

HOMER ADVISORY PLANNING COMMISSION
491 E. PIONEER AVENUE
HOMER, ALASKA

JUNE 24, 2010
THURSDAY AT 5:30 P.M.
COWLES COUNCIL CHAMBERS

SPECIAL MEETING

AGENDA

1. **ROLL CALL**
A quorum is required to conduct a meeting.
2. **APPROVAL OF AGENDA**
3. **PUBLIC HEARING**
 - A. Appeal of an Enforcement Order at 397 E. Pioneer Avenue, Refuge Chapel
4. **PENDING BUSINESS**
 - A. Draft Spit Comprehensive Plan
5. **COMMENTS OF THE AUDIENCE**
Members of the audience may address the Commission on any subject. The Chair may prescribe time limits.
6. **COMMENTS OF THE COMMISSION**
Commissioners may comment on any subject, including requests to staff and requests for excused absence.
7. **ADJOURNMENT**
The next Regular Meeting is scheduled for July 21, 2010 at 7:00 p.m., in the Cowles Council Chambers. There will be a work session at 5:30 p.m. prior to the meeting.



**RECORD OF APPEAL
Index**

Refuge Room/397 E Pioneer Avenue

**Appeal of an Enforcement Order dated March 10, 2010 at 397 E Pioneer Avenue,
Lot 5 Block 7 Glacier View Subdivision No. 2 1953, Glacier View Subdivision Resub. Lots
4, 5, 6 and E 75 feet of Lot 7 Block 6, Lots 4 & 5, Block 6**

March 30, 2010 Appeal letter from Pastor Darren Williams	<i>Page 1</i>
April 2, 2010 Notice of Appeal from Deputy City Clerk Melissa Jacobsen	<i>Page 2</i>
March 10, 2010 Enforcement Letter from Rick Abboud, City Planner	<i>Page 3</i>



Office of the City Clerk

Jo Johnson, CMC, City Clerk
Melissa Jacobsen, Deputy City Clerk II
Renee Krause, Deputy City Clerk I
Rachel Tussey, Clerical Assistant



491 E. Pioneer Avenue
Homer, Alaska 99603
(907) 235-3130
(907) 235-8121
ext: 2226, 2227, 2224, or 2251
Fax: (907) 235-3143
Email: clerk@ci.homer.ak.us

April 2, 2010

To Parties of Record:

Re: Notice of Appeal to the Planning Commission Re: Enforcement Order – Discontinue Use of Property Located at Lot 5, Block 6, Glacier View Subdivision, 397 E. Pioneer Avenue as an Overnight Facility or Submit a Completed Application for a Conditional Use Permit Within 30 Days of Receipt.

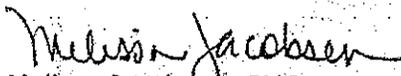
The Refuge Chapel filed a notice of appeal that was received on March 31, 2010 that appears to be in compliance with Homer City Code Section §21.93.070, Time for Appeal, and §21.93.080, Notice of Appeal.

Attached is a copy of the appeal. An appeal record will be prepared by the Planning Department and you will be notified of the date and time set for the appeal hearing.

Homer City Code Section §21.93.300(d) states: The Commission may accept new testimony and other evidence, including public testimony, and hear oral arguments as necessary to develop a full record upon which to decide an appeal from an act or determination of the City Planner. Any person may file a written brief or testimony in an appeal before the Commission."

Please contact the City Clerk's Office at 235-3130 if you have any questions regarding this matter.

Sincerely,


Melissa Jacobsen, CMC
Deputy City Clerk

CC: Refuge Chapel
City Manager Wrede
City Attorney Klinkner
City Planner Abboud

"WHERE THE LAND ENDS AND THE SEA BEGINS"

To access City Clerk's Home Page on the Internet: <http://clerk.ci.homer.ak.us>



REFUGE CHAPEL
397 E. PIONEER AVE #2
HOMER, ALASKA 99603

March 30, 2010

To: City of Homer
Planning Department
491 East Pioneer Avenue
Homer, Alaska 99603

Mr. Abboud,

Concerning a letter received by Refuge Chapel on January 29, 2010, Refuge Chapel responded, by:

1. Pulling our Conditional Use Permit. We believe we are operating as a "Rooming House", and permitted for that operation, in the Central Business District.
2. Providing appropriate documentation showing that Refuge Room meets the definition of "Rooming House" as defined in HCC 21.03.040.
3. Providing appropriate documents showing that the Refuge Room was not an addition, to the existing structure, but a remodel to the existing structure.

I met with you, I believe it was on Friday the 5th of March, and asked you to look at our facility. I asked you to work with us, and suggest ways we might change our operation, if you felt we did not meet the definition of "Rooming House" as defined by city code. You chose not to. Instead, you wrote, in the enforcement order dated March 10th, "I am certain that it is not a rooming house or any other outright permitted use of the Central Business District".

We believe we are innocent of your charges until you prove us guilty. Refuge Chapel will give you the opportunity to state your case before the Homer Advisory Planning Commission.

Refuge Chapel chooses to appeal your Enforcement Order to the Homer Advisory Planning Commission for the purpose of reversing the Enforcement Order.

The Enforcement Order concerns a structure on Lot 5, Block 6, Glacierview Subdivision, 397 East Pioneer Ave.

Refuge Chapel believes that the Refuge Room meets the definition of "Rooming House" as defined in HCC 21.03.040. and, as such, is permitted in the Central Business District under HCC 21.18.020(cc)

"Rooming house" means a dwelling containing not more than five guest rooms that are used, rented or hired out to be occupied for sleeping purposes by guests. A rooming house shall not accommodate in excess of 15 guests. A rooming house shall also include any structures associated with the dwelling, such as guest cabins, provided that a conditional use permit was obtained for any associated structures, if a permit is required in order to have more than one building containing a permitted principal use on the lot. "Rooming house" does not include bed and breakfast.

Thank you.

Darren Williams
Pastor, Refuge Chapel

3/30/10 4:36 PM



City of Homer Planning & Zoning

491 East Pioneer Avenue
Homer, Alaska 99603-7645

Telephone (907) 235-3106
Fax (907) 235-3118
E-mail Planning@ci.homer.ak.us
Web Site www.ci.homer.ak.us

March 10, 2010

Darren Williams
397 E Pioneer Ave. #2
Homer, AK 99603

Re: Use of Refuge Room

Dear Mr. Williams,

THIS IS AN ENFORCEMENT ORDER DEMANDING THAT YOU DISCONTINUE USE OF THE PROPERTY LOCATED AT 397 E PIONEER AVENUE ("THE PROPERTY") AS AN OVERNIGHT FACILITY OR SUBMIT A COMPLETED APPLICATION FOR A CONDITIONAL USE PERMIT WITHIN 30 DAYS OF RECEIPT OF THIS ENFORCEMENT ORDER PER HCC 21.90.060

As of the writing of this letter, I have not been notified of any appeal of the Board of Adjustment (BOA) decision dated January 13, 2010 which overturned my determination that the Refuge Room constitutes a Rooming House.

This notice finds that the Refuge Chapel is in violation regarding use of the Refuge Room which lies outside of permitted uses as defined by Homer City Code (HCC), per HCC 21.90.090 (a) (6). Failure to resolve this violation within 30 days of receipt of this notice may result in fines of \$250 per day per HCC 21.90.080(b) (2).

According to the BOA decision, the Homer Advisory Planning Commission (HAPC) vote overturned my decision that the Refuge Room constitutes a Rooming House. While I do not have recent guidance on just what the HAPC now believes the use of the Refuge Room constitutes (previously a dormitory-style housing facility for men), I can be certain that it is not a rooming house or any other outright permitted use of the Central Business District (CBD). It is likely that it may be considered an "other use" per HCC 21.18.030 (o) or even a shelter for the homeless, either of which requires an approved Conditional Use Permit (CUP) for operation.

To resolve this violation you may submit an application for a CUP in the next 30 days from receipt of this correspondence or immediately cease the overnight accommodations offered in the Refuge Room.

Per HCC 21.93 you have the right to appeal this Enforcement Order to the Homer Advisory Planning Commission within 30 days of written receipt of this notice. Failure to timely appeal to Homer Advisory Planning Commission constitutes a waiver of all rights to appeal this order.

Regards,

Rick Abboud
rabboud@ci.homer.ak.us
City Planner
907-235-8121 x2236

Cc: Walt Wrede, City Manager
Tom Klinkner, City Attorney



1000-1000-1000



**SUPPLEMENTAL
RECORD OF APPEAL
Index**

**Refuge Room/397 E Pioneer Avenue
Appeal of an Enforcement Order dated March 10, 2010 at 397 E Pioneer Avenue,
Lot 5 Block 7 Glacier View Subdivision No. 2 1953, Glacier View Subdivision Resub. Lots
4, 5, 6 and E 75 feet of Lot 7 Block 6, Lots 4 & 5, Block 6
Prepared June 17, 2010**

VOLUME I

Letter date stamped June 16, 2010 from Refuge Chapel to the Homer Advisory Planning Commission regarding Appeal of Enforcement Order	<i>Page 1</i>
Appeal Brief from City Planner Rick Abboud	<i>Page 3</i>
Email from Frank Griswold dated April 5, 2010	<i>Page 21</i>

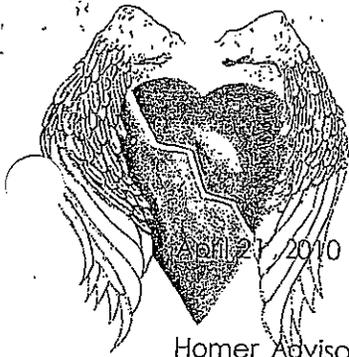


REFUGE CHAPEL

JUN 16 2010 PM 01:38 *pk*

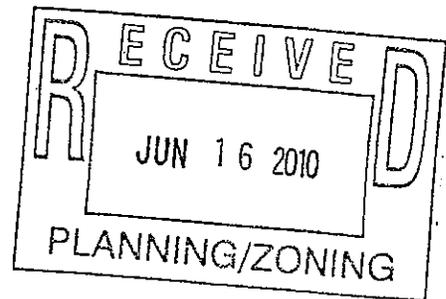
397 E. Pioneer Ave. #B, Homer Alaska 99603

907-235-4744 refugechapelhomer@juno.com



Homer Advisory Planning Commission
491 E. Pioneer Avenue
Homer, AK 99603

Re: Appeal of Enforcement Order for Refuge Chapel



Dear Members of the Advisory Planning Commission,

It is now your task to answer a question that has lain unresolved for some years. **What is the Refuge Room?** Established as a '**Bunkhouse**' in 2003 the Refuge Room has also been called a **homeless shelter**, and a **rooming house**. So which of these terms best describes the RR?

How the Refuge Room works

The Refuge Room is governed by a board of directors and operated by the Refuge Chapel Church and an on site supervisor. The RR is self supporting, deriving all its operating revenue from the \$10/day rent which is either paid by the tenants or by local social service groups. In addition to a small eight man dorm, there are two rooms that can each house two men. There is a studio available for the on site supervisor. The RR has shared bathrooms, laundry, dining and cooking facilities.

Because safety is a primary concern, we screen all applicants for criminal offenses. We do not house known sex offenders or the severely handicapped. No alcohol or drugs are allowed and residents who arrive intoxicated are confronted. In these instances some men leave voluntarily, some are given a second chance and some are escorted off the property by police. Staff base their decisions on public safety, the safety of the residents and the character of the individual involved. Because facilities are shared, other rules are also in place. We will gladly provide more detailed information on our operation at your request.

Definitions (from Wikipedia)

A **Bunkhouse** is a hostel or barracks-like building that historically was used to house...cowboys on ranches in North America. There are bunkhouses throughout Alaska that cater to workers in the fishing, mining and oil industries; some are company sponsored, while others, open to the public, charge residents a nightly fee.

