

Anacortes Planning Commission Minutes - January 24, 2024

Roll Call: Linda Martin; Frank Jeretzky; Jim Stoneman; William McCombs; Paul Ryan; Luke Currier; Mike Mills.

Minutes of December 13, 2023 and January 10, 2024.

The minutes for December 13, 2023 and January 10, 24 were postponed to the next agenda.

Public Comment

No comment heard.

Public Hearings

Other Business

Planning Commission roles and responsibilities discussion.

Darcy Swetnam said she's going to talk about Planning Commission Roles and Responsibilities due to the appointment of new commissioners. There is training for new commissioners that needs to be completed within 90 days. Please look for that email. She started a slideshow: Washington State law authorizes the Planning Commission under RCW 35A.63. The Commission has 2 roles; which are legislative actions and quasi-judicial actions. You serve as an advisory board to City Council. You will be doing a deep dive into things like the Comprehensive Plan update and Land Use Regulations. The Commission will make a recommendation to City Council after holding meetings and public hearings. Quasi-judicial decisions are those actions that affect individual rights; for example specific development proposals. She pointed out that AMC 2.42 created the Planning Commission. She recommends reading this chapter as it lays out your duties. AMC Title 19 is the Unified Development Code. This applies to land and land use issues within the City and Urban Growth Areas. These implement the Comprehensive Plan and state laws; and ensures that we meet state law requirements for combining and expediting development review and environmental review and development plans.

She reviewed the 2 types of actions/decisions. Legislative actions start with Planning Commission, which makes a recommendation to City Council. This includes adoption or amendments to the Comprehensive Plan, Land Use map and implementing development regulations. Quasi-judicial actions determine the legal rights, duties, or privileges of specific parties to an action. We have 3 bodies that make quasi-judicial decisions, which are the Hearing Examiner, City Council or Planning Commission. Title 19 lays out which body makes determinations for different types of projects.

Much of what we do is governed by the Growth Management Act (GMA). It requires Anacortes to develop a Comprehensive Plan to manage growth and address the 13 goals in the GMA. There are mandatory and optional elements. These address urban growth, critical areas, and natural resource lands. Issues related to GMA are appealed to Growth Management Hearings Board.

Darcy briefly reviewed RCW 42.30, Open Public Meetings Act. It requires all meetings of governing bodies to be open to the public. It's triggered whenever there is a quorum of Commissioners when discussing City business. She cautioned them to be mindful of serial meetings; such as emails between Commissioners. She recommended that they be mindful of these types of communications. The public must be given at least 24 hours notice of a hearing; includes requirements for minutes and record keeping. There are limited exceptions for executive sessions such as potential litigation, real estate transactions and personnel issues.

She reviewed the requirements for the public records act RCW 42.56, which requires all records of state and local agencies to be available to the public. Depending on the type of record, they have to be kept for a

specific amount of time. All Planning Commission records are subject to this and must be producible if requested.

She moved on to the Appearance of Fairness Doctrine, RCW 42.36, which requires decision makers to have procedurally fair hearings and unbiased in both appearance and fact. Proceedings must be procedurally fair. Meetings must appear to be conducted by impartial decision makers. The Appearance of Fairness Doctrine only applies to Shoreline Conditional Use and Variance permits, Shoreline Substantial Development Permits for projects valued less than \$1,000,000 on sites less than three acres. It does not apply to Legislative Issues. It requires decision makers to disqualify themselves if they prejudice the issue, have a bias in favor of one side in the proceedings, have a conflict of interest, or cannot otherwise be impartial. There is also a restriction on ex parte communication which is communication outside the formal proceedings. This includes Commissioners doing their own research; for example, if you want a site visit, staff needs to set that up for you. This can be raised as issues and undermine the validity of the decision and put you at risk for personal liability. If you have an ex parte communication, you can disclose that at the hearing for that project, which can be challenged at the meeting.

For quasi-judicial decision making, if the proposal meets the criteria in the code, the decisions makers (Planning Commissioners) have an obligation to approve the permit. Even if there is a lot of community opposition to a project, but it meets the code criteria, it would be an error to deny the application just based on community displeasure.

Luke Currier asked if the public is informed that the Planning Commission has to look at how the application meets the code.

Darcy Swetnam clarified that the staff report will identify what the applicable criteria is for each project.

Linda Martin asked Darcy to talk about emails and public records.

Ms. Swetnam said all emails from City staff are subject to disclosure. We have a program that captures all emails, even deleted ones. She recommended being cautious on what Commissioners use their City email for. She also mentioned that Commissioners should not use their personal emails for Planning Commission business.

John Coleman stated that at the last City Council meeting there was discussion regarding Planning Commission doing shoreline permit reviews. This plays into that. If the Council changed the current regulations to remove the Planning Commission from doing quasi-judicial decisions, it would go thru a whole process before that is decided. We wanted to remind Commissioners of the roles and responsibilities for quasi-judicial. There is some risk for Planning Commissioners for these decisions.

