

Session 10-33 a Special Meeting of the Homer City Council was called to order on December 8, 2010 at 5:30 p.m. by Mayor James C. Hornaday at the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska, and opened with the Pledge of Allegiance.

PRESENT: COUNCILMEMBERS: HOWARD, LEWIS, ROBERTS,
WYTHE, ZAK

ABSENT: HOGAN

STAFF: ATTORNEY JOE LEVESQUE
CITY CLERK JOHNSON

Councilmember Hogan was not present. A request for an excused absence was not made and Mayor Hornaday did not address an excused/unexcused absence.

AGENDA APPROVAL (Only those matters on the noticed agenda may be considered, pursuant to City Council's Operating Manual, pg. 5)

The agenda was approved by consensus of the Council.

Councilmember Zak disclosed he was on the Planning Commission the first time the Refuge Chapel came before the commission. It has been discussed in the past and he does not think he has a conflict.

Attorney Levesque advised Homer City Code speaks of conflicts of interest being a substantial financial interest. Councilmember Zak doesn't think he has a conflict. He is not predisposed as to what will happen, and has not been involved in this decision for the Planning Commission.

Asked by Mayor Hornaday if Mr. Zak's past experience will make any difference in his decision tonight, Mr. Zak answered it would not.

Mayor Hornaday ruled Councilmember Zak does not have a conflict. There was no objection from the Council.

Councilmember Howard disclosed her business (Curves) is located across the street from Refuge Chapel. Transactions between Joyce Williams, wife of Darren Williams, and herself in the past year have totaled \$587.02.

Asked by Mayor Hornaday if Joyce Williams holds any position in this, Councilmember Howard replied she did not know and only disclosed her side.

Attorney Levesque advised Councilmember Howard raised a substantial financial interest. Per HCC 1.18.045 a councilmember will have a conflict of interest if the amount of money is over \$1,000 in one transaction, or \$5,000 in a 12-month period.

Asked by Mayor Hornaday if Mrs. Howard's situation will make any difference in her decision tonight, Mrs. Howard answered it would not.

Mayor Hornaday ruled Councilmember Howard does not have a conflict. There was no objection from the Council.

PUBLIC COMMENTS UPON MATTERS ALREADY ON THE AGENDA

John Williams, Administrative Member of the Refuge Chapel, is interested in seeing the Refuge Chapel continue to do business. Helping men out in the manner they are is not considered a homeless shelter. They have no facilities to take care of homeless people. Men come in that drink and understand right away there is no drinking on the premises, nor are they allowed to be there in an inebriated state. The Refuge Chapel is doing good things for men that need to get on their feet. Mr. Williams hopes Council understands they have a good reputation and are in good control of the situation. They would like to operate under what Council thinks they can. The Planning Commission determined they are a homeless shelter, but it is not what they really do. The Refuge Chapel is pleasing to the city and the people around.

NEW BUSINESS

- A. BOARD OF ADJUSTMENT APPEAL HEARING - Appeal of Homer Advisory Planning Commission Decision on Appeal re: March 10, 2010 Refuge Chapel / Refuge Room Enforcement Order.

Mayor Hornaday relayed this is an appeal of an enforcement order dated March 10, 2010 by Darren Williams of Refuge Chapel. A written brief was received from the Refuge Chapel. All parties have standing pursuant to Homer City Code Sec. 21.93.060.

Mr. Darren Williams, Refuge Chapel, and Rick Abboud, City Planner, were present.

PRELIMINARY ISSUES

Mayor Hornaday remembers being at Lands End when Mr. Williams came up to him and asked if he could discuss the Refuge Chapel. Mayor Hornaday declined, knowing if he had to make a decision he could not discuss it with Mr. Williams. They did not discuss it any further. It would not make any difference in his opinion tonight.

Mayor Pro Tempore Wythe ruled Mayor Hornaday was not disqualified. There was no objection from the Council.

ORAL ARGUMENTS

Mayor Hornaday instructed his recommendation was that the Board hear oral arguments and grant each side a total 30 minutes, if they need it. There was no objection from the Board. New evidence will not be presented to the Board. The case must be based on the evidence in the record from the Planning Commission.

Mr. Darren Williams stated Doug Dodd filed the brief and is to be part of the 30 minutes. Doug Dodd joined Mr. Williams at the table.

Attorney Levesque advised there is a provision that others may participate pursuant to HCC 21.93.090. There has to be written authorization or notice of appearance. There has been no authorization in writing. Mr. Dodd is on the Board of Directors.

Mayor Hornaday ruled Mr. Dodd may be allowed to participate as long as it was in the 30 minutes. There was no objection from the Council.