A **Homeless shelter** is a temporary residence for homeless people. Usually residents are not expected to pay any type of rent. A shelter is usually open to anyone. The services offered vary from one shelter to another.

A **Rooming House or Boarding House** charges a daily fee and usually provides 'bed and board', shared bathroom, laundry and dining facilities, and is similar in some ways to a 'B & B' or a hostel. Traditionally, many rooming houses have rules governing acceptance of residents, facility access times and permitted activities.

Definitions from Homer City Code

The City Code defines '**Shelter for the homeless**' as a building used primarily to provide on-site meals, shelter, and secondary personal services such as showers and haircuts to the homeless and the needy on a non-permanent basis for no or nominal compensation.'

The City Code defines **Rooming House** as "...a dwelling containing not more than five guest rooms that are used, rented or hired out to be occupied for sleeping purposes by guests. A rooming house shall not accommodate in excess of 15 guests. A rooming house shall also include any structures associated with the dwelling, such as guest cabins, provided that a conditional use permit was obtained for any associated structures, if a permit is required in order to have more than one building containing a permitted principle use on the lot. 'Rooming house does not include B and B.'"

Comparisons

Unlike a homeless shelter, the RR is not open to everyone. Prospective residents must pass a criminal background check before being allowed to stay. Unlike a homeless shelter, the RR is not free. We believe that \$300 a month rent is more than a nominal amount. Finally, although an exact percentage is impossible to determine, many applicants are not homeless when they first arrive at the RR.

On the other hand, the **Refuge Room** seems to have all the characteristics of a 'Rooming House'.

In an April 9, 2009 letter to me from the City Mr. Abboud states "...I conclude that the Refuge Room is a permitted rooming house use in the CBD zoning district under HCC 21.18.020(cc)." On what appear to be procedural grounds, Council voted not to accept this definition, thus bringing us to the current public hearing. We frankly express our puzzlement. The RR operates like a rooming house, meets the code definition of a rooming house and looks like a rooming house. Expert city staff has stated that the RR is a rooming house. Why are we not what we appear to be? We ask the Advisory Planning Commission to address this question and respectfully ask for an explanation of the reasoning involved in your decision. Thank you.

Sincerely,



Darren Williams, Pastor Refuge Chapel
397 E Pioneer Ave #2
Homer, AK 99603

CC: City Manager Wrede
City Attorney Klinker
City Planner Abboud

The enforcement order dated March 10, 2010 requires that the use of the overnight facility cease or be properly permitted. This decision was based in several facts supported in record.

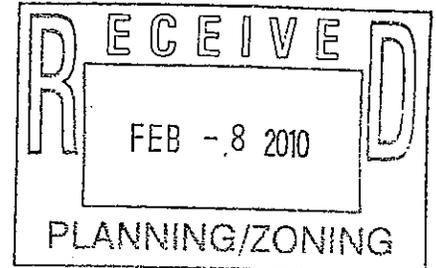
1. The Homer Board of Adjustment (BOA) affirmed that the Commission rejected the conclusion that the Refuge Room constituted a Rooming House operation. The BOA appeal document, Reasons Supporting the Decision, Page 5, number 2, clearly establishes that the BOA found that the Commission rejected the Refuge Room classification as a Rooming House. Neither Mr. Williams nor the City Planner appealed the decision of the BOA, thus exhausting the process of legal remedy to assert that the Refuge Room constitutes a Rooming House.
2. The documentation "showing that the Refuge Room meets the definition of Rooming house," does not present any deviation from the understanding of the operation throughout the previous appeal process. This includes an application for housing and a template of a rent receipt. These two items were not a subject of dispute.
3. The matter of the Refuge Room as an addition to the existing structure was not addressed in the enforcement order and is not subject to appeal.

Conclusion

The ruling of law determined that the Refuge Room is not operating as a rooming house. No evidence has been presented that indicates conditions have significantly changed. While it was argued by the City Planner that the Refuge Room constituted a Rooming Housing operation, this decision was not supported upon appeal. Legal remedies were exhausted by both the City Planner and Mr. Williams. Permitting the Refuge Room as a Rooming House is not a legal option of the City Planner.



REFUGE CHAPEL
397 E. PIONEER AVE #2
HOMER, ALASKA 99603



To: City of Homer
Planning Department
491 East Pioneer Avenue
Homer, Alaska 99603

Mr. Abboud,

Per our conversation on Tuesday, February 2, 2010 the decision was made to:

- A. Refuge Chapel would pull their application for a Conditional Use Permit. You indicated that if the City of Homer determined that a CUP was necessary we would not have to pay the required fees.

From Homer Board of Adjustment determination dated January 13, 2010: Item 2 Page 5

"The remand requesting that the Commission reconsider the matter is still in effect unless the Refuge Chapel has voluntarily pulled its application"

- B. Refuge Chapel would provide appropriate documentation showing that the Refuge Room's meets the definition of "Rooming House" as defined in HCC 21.03.040. (Page 2, 3, 4)

"Rooming house" means a dwelling containing not more than five guest rooms that are used, rented or hired out to be occupied for sleeping purposes by guests. A rooming house shall not accommodate in excess of 15 guests. A rooming house shall also include any structures associated with the dwelling, such as guest cabins, provided that a conditional use permit was obtained for any associated structures, if a permit is required in order to have more than one building containing a permitted principal use on the lot. "Rooming house" does not include bed and breakfast.

- C. Refuge Chapel will provide appropriate documentation showing that: (Page 5, 6, 7, 8)
1. The Refuge Room was not an addition as indicated by the as-built plat.
 2. The Refuge Room enclosed an existing structure.
 3. During the demolition and remodel of the existing structure we reduced the footprint of the facility by 900 +/- square feet.

If there is any other information that you require please e-mail or call and leave a message.

Jim Pastro
jpastro@alaska.net
235.6363

Thank you

Dated 02.08.10



REFUGE ROOM

397 E. PIONEER #B HOMER, ALASKA 99603
907.235.4744 refugechapelhomer@juno.com

APPLICATION FOR REFUGE ROOM HOUSING

Date: _____

Name: _____ Birth Date: _____

Full Address: _____

Your phone #: _____

Next of Kin or Emergency Contact Person: _____

Phone #: _____

Drivers Lic#: _____ State: _____ Soc.Sec#: _____

Employment Info: _____

Medical Problems (Mental or Physical)? Yes _____ No _____

If yes, please explain: _____

We have a no-stay rule for sex abuse violators.

Any outstanding warrants for arrest? _____

Prayer and Pastoral counseling is available. Director will assist you.

Comments: _____

I have read and agree to abide by all Backhouse rules to the best of my ability during my stay.

Signed _____ Date _____



REFUGE ROOM

397 E. PIONEER #B HOMER, ALASKA 99603
907.226.3250 refugechapelhomer@juno.com

REFUGE ROOM RENT RECEIPT

To whom it may concern:

Received from: _____

Check # _____ Date ____/____/____

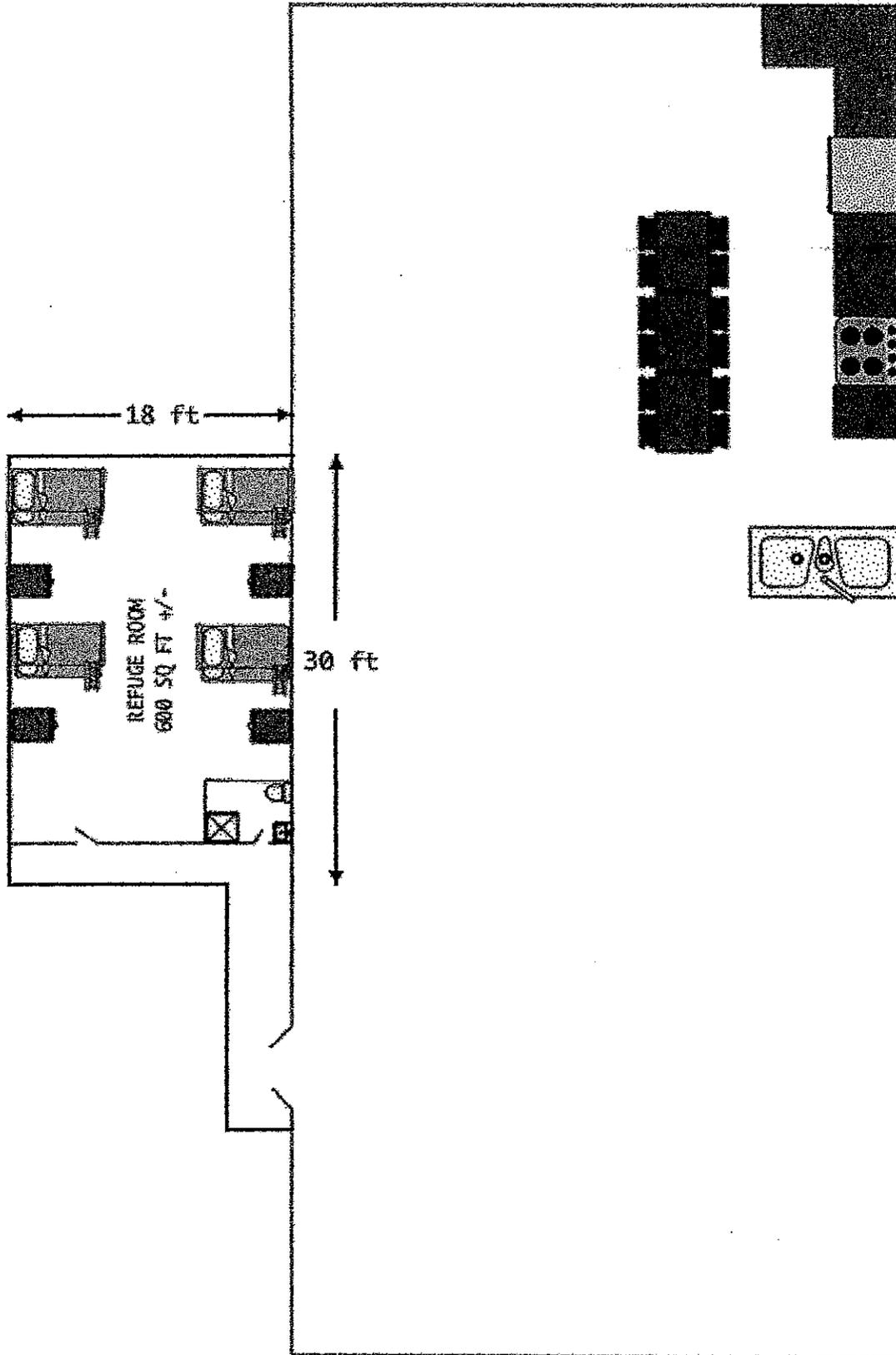
For case # _____ from ____/____/____ to ____/____/____