Darcy pointed out that many agencies don't have the Planning Commission or City Council doing quasi-judicial due to the possible risk.

Discussion: Draft Regulations for Short-Term Rentals in the Commercial (C), Central Business District (CBD), Marine Mixed Use (MMU), and Commercial Marine (CM) zones

Libby Grage said this is amending development regulations, which is a legislative decision for the Planning Commission. She gave background information on this. On March 27, 2023, City Council adopted Ordinance 4046 enacting a moratorium on short-term rentals. Then on May 22nd, Council adopted Ordinance 4052 to extend the moratorium. Tonight's proposal is for draft permanent regulations. She reviewed Ordinance 4046, stating that the City Council found that there was community concern regarding these short-term rentals and contrary to the City's goals for promoting housing development for people wanting to live and work in Anacortes. She showed the City zoning map with areas outlined in black dashes where the moratorium applies. The unaffected zones are mostly residential zones, Short-term rentals are already prohibited, unless already established/ licensed prior to the moratorium.

Commissioner McCombs asked if this is permanent.

Ms. Grage clarified that the moratorium is not permanent; excluding the residential areas.

William McCombs asked if the licensed short-term rental is sold, is the license transferred.

Libby agreed.

Paul Ryan asked how many units are currently active under the old allowable ordinance in the zones being discussed tonight.

Libby said there are very few and estimated less than 20. She reviewed the history prior to 2018 for short-term rentals. They were generally allowed in most zones. In 2019, Ordinance 3040 was adopted which created an overnight lodging use category for less than 30 day stays. This is when overnight lodging in residential zones was prohibited. The exception is bed & breakfasts, which have specific standards, including owner occupancy. They are a condition use with restrictions that can be allowed if met. She reviewed the current Municipal Code for overnight lodging. Prior to 2019, single purpose residential uses were restricted or not allowed in the CBD, C or CM zones. In order to build any residential units in those areas, you would have to have commercial uses on the ground level and residential uses above; other zones had conditional use permit requirements.

During the 2016 Comprehensive Plan update, there were goals and policies put in place to increase housing units and types. It was noted that very few, if any, mixed use buildings had been developed over the past 20 years. That was a sign that the market did not support that type of development. This led to recommendations to ease restrictions on single purpose residential in C, CBD, MMU zones; and provide bonus height incentives in exchange for public benefits (i.e. including affordable, small units). In 2019, Ordinance 3040 amended the development regulations to allow single purpose Multi-Family under certain circumstances in the CBD, C, MMU, and CM zones. It also allowed for taller buildings, subject to provisions for affordable units, etc.

Ms. Grage reviewed community concerns since the 2019 development regulation update. Some of those concerns are conversions of these allowed dwelling units to short-term rentals. This is contrary to the housing goals in the Comprehensive Plan. Another concern is that the units achieved through the height bonus allowances should be preserved for permanent housing; and concern that the new neighborhoods that are created under this could result in many vacant homes during parts of the year. We want vibrant neighborhoods, which that does not promote. She reviewed the City Council workplan timeline for this update.

Ms. Grage reviewed the proposed regulations. Amending AMC 19.44 Commercial Uses to add short-term rentals as a specific use. In that same section, we will add a definition for short-term rentals. The new language also addresses current short-term rentals Table 19.41.050 would also need to be updated.

William McCombs asked if staff had data on the impact short-term rentals have on housing.

Libby Grage said there is no local information, but short-term rental studies across the nation show that they do have an effect on overall housing costs.

Mr. McCombs stated he understands that there are concerns, but he doesn't know how short-term rentals impact our community.

Ms. Grage clarified that our community has a zero percent vacancy rate. The concern with short-term rentals is that they take units off the market for long term rental. People who want to live here can't because there are no units available.

Paul Ryan asked how many Single Family Residences and Duplexes are in these areas.

Libby said staff did not have that figure, but this also applies to other housing types. We could get that information to the Planning Commission if they would like.

Mr. Ryan stated he wants to better understand the effect.

Luke Currier referenced Bed & Breakfast's, stating those are in a whole different category than this because of the owner occupancy.

Ms. Grage clarified that the concern is renting out entire units as short-term rentals, which takes those off the market for individuals that want to work and live here.

Jim Stoneman asked if this change included Air B&B's.

Libby agreed. That is one platform for advertising short-term rentals.

Mike Mills referenced the approximate 20 units that are grandfathered in these areas. He asked if there are other units in different zones that would fall under grandfathering.

Libby agrees. She pointed out that it's really hard to say how many.

John clarified that the way we track the grandfathered units is by a valid business license. We did a search for those and the data is not 100% accurate, but there look to be 60 throughout the City. The issue is how the applicant fills out their business license. If they don't state that they are a short-term rental, it may not be captured. We are cleaning up the ones we come across that are not listed as short-term rental, but should be. He gave the example of a building that has 8 units that turned to short-term rental, but those units were intended to be affordable housing. This is what prompted the moratorium. We are here to study the issue and see how to manage them.