Darren Williams referenced the history of the bunkhouse. They started in January, 2003 and are coming up on their 8th year of operating. They operated two years at the location at 1562 Homer Spit Rd. as a bunk house; they never intended to operate a homeless shelter. The ministry of Refuge Chapel is operated as a church. They wanted to house people that needed a place to stay. Twelve years ago they started as a church in the white house next to Don Jose. There they had an open door policy and would find twenty people asleep on the floor. At the Spit location they carried on the tradition by operating the same way. There were people living in trailers and people on the floors. They were shut down by the Fire Marshal who told them it would be easy to get legal. That is the idea where the Refuge Room began. They always charged for beds, as they had to pay their rent. When they opened the bunk house in 2003 they would charge for beds. Homeless shelters do not charge for rooms. At the Refuge Room when men rent a bed they get to keep it for as long as they pay. They don't consider the people that stay as homeless; they are residents.

The original Conditional Use Permit (CUP) they filed was changed at the last minute as a shelter. Mr. Williams never wanted the Refuge Chapel to be considered a homeless shelter. That definition does not fit what they do. They have honed their ministry where they benefit the community more and more. It is a 10,000 sq. ft. building, with a small percentage of the building used as a bunkhouse. They don't want to be considered a homeless shelter, as that would put them up on national scrutiny by bringing people to Homer. Mr. Williams referenced page 42 of the Record of Appeal, the Planning Commission Decision of Appeal, where the Commission finds the Refuge Room as operating a shelter for the homeless or needy. It defines the homeless shelter. The Refuge Chapel does very little of that.

Mr. Williams read page 39 of the Refuge Chapel appeal. It is not a building used primarily for the homeless. The Refuge Room is a small dwelling attached to a larger structure which is a church. The building size is 11,250 sq. ft. The Refuge Chapel, its youth ministry, and office are 8,000 sq. ft. It leaves 480 sq. ft. for the Refuge Room. The primary use of the building is not the Refuge Room. Mr. Williams stated the Refuge Room does not fit the definition as outlined by the City. The Refuge Room is not a building; it is a small part of a larger building. They do not provide onsite meals and showers, laundry facilities, and kitchen. The men are not homeless or needy because they choose to be guests at the Refuge Chapel. The chief function of the building is the Refuge Chapel. On page 45 of the City's findings, Section 4, Refuge Chapel is used in Refuge Chapel/Refuge Room. The Refuge Chapel is different than the Refuge Room. The Refuge Room is a separate business from the Refuge Chapel. Mr. Williams read the last paragraph of their appeal, stating it was wrong to restrict the church by setting arbitrary

conditions for operation. The Planning Commission by its decision to require a CUP by punitive fines has done just that.

Doug Dodd, Board Member of Refuge Room, stated this meeting comes after years of uncertainty. He hopes it will be the end of that era. On April 9, 2009 the City Planner determined the Refuge Room was a rooming house. On August 5, 2009 the Planning Commission overturned the City Planner's determination. On January 13, 2010 the Board of Adjustment instructed the Planning Commission to determine whether the Refuge Room constitutes a homeless shelter or something else. On March 10, 2010 before the Planning Commission was able to do that, the City Planner issued an enforcement order demanding the Refuge Room either cease operation or apply for a CUP. For that reason they appealed the enforcement order. The Planning Commission held a public hearing and issued a decision on August 18, 2010 that the Refuge Room is a building used primarily to provide onsite meals, shelter and secondary personal services such as showers and haircuts to the homeless and the needy on a nonpermanent basis for no or nominal compensation. The Refuge Chapel's appeal of that decision brings them here tonight.

The Planning Commission decision of August 18th rests on three findings, comparable to a 3-legged stool. If one leg fails the stool is at serious risk, if the second leg fails the stool will collapse.

Finding #1 by the Planning Commission is that the Refuge Room provides secondary services for homeless men. They provide services to residents. The Planning Commission has presented no evidence showing their residents are homeless. Realizing this, the commission states it doesn't matter if residents are homeless, they only need to be needy. Needy is not defined. In the Refuge Chapel brief they note 78% of the Refuge Room operating income is from rent paid by residents. Even if the other 22% of residents are homeless, Pastor Williams has shown the building is primarily used as a church. The first leg of the stool has come unglued.

Finding #2 by the Planning Commission is that the \$10 nightly fee charged is a nominal contribution. The finding is presented without rationale. The brief notes the U.S. Census Bureau set 30% as the maximum amount to spend on housing. The \$300 per month (\$10 daily/30 days) is approximately 30% of the take home pay of a person working full time at minimum wage. It is not trivial or insignificant to that person. The second leg of the stool is nonexistent.

Finding #3 by the Planning Commission finds the Refuge Room is a building, not a dwelling. The commission argument deprived of two of its legs has collapsed. The Refuge Room is a room in a building. The building is primarily used as a church. Over three-fourths of the men pay rent in the amount the U.S. Census Bureau finds appropriate for minimum wage workers. For the men, \$300 a month is clearly not a nominal sum.