For _____ @ the cost of _____ per day, _____ per week _____ per month

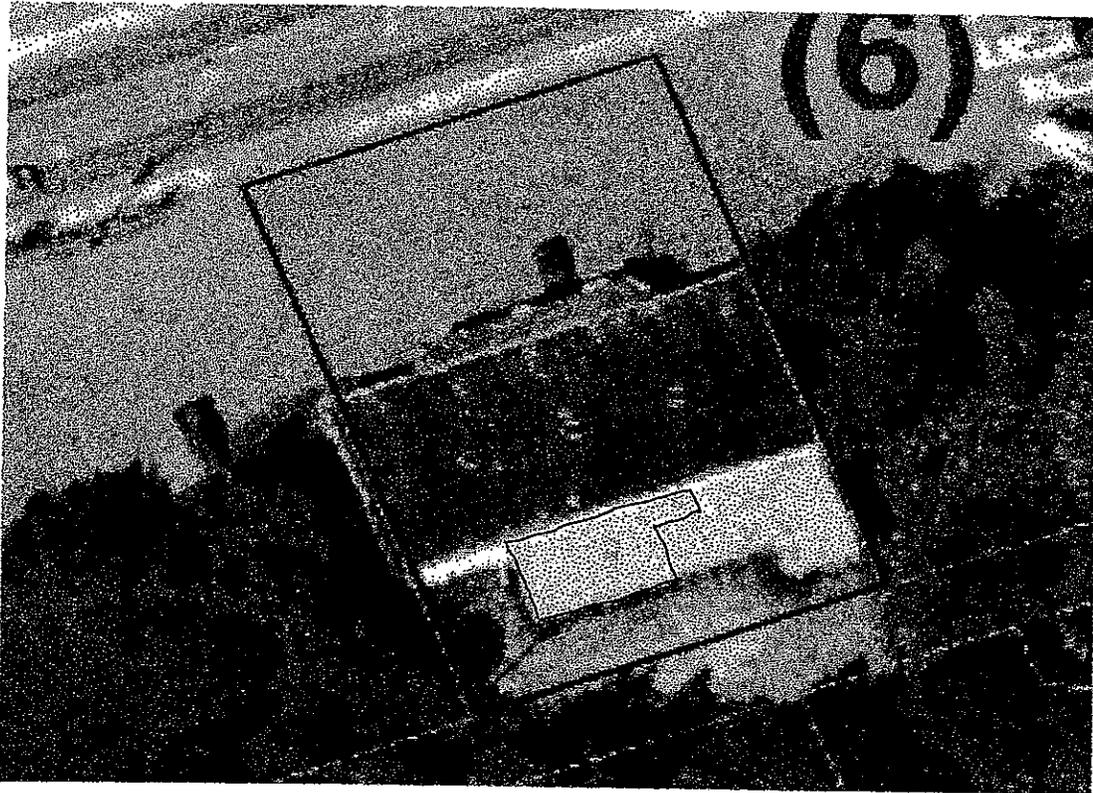
Thank you for your assistance,

Director
Refuge Room Bunkhouse

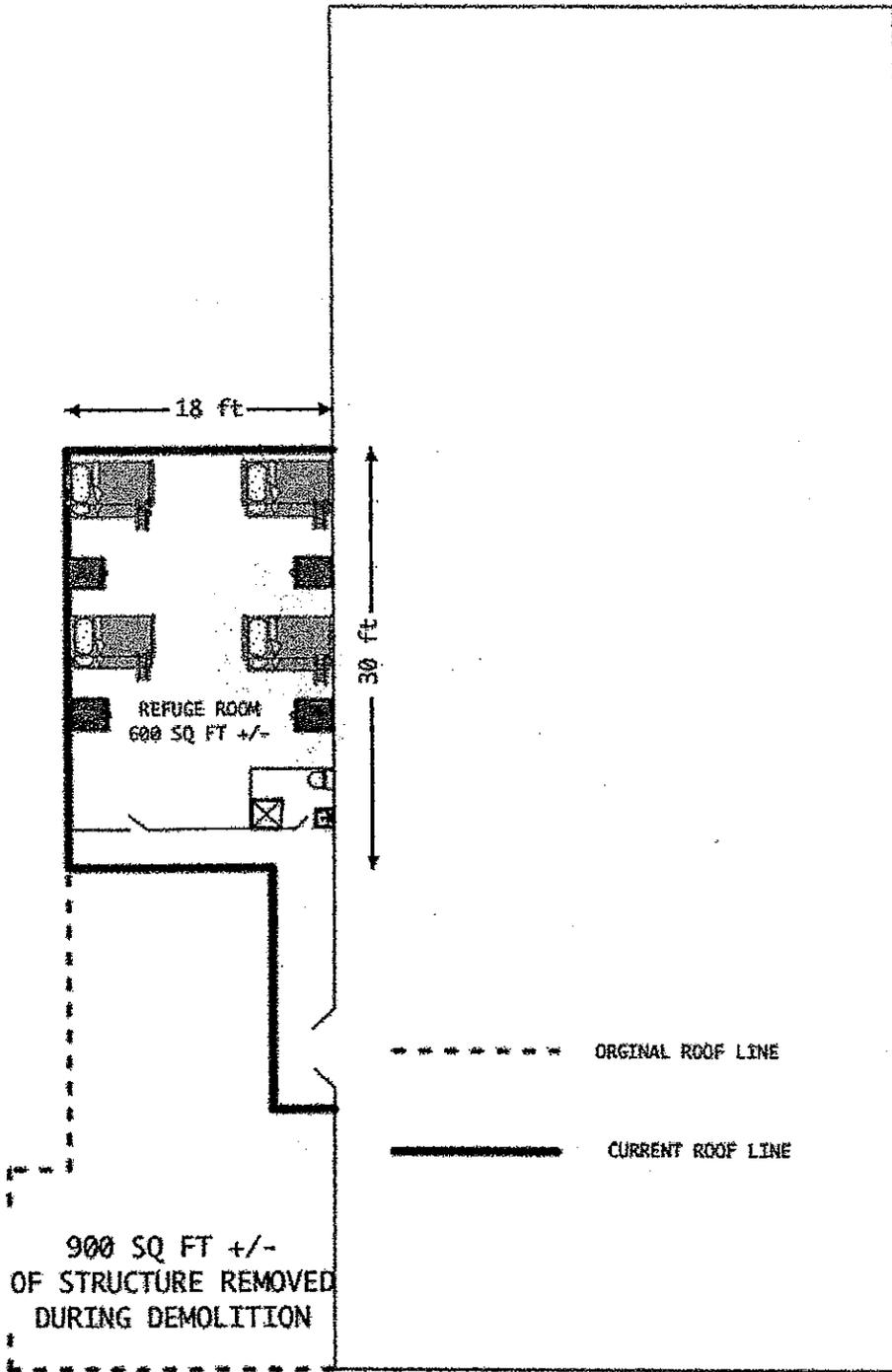
REFUGE ROOM LAYOUT
BUNK SPACE FOR EIGHT MEN
SHOWER AND BATHROOM AND COOKING FACILITIES



This is a picture of our facility, from Kenai Peninsula Borough Map Viewer, showing the footprint of the building when we purchased it. The white area, on the south side of the building, is the portion we remodeled. The area indicated by the blue line is the current area of the Refuge Room. The remainder of the white roof is the area that was removed during the demolition. As you can see we did not increase the footprint of the facility but decreased it.



REFUGE CHAPEL
SHOWING AREA OF DEMOLITION AND STRUCTURE REMODEL



**Listing#
1164**

Bay Realty, Inc.

331 E. Pioneer Ave. Ste. 101,
Homer, AK 99603

Phone: 907-235-6183

Fax: 907-235-4031

Email: info@bayrealtyalaska.com

Web Site: www.bayrealtyalaska.com

END OF THE GARAGE
THAT WAS REMOVED
DURING DEMOLITION



Property Description: Location,
Location, Location!!! Intriguing Investment

Property located in the Heart of Downtown Homer is Prime Time

Spot for You to Reap Financial Growth. Investing in Homer City Real Estate is a great way to Secure
Your Future!

Directions: 397 E. Pioneer - In the Heart of Homer.

ROOF LINE OF STRUCTURE
THAT WAS ENCLOSED DURING
REMODEL FOR THE REFUGE ROOM

Legal Description: L4&5, B6 Glacier View Sub. No.1, Plat No. 51-301 Homer Recording and L5 B7
Glacier View No. 2, Plat No. 53-972 Homer Recording District.

Tax Parcel No.: 177-203-06&07 & 177-105-04

House Size: 10,000 sf

Road Access: Paved/Gov.

Lot Size: .91 acres

Water: Public

Sewer: Public

Electricity: Yes

Zoning: CBD

Assessments: None Known

Covenants:

Price: \$530,000

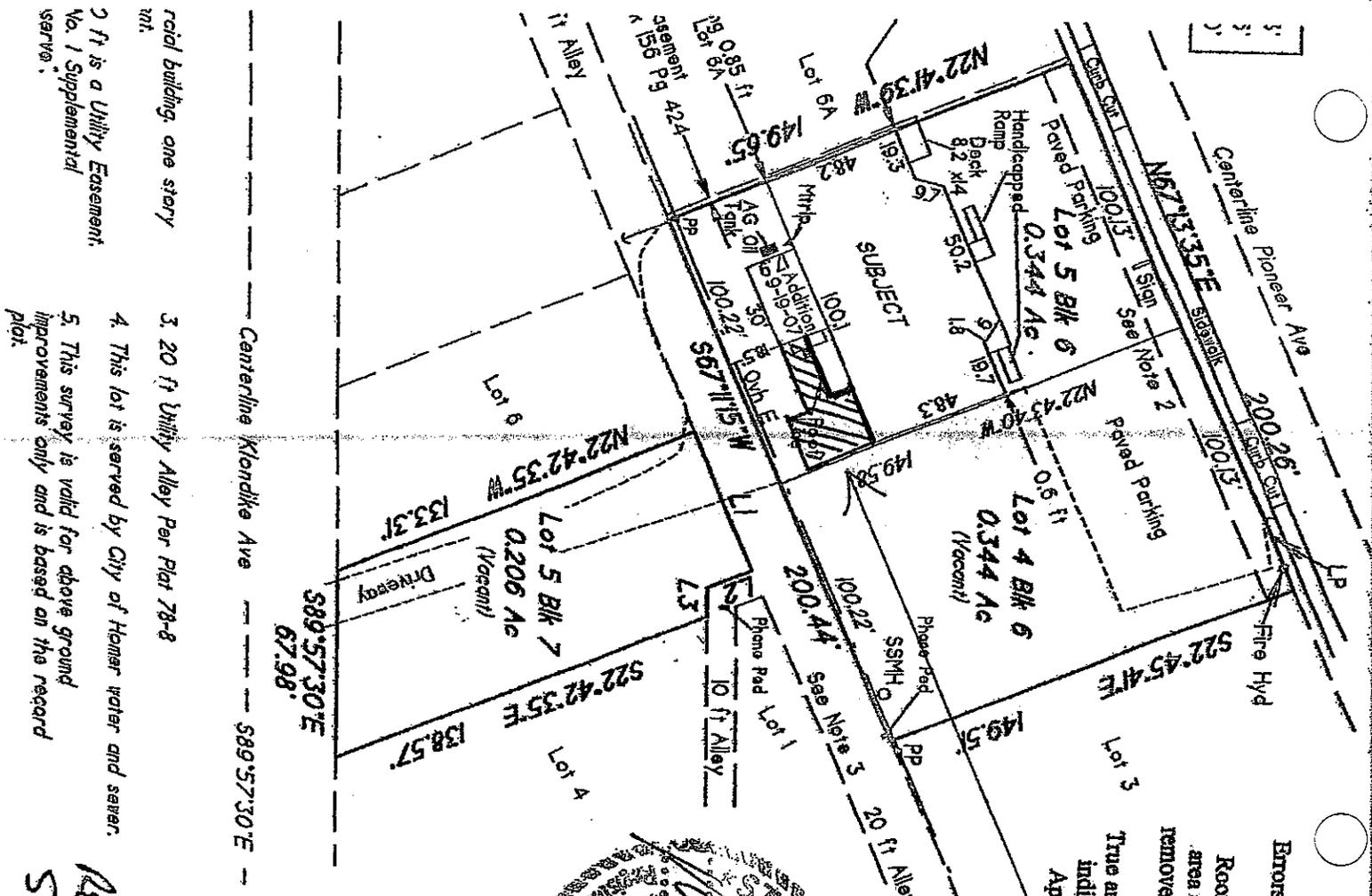
Financing: Cash/Conventional

Sales Associate: DL

District: 415

MLS#: 5402269

Property profile presented for informational purposes. Buyers should verify all information.



