strategy.

Commissioner Gilroy agreed, and stated she doesn't want that either. When the ADU subject first came to the Planning Commission, there was one attached, one detached for all of rural, and we all reacted as if it was just a bad idea. It feels like a cookie cutter, where it is either all or nothing, and maybe that's the right thing, but when Freeland was allowed to have both, it seemed that we should be allowing for both on Camano, but where? She said, I frankly don't think it is much of a decision if the parcels are adjacent to commercial, we could just add that into the Findings of Fact next to the word Freeland. If people don't agree with that, that's different. I do think its general, good land planning to have more dense development next to commercial is all. Camano needs to have something, and I think we are not addressing Camano's need here. She said she would like to know what Vice Chair Andersen thinks about Camano.

Chair Hand acknowledge Commissioner Schwalbe.

Commissioner Schwalbe thanked Commissioner Andersen and stated that he concurred what she said about water and the 100 foot separation, and that he just had one, because he didn't hear the answer to attached ADU limits per year. We know there's a limit for detached which is 35, but what about attached?

Penny interjected by saying there is not currently a limit for the number of attached ADUs per year and at this time we are not proposing to add one. She said that the intention behind the changes is through implementing our housing element of our comprehensive plan. The Board was wanting to look at ways to be more flexible. She elaborated on the topic.

Commissioner Criswell addressed Commissioner Gilroy more than glad to look at her needs for Camano and how to see the needs met. But, it needs researched before adding to this proposal.

Chair Hand noted existing codes are getting amended, they are not new. He also noted they are just providing a recommendation to the BOCC.

Chair Hand opened the meeting up for Public comments.
(Recording timestamp: 01:05:34/1:07:23)

PUBLIC COMMENTS - (Recording timestamp: 01:07:23/1:23:23)

Angie Homola, knows how hard everyone works. Feels so appreciative of the Growth Management Act (GMA) and former legislators that put some thought into long range planning and why people want to live in WA state and what they appreciate about it. GMA was created because we saw rapid growth and weren't being careful with what we were doing. Because of the tax structure of our state, it is difficult for the ones that have the least to not be impacted: mentally ill don't have institutions and no places to care for senior citizens. It places burden on jurisdictions and families to address all of this. She touched on a few codes that she suggests changes to. These included: constraints on well availability, arbitrary setbacks, roof slopes, lot entering restrictions. Nothing enhances environmental protection. Absolutely, Bed & Breakfasts should not be considered an ADU, they should be a business. They shouldn't be included in this. Sending in comments.

Judith Hendricks, Camano Island. Agrees with Commissioner Gilroy, her consideration and recommending passing ordinances that haven't taken into consideration all areas, especially Camano Island. She understands that the board's position is they have been kicking this can down the road for quite some time, but wants them to be sure that all aspects are dealt with for all areas before sending onto the BOCC. She is familiar with what she is talking about and asking for the board to consider Camano Island on all of these ordinances as Whidbey Island.

Todd Spratt, 4968 Canfield Lane, Langley, WA. Addressing the 100 ft set back from the main dwelling and the attempt to cluster the buildings. You are allowed to have multiple buildings on a piece of acreage anywhere on the property. Maybe regulation on permeable surfaces should be addressed instead. Parcels are so diverse that the 100 feet would really restrict in the ADU.

Chair Hand acknowledged that they have been getting comments on the set back and will take all comments into consideration.

Spratt agrees with the Commissioner that said the set back is arbitrary. Clearing is going to take place anyway, what's wrong with green space in between?

Chair Hand asked Meredith to speak on the 100 ft set back. She restated what she had earlier. Explained there could be variances in certain situations. Commissioner Gilroy asked for clarification on the subject. Meredith explained that when there is a hardship from the property that prohibits owner to comply with the regulations; property undersized, steep slopes, critical areas, location of septic, etc.

Spratt voiced his concern over following codes from other counties have adopted, because that doesn't make them right for Island County. The variance is an undue burden the owner must endure.