Homelessness is a hot issue, not only in Anchorage, but in Homer. If the City of Homer wishes to address this problem in a realistic way it needs to do so openly. The City has encouraged the Refuge Room bunkhouse to solve the community problem by the Homer Police Department sending men to the Refuge. By using its powers of enforcement through the Planning Department, the City has attempted to classify the Refuge as a homeless shelter.

Some of their clients are homeless, most are not. They did not begin as a homeless shelter and do not operate as a homeless shelter. Guests at a homeless shelter check in each day. They spend the night and then check out, with no guarantee of another night. In contrast, Refuge Room residents have their own bed, the same bed, each man has a storage locker and a shared refrigerator. If the Board wants a shelter, make that a policy decision. They ask that they go back to doing what they do – providing safe, secure, low cost, temporary housing for men.

Councilmember Roberts asked about reference to an appeal brief in November, 2010. Mr. Dodd stated the brief was filed by them November 16, 2010.

Councilmember Lewis acknowledged the three quarter of the residents that pay rent. He asked what the other one quarter of the residents do? Mr. Dodd answered social service agencies, such as Share the Spirit and the Food Pantry will subsidize their rent and allow them to stay for a month with the understanding at the end of that time they can get a job or paycheck. Mr. Lewis asked if anyone stays for free? Mr. Dodd answered in an emergency situation they will stay for free. The cops or hospital may have dropped them off. They feel uncomfortable putting someone out in the winter; they will not turn anyone away. Mr. Lewis asked how long they would be allowed to stay for free or if the Refuge would take them down to hook them up with social services. Mr. Dodd answered they will network them with social services the next day. Mr. Williams added there are hotels that will do the same thing. They will get vouchers from other agencies and take in homeless people. The Salvation Army gives vouchers. The Refuge does not turn away people if they feel they will die out in the cold.

City Planner Rick Abboud stated he made the decision regarding the Refuge Chapel status as a rooming house. The decision was backed up by legal counsel. There was an appeal to the Planning Commission with confusion about what the vote meant. Mr. Abboud found that the vote meant that the commission overturned him. Administration made a decision not to appeal the Planning Commission decision. Mr. Abboud commented Mr. Dodd said he asked him to come over and tell them how to be a rooming house. It is impossible for Mr. Abboud to tell him how to be a rooming house when he already said they were a rooming house. According to the Planning Commission decision the Refuge Chapel was not a rooming house. He had no other choice to ask the Refuge Chapel to become whatever they were to the Planning Commission. They made the decision without input from him or his staff. He already had his analysis from the previous action.

Councilmember Zak asked when they applied for a CUP what that was for? Mr. Abboud answered they have not applied for a CUP since he has worked for the City. Councilmember Zak noted the size of the rooms where the men sleep is 464 sq. ft. If an addition is added, would the 464 sq. ft. fall under the limit allowed? City Planner Abboud answered you could put 200 sq. ft. or less on the property, but it is subject to other policies in the code. The physical layout of the building has not been part of the conversation; it has been more of the use.

Darren Williams added the definition the Planning Commission had for the homeless shelter was for temporary housing. Many of the guys stay for months, some have been there six months, and pay \$300 a month. A homeless shelter would be temporary for a one night stay.

Mayor Hornaday stated that concludes the oral arguments. Deliberations of the Board will now commence and continue from time to time as necessary until completed.

Mayor Hornaday called for a motion to adjourn to Executive Session for the purpose of deliberating and deciding this appeal.

WYTHE/LEWIS - SO MOVED.

There was no discussion.

VOTE: YES. ROBERTS, WYTHE, ZAK, HOWARD, LEWIS

Motion carried.

Council adjourned to Executive Session at 6:15 p.m. and reconvened the Special Meeting at 7:00 p.m.

Mayor Pro Tempore Wythe stated they met with the attorney and provided him with direction and he will provide us with a written decision for consideration at a later date.

COMMENTS OF THE AUDIENCE

There were not comments of the audience.

COMMENTS OF THE CITY ATTORNEY

Attorney Klinkner was not present.

COMMENTS OF THE CITY CLERK

City Clerk Johnson had no comment.

COMMENTS OF THE CITY MANAGER

City Manager Wrede was not present.

COMMENTS OF THE MAYOR

Mayor Hornaday had no comment.

COMMENTS OF THE CITY COUNCIL

Councilmembers Howard, Lewis, Roberts, Wythe, and Zak had no comments.

ADJOURNMENT

There being no further business to come before the Council Mayor Hornaday adjourned the meeting at 7:02 p.m. The next Regular Meeting is scheduled for Monday, December 13, 2010 at 6:00 p.m. The Committee of the Whole is scheduled for Monday, December 13, 2010 at 5:00 p.m. and a Special Meeting is scheduled Monday, December 13, 2010 at 4:00 p.m. All meetings scheduled to be held in the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

JO JOHNSON, CMC, CITY CLERK

Approved: _____