Errors in the asbuilt survey:
 Roof line of the storage area and garage that was removed during the remodel.
 True area that was removed indicated by red line. Approx. 900 sq. ft.



I hereby certify that I have surveyed the following property and that no visible encroachments exist except as shown:

Lots 4 and 5 Block 6 Glacier View Subdivision
 A resub of Lots 4, 5, 6, & 8 the East 75.00' of Lot 6 as shown on Plat No. 78-8 HRD and Lot 5 Block 7 Glacier View Subdivision No. 2 as shown on Plat No. 53-972 HRD

Exclusion Note: It is the responsibility of the Owner to determine the existence of any easements, covenants, or restrictions which do not appear on the recorded subdivision plan. Under no circumstances should any data hereon be used for construction or for the establishment of fences or boundary lines.

This document may not be recorded or copies sold without the written permission of the Surveyor. This Survey is to be used only for the purposes intended and is valid for 120 days from the date of original survey after which it must be re-certified.

[Signature] OCT 1, 2007

Covered Storage (Roof Line) offered as shown. Deleted Garage. Added 17.9 x 30 framed Addition to "Basement" Level. No new Encroachments this date of survey.

Asbuilt Survey

Lots 4 and 5 Block 6 Glacier View Subdivision
 A resub of Lots 4, 5, 6, & 8 the East 75.00' of Lot 7, Lot 5 Block 7 Glacier View Subdivision No. 2 as shown on Plat No. 53-972 HRD

Located in the NW 1/4 Section 20, T6S, R3W, S1W within the City of Homer

Homer Recording District
 Third Judicial District, Alaska

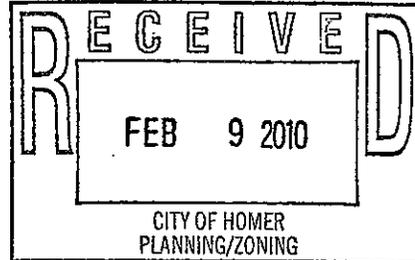
Client's: Earl & Rose Hill 267 Mereton Bay Kn Apt 1 Golito Ca 93117	Surveyed By: Roger W. Imhoff, RLS PO Box 2508 Homer Ak 99603
Date of Survey 5-31-05	LSglacierview,vc
FB2005-2	Scale 1" = 50 ft

- 1. 20 ft Utility Easement
- 2. 1 Supplemental
- 3. 20 ft Utility Alley Per Plat 78-8
- 4. This lot is served by City of Homer water and sewer.
- 5. This survey is valid for above ground improvements only and is based on the record plot.

RECOVERED SCALE



REFUGE CHAPEL
397 E. PIONEER AVE #2
HOMER, ALASKA 99603



February 8, 2010

City of Homer
Planning Department
491 East Pioneer Avenue
Homer, Alaska 99603

To Mr. Abbod,

This is to clarify a request made by Refuge Chapel concerning the Conditional Use Permit for the activities of the Refuge Room. Refuge Chapel is pulling the CUP and removing it from consideration.

Thank you.



Jim Pastro



HOMER BOARD OF ADJUSTMENT

City of Homer
491 East Pioneer Avenue
Homer, Alaska 99603-7645

APPEAL OF A NON-DECISION OF A ROOMING HOUSE DETERMINATION FOR THE REFUGE CHAPEL AT 397 E. PIONEER AVENUE, LOTS 4 AND 5, BLOCK 6; AND LOT 5, BLOCK 7, GLACIER VIEW SUBDIVISION NO. 2

DECISION ON APPEAL

This Decision is made pursuant to Homer City Code (HCC) §21.93.110. As such it includes an official written statement of findings and reasons supporting this decision.

INTRODUCTION AND BACKGROUND FACTS

1. This is the second time that issues regarding the Refuge Chapel have been brought before the Homer Board of Adjustment (Board).
2. On or about September 5, 2007, this Board reversed a conditional use permit decision by the Homer Advisory Planning Commission (Commission). In that appeal, the Commission had approved a conditional use permit for the Refuge Chapel to operate a dormitory-style housing facility for men. On appeal, the Board reversed and remanded the Commission's decision after it determined, among other things, that a planning department staff member, primarily responsible for working on the conditional use permit had a disqualifying conflict of interest.
3. HCC §21.93.560 governs remands from the Board. In its remand, the Board requested that the Commission reconsider the application for a conditional use permit after presentation of a new staff report. Pursuant to HCC §21.93.560 (c) the Commission was mandated to prioritize its reconsideration of the remanded conditional use permit.
4. Rather than follow the express request by the Board, the new City Planner issued a letter on April 9, 2009, (over one and one-half years after the Board's remand) which appears to abandon the need for a conditional use permit by determining that the Refuge Chapel meets the definition of a "Rooming house" under HCC §21.03.040.
5. In his letter, the City Planner also determined that a new conditional use permit application would be required to deal with expansions of the Refuge Chapel building that exceed 30% lot coverage and on remand, the Refuge Chapel's conditional use application should be dismissed as moot.

6. On or about April 13, 2009, Frank Griswold appealed the City Planner's April 9, 2009, determination letter to the Commission.
7. The Commission scheduled the appeal hearing for June 17, 2009, and all parties were provided adequate notice.
8. The appeal hearing date was rescheduled to take place on June 3, 2009. At the June 3, 2009, appeal hearing, the City Planner appeared and presented oral argument. Frank Griswold did not appear and the appeal hearing was conducted in his absence. A review of the record revealed that Frank Griswold was not given adequate notice pursuant to HCC §21.93.100.
9. The Commission continued the appeal hearing to allow Frank Griswold an opportunity to present his oral argument. Frank Griswold appeared and presented written material and oral argument on June 17, 2009.
10. One Commission member, Commissioner Moore was ultimately found to have a conflict of interest. A decision by the Commission, on July 1, 2009, disqualified Commissioner Moore from taking part in the appeal hearing and deliberations. Because one Commission seat was vacant, the determination that Commissioner Moore had a conflict of interest left five (5) Commission members to deliberate and render a decision.
11. Apparently, after deliberations the Commission made a motion to support the City Planner's determination that the Refuge Chapel was a "Rooming house". Two (2) members voted in support of the City Planner and three (3) members voted not to support the City Planner's determination.
12. Based upon a reading of Paragraph K of the Commission's bylaws, that four (4) affirmative votes were required to pass an ordinance, resolution or motion, the Commission determined that its 2-3 vote was not sufficient to affirm or reverse the City Planner's determination.
13. Therefore, the Commission reasoned that since under its bylaws it neither affirmed nor reversed the City Planner's determination, that the City Planner's determination remained in effect.
14. The Commission issued its decision on August 5, 2009.
15. Frank Griswold filed a request for reconsideration on August 6, 2009. The request for reconsideration was denied by the Commission.
16. A notice of appeal was timely filed by Frank Griswold on September 15, 2009. Frank Griswold is the appellant and the City Planner Rick Abboud, and Darrin Williams of the Refuge Chapel are the appellees in this appeal.
17. The Board heard oral argument on this matter at a Special City Council Meeting at 5:30 P.M. on Monday, November 30, 2009. The appellant and the appellees were given an opportunity to present written briefs and oral argument at that time.

18. Prior to the start of oral argument, the appellant, Frank Griswold, challenged and questioned whether three (3) Board Members should be excused due to potential conflicts of interest. The Board determined that all three (3) (Board Member Hornaday, Board Member, Hogan and Board Member Zak) did not have conflicts of interest. Board Member Hornaday asked to be excused and did not participate.

19. At the conclusion of the appeal hearing, the Board reviewed the matter and performed its deliberation.

ISSUES ON APPEAL

The Board is asked to answer the following questions in this appeal:

1. Was the Planning Commission's 2-3 vote sufficient to overturn City Planner Rick Abboud's determination?
2. Does the Refuge Room constitute a shelter for the Homeless, or a Rooming House?
3. Does the City Planner Rick Abboud have authority to determine that the expansion of the Refuge Chapel building to exceed 30% lot coverage requires a conditional use permit?
4. Was the June 3, 2009, Planning Commission Hearing illegal?
5. Does City Planner Rick Abboud have a disqualifying bias?

STATEMENT OF FINDINGS

The Board finds that:

1. The Planning Commission's 2-3 vote was sufficient to overturn City Planner Rick Abboud's April 9, 2009 determination.
2. It is still up to the Commission to determine whether the Refuge Room constitutes a Homeless shelter or something else.
3. Yes, the City Planner does have the authority to determine that a certain use requires a conditional use permit.
4. Yes, the June 3, 2009, Planning Commission Hearing was an improper meeting and appeal hearing.
5. No, City Planner Rick Abboud does not have a disqualifying bias.

REASONS SUPPORTING THIS DECISION

The Board's findings are supported by the following reasons:

1. The Board accepts the fact that the HCC §1.76.050(b) authorizes the Commission to adopt its own rules of procedure and recognizes that the Commission has done so by adopting its own Bylaws (which were approved by the Homer City Council on June 8, 2008). However, Paragraph K of the Commission's Bylaws does not state that it covers quasi judicial proceedings or appeals to the Commission. Further, the Board does not believe that Paragraph K was ever intended to govern anything other than Regular Planning Commission meetings.

A close review of Paragraph K shows that it is almost identical to the City Council's adopted procedure found at HCC §1.24.040 (h) which provides in part, that:

Four Councilmembers shall constitute a quorum. Four affirmative votes are required for the passage of an ordinance, resolution, or motion.

This provision applies to Councilmembers at Council meetings. Were it to apply to the City Council serving in a quasi judicial role it would say so. Instead, the HCC expressly provides that when acting in the Board of Adjustment role, a decision is determined by a majority vote. In other words, only a majority of board members who are not disqualified for conflict is required to "reverse or modify the action or determination appealed from." HCC §21.93.550 (a) [governing Board of Adjustment decision].

The same majority rule applies to Board of Ethics decisions. Under HCC §1.79.010:

A quorum of the Board shall be a majority of all members who are not excused for cause, such as being the complainant, the respondent, a witness, having a conflict of interest, or other cause for recusal. However, in no event may a quorum be less than three.

Therefore, even though the City Council restricts itself to four (4) affirmative votes to pass an ordinance, resolution, or motion, HCC does not require the same when the City Council acts in a quasi judicial capacity.

Accordingly, the Commission had five (5) members present during its deliberations and a simple majority vote was sufficient to affirm or reject the City Planner's determination.

The Board's conclusion is also supported by the differences between open and closed meetings; that is while quasi judicial bodies are allowed to deliberate and make decisions in a closed meeting; the Council and the City's Boards and

Commissions are required to usually act in the open when they conduct their normal business. A review of the above referenced Bylaws provisions directs its members to vote by roll call when voting on ordinances, resolutions or motions; it does not address the Commissions' quasi judicial role.