Margaret Anderson supplied the wording that Gilroy was looking for clarification for in regards to the 100 ft set back.

Dean Enell, Saratoga Rd, Langley WA Would like to make sure his comment from earlier is part of the public record. Chair Hand advised that it was recorded.

Chair Hand asked for any further Public Comments. He thanked all the Commissioners for provided their thoughts.

Chair Hand asked for the Commissioner's final comments. (Recording timestamp: 01:24:04/1:54:29)

Commissioner Busig asked a question for staff, Meredith. Has concerns about the environment... would it remiss to say that the current existing county code protecting the environment., (retention, sewage, water drainage or roots that could cause erosion, etc...would not coincide with building as part of the GMA, is in incorrect in saying that or would those two work together in that fashion.

Meredith answered: Yes, correct, they coincide together. She explains further with examples. Commissioner Busig asked in regards to Bed & Breakfast as they may fall under the Hotel Lodging Tax, would it be advisable in the future to speak to the County Commissioners that would consider on giving guidance on where they lie as the ADUs are being constructed they have the correct jurisdiction on the issue.

Meredith agreed that the concerns on all short term rentals could be brought to the BOCC. Commissioner Busig addresses the affordable housing and impacts, would this also be something to mention with the Commissioners and restate that this is not a fix for these issues.

Commissioner Lovelady addresses Angie Homola's comments on page 13 in regards to the community wells may have a limited number of hook ups. She states that they are not wanting to, through changes, that create a scenario that eliminates actual parcels that may not have been built from getting their water simply because and ADU has swept in and taken the final water hookup. Curious to hear from Planning on how we can assure this doesn't happen.

Meredith agrees that this is an issue that has come up before. It comes down to the individual water systems: maximum build out/growth and infrastructure that is needed. Some have water system lotteries. One of the suggestions from the Commission going further is to make sure there is water availability verification for all buildings (attached and detached).

Commissioner Anderson informed Commissioner Lovelady that they have added item 9 to the Facts Finding on this issue and elaborated on it. They looked at it and didn't interfere separate jurisdictions on their current water compliance.

Commissioner Gilroy addressed Commissioner Anderson that the different water districts are not able to be regulated by the county so the county could protect the vacant land owner from losing

the water hookup to an ADU. The county should be able to do something on that and maybe the PA could clarify. Suggests using different words for item 9. She has a lot of comments and she hears that the Commission wants to be done with it, but agrees with Angie Homola. Believes that they are pulling the cart before the horse. Addressing unnecessary barriers. Discusses her concerns.

Commissioner Lovelady agrees with staff that it would be acceptable to require water availability confirmation if we're attaching an ADU as it's a substantial unit coming in and taking water. Understands it would be difficult for the water districts to make the decision, but agrees with Commissioner Anderson and it is not ours to oversee the water purveyors.

Chair Hand asks with they want to discuss the wording in item 9.

Discussion ensue on this topic.

Chair Hand motioned a vote for the amendment of item 9 before the fact finding vote.

Commissioner Busig seconded the amendment of item 9 set forth by Commissioner Anderson.

All agreed.

Commissioner Anderson asked the language on page 15 to be looked at. She proposes an amendment to the language for the one item that she suggested.

Discussion ensued on the topic as there should be a better way to say, "no more than 100 ft" (when does the house begin).

Commissioner Anderson moved to accept Code Language exhibit A amendments as modified.

Commissioner Lovelady seconded the motion.

All agreed except Commissioner Gilroy who abstained.

Commissioner Anderson moved to accept of the finding of facts as amended and exhibit A as amended.

Commissioner Busig seconded the motion.

All agreed except Commissioner Gilroy who abstained.

Chair Hand entertained a motion to adjourn. (Recording timestamp: 01:54:29/1:54:51))

Commissioner Munson motioned to adjourn the meeting. Seconded. Motion carried.

Meeting adjourned at approximately 3:54 p.m.

Respectfully submitted by: Lourdes Shuart/Stephanie Montgomery (Public Comments & Final Commissioners' comments)