Mr. Mills wondered if grandfathering should be discussed as well.

Darcy clarified that was written into the moratorium, but preexisting non-conforming uses are generally allowed. She pointed out that it's hard to retroactively prohibit something.

John referenced the new language, 19.44.050 D(2)(a). This allows the grandfathered units that have a business license to continue, but added language that clarifies if the owner ceases to operate that business, then the non-conforming status is lost and it cannot continue as short-term rental.

Mr. McCombs asked if the City has looked at any other solutions.

Libby clarified that the direction staff was given by City Council was to address the moratorium. There could be options for other solutions after additional discussion. This proposal is at the direction of City Council.

William McCombs wondered if staff had looked at ways to open up more housing.

Mr. Coleman said he's not aware of other ways to manage this.

William McCombs pointed out that if the problem is people are buying properties just to have Air B&B's, there must be somethings we can do. He expressed concern at banning short-term rentals outright.

Paul Ryan asked if there is a rental registration. He pointed out that other municipalities use this; while other communities have regulations per unit.

Ms. Grage stated staff hasn't looked at that yet because the proposal was to not allow short-term rentals.

John asked Mr. Ryan to clarify how a rental registration would address the concern of losing housing stock to short-term rentals.

Mr. Ryan said it would identify how many are out there and where they are at. The revenue could offset the administrative costs.

Luke Currier asked if the rental registry would be in addition to business license.

Paul Ryan clarified that for certain short-term rentals in Washington State, the owner has to register as an operator. Anacortes could require short-term rentals to register. This addresses safety, non-conformity, and provides for fines for those that don't comply. We need to look at how to manage all of these. Without knowing where they are, we cannot do that.

Linda Martin said she likes the proposal with minor tweaks. She suggested where short-term rentals are defined, we should add hostels. Then in the Bed & Breakfast under section D, it talks about off-street parking, which is an issue. She suggested adding some language regarding off-site parking similar to the language we already have for the Bed & Breakfast.

Libby asked if existing non-conforming short-term rentals need to provide parking. She pointed out that under this proposal, no new short-term rentals are allowed.

Paul Ryan agreed that parking is a huge concern. He wondered if we are able to add parking requirements.

Ms. Martin retracted her suggesting to address parking since short-term rentals are going to be banned.

John clarified that could be addressed in the parking standards. we would need to include short-term rentals in that section to address those concerns. If we do allow short-term rentals, we should consider amending the parking chapter. If we don't allow short-term rentals, there is no point in adding it to the parking standard. Mr. Ryan pointed out that Anacortes is a destination city. Short-term rentals could be an income generator. They could also add jobs for maintenance and upkeep of the short-term rentals.

Libby agreed that there are benefits to maintain short-term rentals and reasons to allow them, but that is not the topic at hand. She asked the Planning Commission to provide direction to staff if they want to go in that direction.

Luke Currier commented that the Commission will be looking at the Comprehensive Plan. He asked how eliminating short-term rentals will impact that process.

Ms. Grage clarified that the big focus of that process will be planning for the 20-year growth projection and this is a part of that. She agreed that more available homes are needed and studies show that short-term rentals take those units. We are planning on advertising for the Public Hearing on February 14th. People can submit comments prior to the hearing so that staff can review them.

Paul Ryan asked if the Commission recommended lifting the moratorium, even for short term to study the housing impact, could that decision be reversed.

Libby aid the effect of the proposed regulations would do the same as the moratorium is doing now. At any time, if the City Council lifted this to allow short-term rentals, then it would come back to the Planning Commission for another hearing. .

Planning Department Update

John pointed out that there is a new standing item on the agenda called the Planning Department update. This is to close the loop for items that the Planning Commission reviewed that went to City Council. At the last City Council meeting, they passed 3 different code amendments. Those all came through Planning Commission on November 8, 2023. They were to change conditional uses to outwardly permitted. The Commission recommended delaying that decision until the Comprehensive Plan update. The City Council took a long time deliberating on this. They decided to adopt as recommended, which was against the Planning Commission recommendation. They also reviewed the ADU owner occupancy issue. The Planning Commission recommended adoption, and City Council concurred. The last thing they reviewed was changing the non-conforming regulations for existing historical buildings so that when they are being remodeled or rebuilt, they will not have to follow the same setback standards as a new building.

There is a grant award the City is receiving from Department of Commerce for the Comprehensive Plan updates. The award is based on the size of the city, so we were offered a \$125,000 grant. I will review this again with Planning Commission when the Comprehensive Plan comes back. We are working with Makers for the update. They did the 2016 Comprehensive Plan and Development Regulations updates. There is still a lot of work for staff to do on this. We are hoping to kick off the Comprehensive Plan process on February 28, 2024. We are also waiting on a \$500K grant from Commerce for the climate impact for the Comprehensive Plan update. This is a new element for the update. There will be a total of \$625K for this update. Some of the funds will be for public outreach, studies, consultants, and public participation planning.

Adjournment: 7:26 p.m.