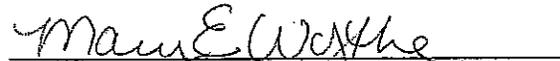
Finally, during deliberations a quasi judicial body does not have to reveal who voted for or against. In fact, the decisions are required to be prepared in a written form outlining the decision and findings. The vote of the Commission to adopt the City Planner's determinations was 2-3; therefore the Commission rejected the City Planner's determinations by a simple majority vote. It is now up to the Commission to decide whether to rescind / reconsider its August 5, 2009 decision or not.¹

2. Having determined that the Commission rejected the City Planner's determinations, it is not for the Board to decide whether or not the Refuge Room is a Rooming House – the Commission rejected that classification. As to whether or not the Refuge Room is a Homeless Shelter, the answer to that question lies with the Commission. Although the City Planner was recommending that the Refuge Chapel's application for a conditional use permit should be dismissed as moot, the Record on Appeal does not show that it was dismissed. This leaves the application where it was on September 5, 2007. The remand requesting that the Commission reconsider the matter is still in effect unless the Refuge Chapel has voluntarily withdrawn its application.
3. In reviewing the City Code, the Board finds that the City Planner is given certain powers in order to fulfill his duties. These broad powers include, among other things, authority to interpret and enforce Title 21 of the HCC. Accordingly, it is part of his power to interpret the Code to determine that a certain land use requires a conditional use permit. The Board's review of the Record on Appeal does not show that the City Planner granted any conditional use permits, only that he advised the Refuge Chapel that it was required to apply for a conditional use permit for expansions that occurred in the past.
4. The Board takes the public notice requirements very serious. If a certain type of notice is required to be given to parties or adjacent land owners those notices must be given. At the start of all appeals, the Commission must determine whether sufficient notice was provided to all concerned parties. If it is revealed that sufficient notice was not provided then the appeal hearing must be rescheduled. It is simply not appropriate to conduct part of the appeal hearing without all parties being present. Therefore, the Board concludes that the June 3, 2009, appeal hearing was not proper under the HCC.
5. The Board has reviewed the Record on Appeal and can find no evidence to support any assertion that the City Planner Rick Abboud has a bias. The fact

¹ Usually a motion to reconsider must be made within a certain time period. A motion to rescind, however, can be made as long as it is not impossible to undo. See Generally: Robert's Rules of Order.

that the Commission took almost one and one-half years to deal with the Board's remand concerns the Board; however, realizing that positions were changing and that new personnel was hired to address this and other important matters explains and justifies some of the delay.

APPROVED by the Homer Board of Adjustment January 13, 2010.


Mary E. (Beth) Wythe, Chair

NOTICE OF APPEAL RIGHTS

Pursuant to Homer City Code §21.91.130 titled Appeals to Superior Court:

- (a) An appeal from a final decision of the Board of Adjustment may be taken directly to the Superior Court by a party who actively and substantively participated in the proceedings before the Board of Adjustment or by the City Manager, City Planner or any governmental official, agency, or unit.
- (b) An appeal to the Superior Court shall be filed within 30 days of the date of distribution of the final decision to the parties appearing before the Board of Adjustment.
- (c) An appeal from a final decision of the Board of Adjustment to the Superior Court is governed by court rules.

CERTIFICATION OF DISTRIBUTION

I certify that a copy of this Decision was mailed to Frank Griswold and Darren Williams of the Refuge Chapel on January 14, 2010. A copy was also delivered to the City of Homer Planning Department, Homer City Clerk and the City Attorney on the same date.

Dated:

January 14, 2010



Email from Frank Griswold April 5, 2010

From: Frank Griswold [Try Beta](#) [Log in / create account](#)
To: [Rick Abboud](#) [article](#) | [discussion](#) | [edit this page](#) | [history](#)
Cc: [Jo Johnson](#)
Subject: Re: Refuge
Date: Monday, April 05, 2010 4:28:33 PM
Attachments: [50px-Question_book-new.svg.png](#)
[48px-Ambox_globe_content.svg.png](#)
[poweredby_mediawiki_88x31.png](#)
[wikimedia-button.png](#)

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Collateral estoppel

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The examples and perspective in this article **may not represent a worldwide view of the subject**. Please improve this article and discuss the issue on the talk page.

Collateral estoppel (CE), known in modern terminology as **issue preclusion**, is a common law estoppel doctrine that prevents a person from relitigating an issue. One summary is that "once a court has decided an issue of fact or law necessary to its judgment, that decision ... preclude[s] relitigation of the issue in a suit on a different cause of action involving a party to the first case."^[1] The rationale behind issue preclusion is the prevention of legal harassment and the prevention of abuse of legal resources.

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- 1 Issue
- 2 Due process concerns
- 3 Mutuality
- 4 Strategy
- 5 Rationale
- 6 Related concepts
- 7 Criminal law
- 8 References
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Issue

[edit]

Parties may be estopped from litigating determinations on issues made in prior actions. The determination may be an issue of fact or an issue of

law. Preclusion requires that the issue decided was actually and necessarily decided as part of a valid final judgment. Valid final judgments of state courts are given preclusive effect in other state and federal courts under the Full Faith and Credit Clause of the U.S. Constitution.

Valid final judgments must be issued by courts with appropriate personal and subject matter jurisdiction. It is notable, however, that an error does not make a decision invalid. Reversible errors must be appealed. The legal defense (CE) applies even if an erroneous judgment, or erroneous use of legal principles, occurred in the first action. An incorrect conclusion of the court in the first suit does not cause defendant to forsake the protection of *res judicata* (and by extension, of CE)^[2] A judgment need not be correct to preclude further litigation; it is sufficient that it be final, and that it have been decided on the merits of the case.

Collateral estoppel does not prevent an appeal of a decision, or a party from asking the judge for re-argument or a revised decision. In federal court, judgments on appeal are given preclusive effect. However, if the decision is vacated, the preclusive effect of the judgment fails.

Due process concerns

[edit]

Collateral estoppel cases raise constitutional due process problems, particularly when it is applied to a party that did not participate in the original suit. Due process mandates that collateral estoppel not be applied to a party that has not actually litigated the issue in dispute, unless that party is in legal privity to a party that did actually litigate it. In other words, every disputant is entitled to a day in court and cannot ordinarily be bound by the negative result of another disputant's suit, even if that other disputant had exactly the same legal and factual arguments.

Due process concerns also can arise even when a party did have a day in court to dispute an issue. For example, a defendant may have not effectively litigated an issue decided against the defendant in an earlier suit because the damages were too small, so it may be unjust to bar the defendant from relitigating the issue in a trial for much greater damages. As another example, suppose that a defendant did effectively litigate an issue to a favorable conclusion in nine cases, but to an unfavorable result in a tenth case. In this situation, note that the defendant did not have the opportunity to use the nine judgments in its favor as collateral estoppel against subsequent plaintiffs, because that would violate their right to a day in court. To allow a subsequent plaintiff to use the tenth, negative judgment as collateral estoppel against the defendant may seem unjust. See the leading Supreme Court case *Parklane Hosiery Co, Inc. v. Shore*.

Mutuality

[edit]

Traditionally, collateral estoppel applied only where there was mutuality

of parties, meaning that both the party seeking to employ collateral estoppel and the party against which collateral estoppel is sought were parties to the prior action.

Most courts have now abandoned mutuality as a requirement for collateral estoppel in most circumstances. The modern trend is clearly in favor of abandoning the mutuality requirement. A 1942 case^[3] caused mutuality to cease being a necessary factor in US applications of CE. *Bernhard* claimed that certain assets held by the executor of a decedent's estate were part of that estate, while the executor claimed they had been gifted to him by the decedent. In a court action it was decided that the assets were gifts to the executor and not assets in escrow, upon which *Bernhard* sued the bank that had been holding the assets and who had disbursed them to the executor, alleging again that the assets were property of the estate and should have been handled as estate matter. The bank successfully used CE as defense, arguing that *Bernhard* had already adjudicated the right to those funds and had lost. The court concluded that it was proper for a new party to take advantage of findings in a previous suit to bar action by a party of that suit. Since *Bernhard* had a full and fair opportunity to litigate the issue in her first suit, the court did not allow her to retry the same issue by merely switching defendants. The precedent of *Bernhard* holds that CE may be used as defense against any party who has fully and fairly litigated an issue in a previous action.^[4]

In the absence of mutuality, courts are more hesitant to apply collateral estoppel in an offensive setting than in a defensive one. In other words, courts are more hesitant to apply collateral estoppel to a defendant from a previous action if the defendant is sued by a new plaintiff for the same issue.

Strategy

[edit]

Collateral estoppel may be used either defensively or offensively; mutually or non-mutually:

- **Defensive Mutual Collateral Estoppel**
 - Used against the plaintiff from the first suit regarding issue(s) that were previously litigated against the defendant from the first suit.
- **Defensive Non-Mutual Collateral Estoppel**
 - Used by a new defendant in a subsequent suit who wants to assert a final judgment on an issue(s) against the plaintiff from the first suit
- **Offensive Mutual Collateral Estoppel**
 - Used against the defendant from the first suit by the plaintiff (from the first suit) in a subsequent suit thereby preventing relitigation on an issue already decided
- **Offensive Non-Mutual Collateral Estoppel**

Used by a new plaintiff in a subsequent suit who wants to assert a final judgment on an issue(s) against the defendant from the first suit

- Court employs 5 "Fairness Factors" from *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322 (1979), to determine validity of the ONMCE:

1. Could the party trying to assert Collateral Estoppel have intervened in the earlier suit?
2. Did defendant have incentive to litigate the first action?
3. Are there multiple, prior inconsistent judgments?
4. Did the party who is attempting to assert ONMCE sit out and wait during earlier suits?
5. Are there any procedural opportunities available to defendant in the second suit that were not available in the first suit?

CE may be avoided as a defense if the claimant did not have a full and fair opportunity to litigate the issue decided by a state court, which means he may file suit in federal court to challenge the adequacy of state procedures. Note that in this case the plaintiff's suit would be v. the state, not v. the other party in the prior suit.^[5]

In the U.S., the doctrine of offensive non-mutual collateral estoppel does not extend to the U.S. government; it is limited to private litigants.^[6]

Rationale

[edit]

Collateral estoppel is an efficiency rule that is meant to save judicial resources by avoiding the relitigation of issues of fact that have already been actually litigated. The rule is also intended to protect defendants from the inequity of having to defend the same issue repeatedly.

But note that the use of offensive non-mutual collateral estoppel may work *against* the goal of judicial economy. The offensive use encourages potential plaintiffs to sit and "test the waters" to see the strength of the defendant's case. If the defendant's case is weak, there is great incentive for new parties to sue and claim that the defendant is estopped based on the prior adverse ruling.

Related concepts

[edit]

Collateral estoppel is closely related to the concept of claim preclusion, which prevents parties relitigating the same cause of action after it has been decided by a judge or jury. *Res judicata* (literally - that which has been decided) can be used as the term for both concepts, or purely as a synonym for claim preclusion. Under the doctrine of *res judicata*, a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action. Under the doctrine of collateral estoppel, on the other hand, the second action is upon a different cause of action and the judgment in the prior suit

precludes relitigation of issues actually litigated and necessary to the outcome of the first action.

Res judicata may be used as a defense in a second suit which involves the same claim as a prior suit, and is conclusive on all matters which were litigated as well as all matters which could have been litigated in the prior suit. In *collateral estoppel* the judgment is conclusive only regarding the issues which were actually litigated. In order for CE to apply, four factors must be met:

- The issues in the second suit are the same as in the first suit;
- The issues in the first suit must have been actually litigated;
- The issues in the first suit must have been actually decided;
- The issues must have been necessary to the court's judgment.

See also direct estoppel.

Criminal law

[edit]

Although it emerged out of civil law, in the United States it has applied to federal criminal law since *United States v. Oppenheimer* in 1916. In 1970 in *Ashe v. Swenson*, the United States Supreme Court applied it to double jeopardy to limit prosecution for crimes committed at the same time.

References

[edit]

1. ^ *San Remo Hotel v. San Francisco*, 545 U.S. 323 (2005), fn. 16.
2. ^ *Federated Dept. Stores v. Moitie*, 452 U.S. 394 (1981)
3. ^ *Bernhard v. Bank of America* 19 Cal.2d 807, 122 P.2d 892 (1942)
4. ^ <http://www.west.net/~smith/resjud.htm>
5. ^ <http://www.lectlaw.com/def2/q036.htm>
6. ^ *United States v. Mendoza* 464 U.S. 154 (1984)

External links

[edit]

- *United States v. Oppenheimer* , 242 U.S. 85 (1916)
- *Ashe v. Swenson* , 397 U.S. 436 (1970)

Categories: Civil procedure | Common law | Legal terms



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On Apr 5, 2010, at 9:15 AM, Rick Abboud wrote:

Mr. Griswold,

Just wanted to let you know that the Clerk has issued a notice of appeal regarding my enforcement order, no date for a hearing has been set yet.

Regards,

Rick Abboud

City Planner

City of Homer

491 E. Pioneer Ave.

Homer, AK 99603-7624

(907)235-3106

To the Homer Advisory Planning Commission:

June 23, 2010

I want to thank the Commissioners for the opportunity to clarify, in a public forum, the proper description of the Refuge Room. As a member of the RR board of directors and an unpaid volunteer like all of you, my primary concerns are compliance with the City Code and the RR's impact on quality of life in the community. Our board has always acted and will continue to act in good faith with the City.

We have appealed Mr. Abboud's enforcement order of March 10, 2010 because we believe his order has preempted the Board of Adjustment Statement of Findings of January 14, 2010, item 2, which states: **"It is still up to the Commission to determine whether the Refuge Room constitutes a Homeless shelter or something else."** We are here tonight to openly and publicly provide whatever information about the R. R. the Commission requires and **we ask the Commission for abatement of Mr. Abboud's enforcement order until the Commission determines the RR's status.**

While beyond the scope of this hearing, it is clear that the Refuge Room is of established benefit to the community. We provide emergency, short term, low cost housing for men; something not provided elsewhere in the community. Previous testimony from law enforcement, mental health workers and emergency food providers is already on file supporting the work of the R.R. It is also worth pointing out that concerns that the activities of R. R. guests might threaten the community have proved unfounded.

You have the authority and the responsibility to decide what the RR is; a Rooming house, a shelter for the homeless or something else. The Refuge Room has never operated like a homeless shelter; according to the City Code there are three differences:

1. Guests pay to stay at the RR. A homeless shelter is free.
2. We screen our guests, so the RR is not open to everyone. A homeless shelter must accept all comers.
3. Guests at the RR are not provided with on-site meals. Most homeless shelters furnish meals.

Finally, the Refuge Room meets the City Code definition of a Rooming House "...a dwelling containing not more than five guest rooms that are used, rented or hired out to be occupied for sleeping purposes by guests."

I and the other board members are willing and ready to provide whatever additional information or clarification the Commission may require to facilitate its decision. Thank you for your service.

Respectfully,



Doug Dodd

Refuge Room Board Member

June 24, 2010

Appeal of City order for Refuge Room to cease operation.

Thank you for allowing this forum to continue to clarify the operation of the Refuge Room. Thank you for your time.

The Refuge Room has been in operation for seven years. We started the Refuge Room as a bunkhouse (by counsel from the city planner) back then, and we have consistantly run it that way since. The Refuge Room is a viable business and service in the community of Homer.

We never intended to open a Homeless Shelter. We are a church first that offers a service for those who need low cost housing.

We help fishermen, displaced domestics, men that are temporarily out of work, students seeking summer employment and travellers. While the lifestyle homeless are filtered out by the nightly fee and strict no drug/alcohol policy.

We have an on staff employee that meets each client personally to help them on their way to success.

The Refuge Room operates on donations and rent. We do not receive operating grants, at this time

The facility is open for people to checkout what we do. We are like you (planning commisioners), public servants. We are a volunteer board. Thankyou for serving the community of Homer.

We are open to hear from you and the community with suggestions and advice to better operate.

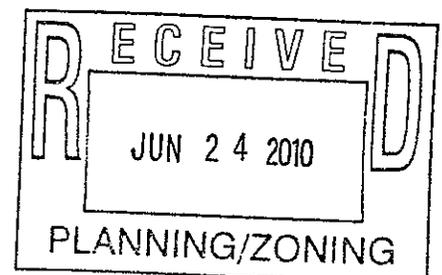
We believe that we are a rooming house. If there is some way that we are functioning that you would not define as a rooming house, we are open to hear how we can change it. We would like to know what we are doing that is not consistent with a rooming house.

We ask the Advisory Planning Commision to address this question and respectfully ask for an abatement of Mr. Abboud's enforcement order pending your determination of the Refuge Room's status.

Again thank you for your time and consideration. I am open to any questions.

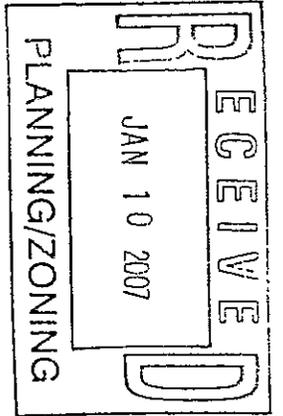
Sincerely,


Darren Williams, Pastor Refuge Chapel

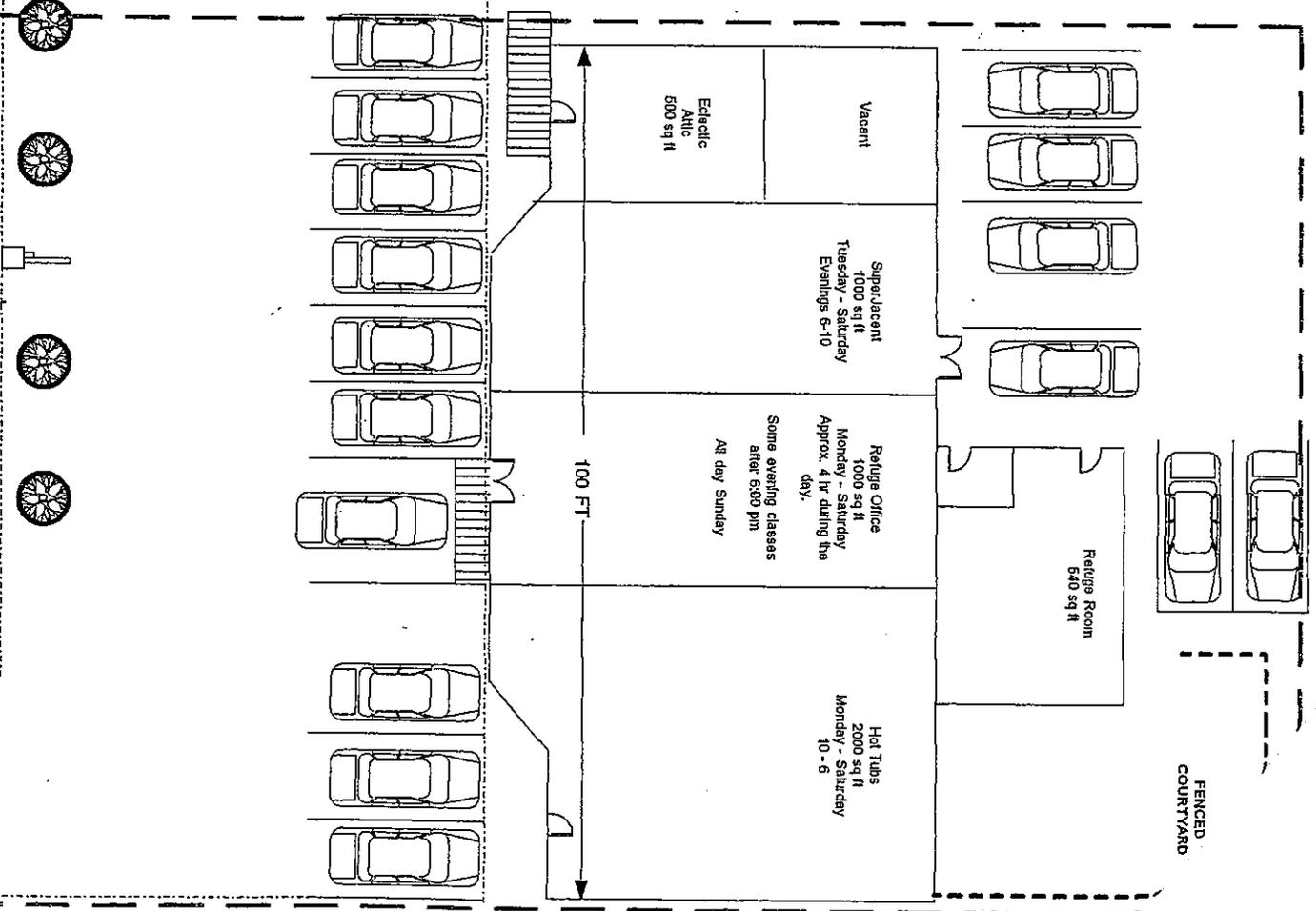
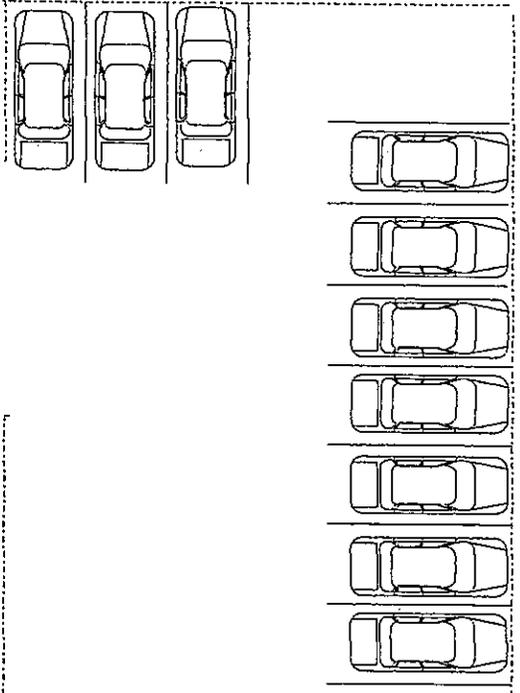
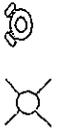
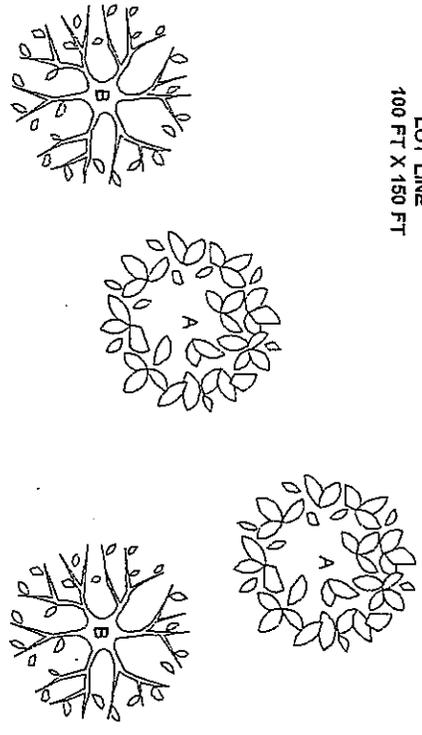


PARKING AND BUILDING PLAN

INCLUDED ARE 14 PARKING POSITIONS AT REMAX FOR SUNDAY SERVICES



LOT LINE
100 FT X 150 FT



286 FT

58 FT

50 FT

C. Planning Director's Report

City Planner McKibben reminded the Commission that there is a worksession with the City Council on Monday, February 26 from 5:30 to 7:00 to discuss the Land Allocation Plan. The plan has been reformatted to make it more useable. She suggested they may want to mention a location for itinerant merchants on the spit.

Ms. McKibben also commented regarding the upcoming Planning Commissioner Training that is scheduled on March 2nd. She believes all the Commissioners will be attending. It is a one day training provided by the Alaska Chapter of the American Planning Association.

PUBLIC HEARINGS

The Commission conducts Public Hearings by hearing a staff report, hearing public testimony and then acting on the Public Hearing items. (3 minute time limit) The Commission may question the public. Once the public hearing is closed the Commission cannot hear additional comments on the topic.

- A. Staff Report PL 07-10, CUP 07-03, The Refuge Chapel, 397 East Pioneer Avenue Staff Report PL 07-13 (S), CUP 07-03, The Refuge Chapel, 397 East Pioneer Avenue, to address parking

City Planner McKibben noted that there are two laydown items from Frank Griswold regarding the CUP 07-03. City Planner McKibben briefly summarized the Staff Report. She noted that one of the findings that the Commission has been asked to make is regarding the applicant's request to be considered as "Other uses similar to and not more objectionable than permitted uses in this district as determined by the Commission." There are findings that support this application and fourteen conditions suggested. She suggested an amendment to condition two which says "An as-built survey is required prior to construction of additions, structures or fences, to verify that improvement(s) do not cross property lines or encroach on rights-of-way" would be amended it to say "An asbuilt survey will be required within 6 months after approval of the CUP". She noted a supplemental staff report in the packet. The supplemental staff report is a result of re-evaluating the site after the January public hearing. She said they did not amend their recommendation for four parking spaces for the refuge. There is a new chart included in the packet. There are 30 spaces available, 24 for the church and there are 30 spaces on site. There is an additional recommendation of another condition that the parking and building plan dated February 12, 2007 be recorded on all three lots, per HCC 7.12.060 (d) and the applicant is responsible for the recording fees.

Commissioner Foster was determined to have a conflict of interest at the previous public hearing and left the table.

Doug Dodd, City Resident, advised the Commission that he is on the Board of Directors at the Refuge and he and his family live about a block and a half from the refuge on Bonanza. He stated that he is happy to answer any questions. He commented that he did see the information that was provided today on NIMBYism and said the refuge is in his back yard. He has a minor son and a wife and he feels safe because he has gotten to know the residents that live in the Refuge. He expressed his appreciation for the time the Commission has spent on this.

Darren Williams, Pastor of the Refuge Chapel, said he was also available to answer questions.

Frank Griswold, City Resident, commented that the use at issue is not a men's dormitory shelter. Staff previously determined the Refuge Room constituted a men's homeless shelter and that determination was not appealed. The use more closely fits Wikipedia's¹ description of a flop house which is not allowed in any of Homer's zoning districts. No homeless shelter should be allowed within or adjacent to any residential neighborhood. The dormitory use would be allowable in GC1 and GC2 so you cannot consider it as a similar use in the CBD. The structure at 397 E. Pioneer Avenue has never been formally accepted as a non conforming use and neither the Planning Staff nor this Commission has the authority to make this determination without a separate public hearing. The fact that the 104 foot wide roof is wider than the 102.2 foot lot suggests that it is an illegal use, not a non conforming use. Even if it were a non conforming structure, the non conforming use can only be expanded within the limits of current code. Note that when building permit 86-29 was issued for remodeling in 1986 a five foot setback from other boundaries was required in addition to the 20 foot setback from right-of-way. Zoning permit 0506-032 issued on May 12, 2006 is invalid since the Refuge Room addition violates current lot density requirements and includes no storm water plan. The site plan is incomplete, no affidavit of facts by applicant was included and the permit was not issued by the City Planner as required by code. Instead of a buffer along Pioneer Avenue, the latest parking plan shows four additional parking spaces. HCC 21.61.020(e) provides that consideration may be given to scale, bulk, coverage, density and harmful effects upon the neighborhood. Any zoning permit for a men's homeless shelter by CUP must require compliance with applicable provisions of the Community Design Manual, including parking, landscaping, fencing and building design regardless of whether the use is visible from Pioneer Avenue. Proposed parking is inadequate.

At the last public hearing three refuge room residents stated they have vehicles. It is unclear exactly how many clients will be allowed in this ten bed facility, but the two on duty staff members and two trainees will require four parking spaces all by themselves. There is a big difference between a men's dormitory and a rest home. Most clients of a rest home no longer drive. Applying the parking requirements of a rest home to this use is improper. Parking next to entrances and in the Pioneer Avenue buffer zone should not be allowed. The dumpster space cannot be designated parking space. HCC 7.12.030(j) mandates that parking must be screened from view of adjoining residential properties. If either of the two adjacent lots to the property are sold or further developed, the CUP should automatically be void; otherwise there could be three refuge rooms and all with insufficient parking. Elimination of lot lines should be a condition of the CUP. Fire Marshall approval for a men's shelter has not been granted, he made a records request for the information, received none, and was informed that there are currently infractions under investigations, which is why he was not given documentation. Lastly, the Fireweed Shelter was an illegal use, no CUP was ever granted and there were problems associated with the facility. The Haven house caters to a totally different clientele than the Refuge Room. It is irrelevant that no evidence of adverse effects of the Glory Hole shelter or the Kodiak Brother Francis Shelter has been presented. These two facilities do participate in the Homeless Shelter network and are not flop houses. Evidence of adverse effects of other facilities has been provided.

¹ Clerk's Note: per: <http://en.wikipedia.org/wiki/Wikipedia:Introduction> Wikipedia is an encyclopedia collaboratively written by many of its readers. It is a special type of website, called a wiki, that makes collaboration easy. Many people are constantly improving Wikipedia, making thousands of changes an hour, all of which are recorded on article histories and recent changes.

Karen Devaney, City Resident on Klondike Avenue, stated that she does have concerns about the request. She was told at the open house that the Refuge won't do back ground checks as they cannot afford to. She expressed concern with this especially in light of the teen center that is going to be occupied in the same building. The Refuge said that they do check registries but she doesn't know if that means that no one will be allowed to stay if they have a criminal back ground once the teen center is open. She appreciates their stance on zero tolerance for drug and alcohol use but it does make her uncomfortable to know that someone not in full control of their actions and probably angry can be turned out in the middle of the night with no place to go, several doors down from her house. She does have three minors and under these circumstances if the teen center does open, she doesn't think she would allow them to go. She commented one of the issues of the old teen center was trying to figure out how to keep the kids from sneaking out back to drink or smoke. She sees no reason why that will change with this facility and there is no way they can guarantee that the two clientele won't be mixing. Mrs. Devaney said that the Refuge did state that the inside doors would be unlocked and the kids would be invited downstairs for concerts, which will put them in direct proximity to the bunk house and the transient population that is there. For those reasons they are requesting that this CUP be denied.

Chase Dunkley, overseer for the bunk house, stated that he is the person that the so-called homeless people will have to deal with when they come there. He stated he will not put up with alcohol on the property and will be the first one to call the police because of the fact that there are children in the area. He wants to protect the children, just as the parents do. He works very hard with Pastor Williams, Mr. Dodd and the rest of the Board to try to keep it safe for the children and the other people who stay there. At the moment there are seven people there and they all have jobs, they are either gone or they are there to help keep the place clean. With the Fire Marshall stating what needs to be done, all of them have jumped in together and built the deck that was asked for, fixed the light bulbs and other fixtures that were asked for. They worked together to make it safe for the kids, the coffee shop that is being put in and for the people who go to church there. He said he would be happy to answer any questions.

Pastor Williams commented that they do have a Fire Marshall certificate that has been filed with the City and it did include the men's dormitory. He said they did get a visit by the Fire Marshall a few weeks ago and received a letter stating they are in compliance, they are changing the things that were requested by the Fire Marshall, but the Fire Marshall did not pull their certificate. The blue prints they gave the Fire Marshall a year ago included the Refuge Room and it was approved. Regarding the teen center, they have requested neighborhood participation to help keep the area safe and sound. There is a family directly behind the chapel that has said they will organize people in the neighborhood to help police to make sure the kids aren't going in the woods to smoke, drink or whatever. There are two people on staff when the teen center is open on the Pioneer Avenue side. When there are concerts, they will organize with the neighbors below to help police the facility. There will also always be two people on staff at the Refuge Room to ensure there is no mixing of the facility.

There being no further testimony, Chair Kranich closed the public hearing.

MINSCH/SCHEER I WOULD LIKE TO MAKE A MOTION TO ADOPT STAFF REPORT PL 07-10 CUP 07-03 STAFF REPORT WITH RECOMMENDATIONS AND INCLUDE 07-13(S) CUP 07-03.

STAFF RECOMMENDATIONS:

Staff recommends that the Planning Commission approve the applicant's request for a Conditional Use Permit with on the following conditions:

- *If parking is expanded on the south lot which fronts Klondike Street, side lot line screening by wall, fence or planting will be required per HCC 7.12.030(j).*
- *An as-built survey is required prior to construction of additions, structures or fences, to verify that improvement(s) do not cross property lines or encroach on rights-of-way.*
- *A landscaped buffer will be planted in spring of 2007 consisting of two, 3' x 8' raised planter boxes located between the Pioneer Avenue sidewalk and the parking lot, and between the two curb cuts on Pioneer Avenue, near the existing cluster business sign.*
- *The minimum 3' buffer between the east parking area and Homer Travel will be maintained.*
- *If applicant sells the southern or eastern lot, the parking requirements to be reevaluated and approved by the Planning and Zoning Office.*
- *The CUP will be reviewed by the HAPC 2 years from the date of decision.*
- *Newly installed lighting related to The Refuge Room will comply with Homer City Code and the CDM. Any existing lighting that is replaced will comply with Homer City Code and the CDM.*
- *The shelter will be staffed 24 hours, 7 days a week.*
- *No more than 10 residents will be served at any time.*
- *If an individual is denied a bed because of the zero tolerance policy on drugs and alcohol the shelter will immediately contact the Homer Police Department.*
- *The project meets all other applicable local, state and federal requirements.*
- *By September 1, 2007 all taxi pick-up and drop-offs to be on the Pioneer Avenue side of the building.*
- *Signage is limited to 6 sq. ft. on the south side of the building which abuts the residential use area.*
- *Change of use permits will be submitted as needed to facilitate review of the parking requirements.*

City Planner McKibben suggested the Commission make the determination of what the use is and then work through the findings and conditions.

The Commission discussed the definition of the use for the facility they reviewed definitions in the code. Comments included:

- After reviewing all of the definitions, what is being operated does fall under the definition of "Shelter for the Homeless", unless something can be found that would fall in this less objectionable class.
- Amend the finding that states "The Refuge Room is similar to, ~~but less objectionable than~~ HCC 21.48.030 (j) Shelter for the homeless".
- Shelter for the Homeless means a building primarily used to provide onsite meals, shelter and secondary personal services such as showers and haircuts to the homeless and the needy on a non permanent basis for no or nominal compensation.
- The application states the facility will continue to be used as a very low cost dormitory style housing for men. There is no definition in HCC of a dormitory, but a dictionary defines it as "A large room in which many persons sleep."
- Although the Refuge Room is not providing meals they are providing the secondary service of showers.

- The Refuge Room is charging an amount that would be considered nominal in today's market.

SCHEER/MINSCH I WOULD LIKE TO MAKE A MOTION TO MODIFY THE WORDING FOR THE FIRST FINDING ON PAGE 16 TO READ "THE REFUGE ROOM IS SIMILAR TO AND NOT MORE OBJECTIONABLE THAN HCC 21.48.030(J) SHELTER FOR THE HOMELESS AS DEFINED IN 21.32.451.

There was no discussion.

VOTE (Primary amendment): YES: SCHEER, MINSCH, ZAK, KRANICH, HESS

Motion carried.

It was questioned whether the action satisfied the need for determining the use. Comment was made that the use would be "Other use that is similar"; these uses are similar but not more objectionable. It does have some, but not all of the criteria for the shelter for the homeless, so there could be allowance made through conditional use.

Chair Kranich stated that on page 22 there is a finding that they would like a non conforming status granted and proposed wording for an amendment.

MINSCH/HESS I WOULD LIKE TO MAKE A MOTION TO REPLACE THE STAFF FINDING THAT THE APPLICANT APPLIES FOR NON CONFORMING STATUS AFTER COMPLETION OF THE ASBUILT.

There was no discussion.

VOTE(Primary amendment): YES: SCHEER, MINSCH, HESS, KRANICH, ZAK

Motion carried.

There was discussion regarding an amendment to staff recommendation 2.

MINSCH/ZAK I WOULD LIKE TO MAKE A MOTION TO AMEND CONDITION TWO TO STATE THAT AN ASBUILT SURVEY IS REQUIRED WITHIN SIX MONTHS OF ISSUANCE OF THE CUP.

There was discussion whether or not to add the additional wording in the recommendation.

HESS/MINSCH I WOULD LIKE MAKE A MOTION TO AMEND THE AMENDMENT TO NUMBER TWO TO INCLUDE "THAT WILL INCLUDE VERIFICATION THAT THE IMPROVEMENT DOES NOT CROSS PROPERTY LINES OR ENCROACH ON RIGHT-OF-WAYS.

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City Planner McKibben stated that the original condition was requiring an asbuilt prior to any new construction taking place. She said it seems prudent to have an asbuilt now to verify what exists on the site.

VOTE (Secondary amendment): YES: HESS, SCHEER,
NO: ZAK, MINSCH, KRANICH

Motion failed for lack of majority.

There was discussion regarding a condition for non conforming use.

VOTE (Primary amendment): YES: MINSCH, ZAK, KRANICH, HESS, SCHEER

Motion carried.

SCHEER/MINSCH I WOULD LIKE TO MOVE TO ADD THE CONDITION NUMBER 15 READING THAT A DECISION ON NON CONFORMING STATUS SHALL BE REQUESTED WITHIN ONE YEAR.

Chair Kranich noted that there is a finding that the applicant should apply for non conforming after an asbuilt is done.

VOTE (Primary amendment): YES: KRANICH, ZAK, SCHEER, HESS, MINSCH

Motion carried.

Chair Kranich suggested a motion that would state that the guest bed area will only be placed in the 540 square foot Refuge Room addition.

MINSCH/ZAK MOVED TO ADD A CONDITION NUMBER 16 THAT WOULD REQUIRE THAT ALL TEN BEDS IN THE REFUGE ROOM BE INCLUDED IN 540 SQUARE FOOT REFUGE ADDITION AS IDENTIFIED.

The Commission discussed the lay out for the resident beds, staff beds and trainee beds. This action would help ensure that the guest beds will not migrate to other areas of the building.

HESS/MINSCH I WOULD LIKE TO MAKE A MOTION THAT AN AMENDMENT TO THE MOTION ON STAFF RECOMMENDATION 16 TO ADD LANGUAGE SAYING THE GUEST BEDS BE ONLY LOCATED WITHIN THE 540 SQUARE FOOT REFUGE ROOM ADDITION THAT WOULD INCLUDE THE CLIENT AND STAFF BEDS.

Commissioner Scheer questioned if this action is within the Commission's purview, noting that layout of the building would be an issue for the Fire Marshall. City Planner McKibben commented that the intent is to keep the Refuge Room in the designated area rather than having it take over the rest of the building. It is questionable if it is as effective as limiting the total number of residents that can live in the facility.

Discussion continued.

VOTE (Secondary amendment): NO: SCHEER, MINSCH, ZAK, KRANICH, HESS

Motion failed.

There was no further discussion on the primary amendment.

VOTE: (Primary amendment): NO: MINSCH, SCHEER, ZAK, KRANICH, HESS

Motion failed.

Discussion continued regarding the wording of a motion that would ensure the beds for the residents and staff is confined to the area allotted for the Refuge Room. Discussion points included:

- It may be determined that there will be better ways to organize the building and it wouldn't be fair to pigeon hole them to one location.
- It was noted that if they change the floor plan in the future it could put the residents closer to the teen center.
- A separation distance between the teen center and Refuge Room could be required.
- The CUP is for the use that is occurring in a portion of a building. It is appropriate to limit a use to a portion of a building so that it will not expand, or limit the number of residents.

HESS/MINSCH I WOULD LIKE TO MAKE A MOTION TO ADD CONDITION 16 THAT READS "CLIENT AND STAFF BEDS WILL BE LIMITED TO THE AREA WITHIN THE 540 SQUARE FOOT REFUGE ROOM ADDITION.

There was comment restating concern for locking them into one location. Discussion resumed on previous comments. City Planner McKibben noted that a condition is that the CUP comes back before the Commission for review two years after the final decision. That would be an opportunity for the applicant to make changes. It was noted that the applicant could bring changes to staff prior to the two years.

VOTE: (Primary amendment): YES: MINSCH, KRANICH
NO: SCHEER, HESS, ZAK

Motion failed for lack of a majority.

ZAK/MINSCH I WOULD LIKE TO MAKE A MOTION THAT A TEEN CENTER NOT BE OPERATED AT THE SHELTER.

Commissioner Zak stated that he is supportive of the shelter, but does not support the two together.

City Planner McKibben clarified that Commissioner Zak's intention is that the uses not be operated in the same building. Mr. Zak responded no, not at all with this conditional use. Ms. McKibben

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asked again, not in the same building. Mr. Zak said not anywhere. The question was posed, "Not on the property?" Mr. Zak responded "Right."

Concern was expressed that the Commission could not deny the teen center under this action. Commissioner Zak referenced HCC 21.61.020 to support his motion.

Commissioner Hess expressed his agreement that the Commission would have standing to recommend that the Teen Center no be allowed. He said there are probably other scenarios where two uses in the same building would not be compatible and disallowing both uses in the building may be inappropriate even though both uses are allowed in the CBD. They aren't saying the CBD shouldn't have a Teen Center, they are saying it wouldn't be appropriate to have it in the same building.

Discussion ensued and comments included:

- The Teen Center could be looked at as a conditional use after the Refuge Room has been in operation for a while.
- The Refuge Room is not licensed through the State. If it were, there would state and federal restrictions placed on the facility.
- There could be issue with concerts at the teen center in proximity of residential area.
- CBD allows for entertainment establishments such as theaters and auditoriums; art, dance, music and radio studios that are permitted uses. Also included are churches, and there is music and singing in the churches.
- This action does not say it would be inappropriate to have a Teen Center in the CBD, just at this particular location. It would not be appropriate to have both uses in the same building.
- If adopted this will be Condition 16.

VOTE (Primary amendment): YES: MINSCH, ZAK, KRANICH, HESS
NO: SCHEER

Motion carried.

Chair Kranich called for a brief recess at 8:52 pm. The meeting resumed at 9:02 pm.

ZAK/MINSCH I MOVE WE ADOPT A FINDING BASED ON INFORMATION PROVIDED BY THE APPLICATION AND TESTIMONY DURING THE PUBLIC HEARING THAT THE PROPOSED TEEN CENTER IN THE SAME BUILDING AS THE REFUGE ROOM IS NOT COMPATIBLE.

City Planner McKibben commented that the code citation HCC 21.61.020 shouldn't be included doesn't support the condition just the right to make a condition.

VOTE (Primary amendment): YES: ZAK, HESS, MINSCH, KRANICH
NO: SCHEER

Motion carried.²

Chair Kranich recommended a motion to address the issue of the CUP being reviewed in the event that the ownership of the property changes.

HESS/MINSCH I MOVE THAT WE ADD CONDITION 17 THAT IF OWNERSHIP CHANGES THE CONDITIONAL USE PERMIT WILL BE REVIEWED.

There was no further discussion on the motion.

VOTE (Primary amendment): YES: KRANICH, ZAK, SCHEER, HESS, MINSCH

Motion carried.

Chair Kranich raised the issue of an amendment regarding the parking determination on page 96 of the packet would be utilized rather than the one in the original staff report. The change refers to the table for parking lots on site. There was consensus of the Commission to implement the change to the parking layout.

City Planner McKibben suggested that if the Commission wants to keep the recommendation to record the building and parking plan then they should make it a condition.

HESS/SCHEER I WOULD LIKE TO MAKE A MOTION THAT WE ADD CONDITION 18 THAT THE PARKING AND BUILDING PLAN DATED FEBRUARY 12, 2007 MUST BE RECORDED ON ALL THREE LOTS.

There was brief discussion regarding recording a parking plan.

SCHEER/MINSCH MOVED TO AMEND CONDITION TO READ PARKING AND BUILDING PLAN DATED FEBRUARY 12, 2007 MUST BE RECORDED ON ALL THREE LOTS PER HCC 7.12.060 (B) AND 7.12.080.

There was no discussion.

VOTE (Secondary amendment): NON OBJECTION, UNANIMOUS CONSENT.

Motion carried.

There was no further discussion on the primary amendment.

VOTE (Primary amendment): YES: MINSCH, SCHEER, ZAK, KRANICH, HESS

Motion carried.

² Commissioner Zak commented during minute's approval at the March 7 regular meeting that his intent of this action was that a Teen Center not be allowed on any of the lots with the conditional use of the Refuge Shelter being allowed.

Chair Kranich commented regarding removing condition 12. He suggested it may be better not to restrict taxi pick up at the Pioneer Avenue entrance, it would be acceptable to have the residents picked up and dropped off at the Refuge Room entrance.

ZAK/HESS I WOULD LIKE TO MAKE A MOTION THAT WE REMOVE CONDITION 12 AND RENUMBER SUBSEQUENT CONDITIONS.

There was brief discussion on the reasoning behind staff's recommendation. Ms. McKibben commented it was in an effort to reduce impacts to neighboring residences and said both sides could be easily argued. Further comment was made as to whether it is a reasonable requirement since is in the business district.

VOTE (Primary amendment): YES: SCHEER, MINSCH, HESS, KRANICH, ZAK

Motion carried.

MINSCH/SCHEER I WOULD LIKE TO MAKE A MOTION REGARDING NUMBER SIX THAT CUP WILL BE REVIEWED BY THE COMMISSION ONE YEAR FROM THE DATE OF DECISION.

Commissioner Minsch commented that the year will give the applicant time to get all their conditions met and up and running. It would give time to see what any problems may be and see if they can give any help in resolving them. It also lets the public know there is a reckoning coming sooner than later.

Commissioner Scheer added that the year may show that they are a benefit to the community and could possibly look at the Teen Center again.

VOTE (Primary amendment): MINSCH, ZAK, KRANICH, HESS, SCHEER

Motion carried.

Further comments were made clarifying actions that had been taken.

VOTE (Main motion as amended): YES: MINSCH, SCHEER, ZAK, KRANICH, HESS

Motion carried.

Commissioner Foster returned to the table.

PLAT CONSIDERATION

The Commission hears a report from staff, testimony from applicants and the public. The Commission may ask questions of staff, applicants and the public. The Commission will accept testimony or a presentation on agenda items that involve an applicant.

A. Staff Report PL 07-02 Country Club Estates Plat Waiver of Tract 2-1

CITY OF HOMER

2010 PUBLIC SIGN IN SHEET

Planning Commission Special Meeting June 24, 2010 ** Check one of the following:

PRINT YOUR NAME!!! ADDRESS CITY RESIDENT NON RESIDENT

example:

1.	JAMES HORNADAY 491 E. PIONEER AVENUE	<input type="checkbox"/> ✓	<input type="checkbox"/>
2.	Darren Williams	<input type="checkbox"/>	<input type="checkbox"/>
3.	Doug Dodd	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4.	Ricky Alkoud	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5.	John Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6.	Jim Grew	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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