

Session 11-37 a Special Meeting of the Homer City Council was called to order on December 19, 2011 at 5:15 p.m. by Mayor James C. Hornaday, at the West Campus located at 450 Sterling Highway, Homer, Alaska, and opened with the Pledge of Allegiance.

PRESENT: COUNCILMEMBERS: HOGAN, HOWARD, LEWIS, ROBERTS,
WYTHE, ZAK (telephonic)

STAFF: CITY MANAGER WREDE
CITY CLERK JOHNSON
CITY ATTORNEY KLINKNER (telephonic)
PUBLIC WORKS DIRECTOR MEYER

Councilmember Zak has requested telephonic participation.

Mayor Hornaday called for a motion to allow Councilmember Zak to participate by phone.

HOWARD/LEWIS – SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

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.

PUBLIC COMMENTS UPON MATTERS ALREADY ON THE AGENDA

Mayor Hornaday strongly cautioned Council that only the City Manager and City Attorney speak on the seawall in public. When he and Councilmember Wythe joined the Council eight years ago they were advised that there were several comments over the years on this issue by councilmembers that were subject to different interpretations and caused some problems. However, Council may speak due to freedom of speech.

Chris Newby, resident of the seawall, told Council the City has the duty and responsibility under the Corps permit to maintain activity authorizing the permit. The City should repair the seawall when it breaks and reinstate the insurance. The City should find a way to work with property owners for a long term solution and the seawall should be put on the CIP list.

Paul Hueper, resident of the seawall, commented the ordinance is a bad idea. There is no way to fairly collect as two lots are in default, three lots are owned by senior citizens who could not afford to contribute, and two lots are city owned. Fifty percent would not be able to contribute. The seawall is on private property with no easement. The City cannot do repairs and bill him for

it, nor force him to pay his neighbor's bill. The City set a legal precedence by doing repairs, claiming responsibility. He had not seen the Corps permit until two years ago. It would have changed how the courts would have viewed the lawsuit.

Don McNamara, resident of the seawall, appreciates the City funding the seawall. He lives at the west end and has followed the maintenance agreement by replacing boards, bolts, and plates, and installing rocks. He has spent \$15,000 over the last eight years keeping his portion of the wall in good shape. He requests to be let out of the district.

Pat Irwin, resident of the seawall, commented both Senators are up to speed on the seawall and it is on their radar for a long term solution. Senator Begich walked the seawall and emphasized it needs to be a priority on the City's CIP list. Everyone is in agreement the wall needs armor rock, an expensive project. The current wall is working; it just needs improvement. He wants to work with the City Council.

Marilyn Hueper, resident of the seawall, told Council it was another mayor, other council members, and another city manager when the seawall project started. There are a lot of challenges since Homer does not have any rock. When they bought in property values were low. They are now paying increased taxes and other businesses have joined the area bringing benefits to the City. She asked not to enact the emergency ordinance, restore the insurance, and work together for a long term solution.

Donna Rae Faulkner, resident of the seawall, commented there was an understanding homeowners would be responsible for paying for maintenance and repairs. They have spent \$15,000 of their own money on the seawall over the last years. The special service district is the most inequitable thing that could be done. A long term solution is needed such as an LID or federal funding. She doesn't want to be paying lawyers to figure it out, but instead would like to make an investment in the wall. She has asked Dave Casey and the Corps of Engineers to write up information for a good faith transfer of the City's permit. She can't afford to maintain other people's private property and a \$2M project.

Sunny Bourgeois, resident of the seawall, has two properties (formerly Larry Goode's) under lease with the option to buy. How fast the wall is repaired is a huge thing. She sent pictures to the Corps of Engineers. Small repairs turn into big fixes after just a few days. One storm made their neighbors house nearly fall. She asked that something be put in place right away. Their property is less than 20 ft. from the edge.

Councilmember Hogan asked property owners how many had property less than 20 ft. from the water's edge. There were two with properties less than 20 ft. One party (Findlay Abbott) is less than 10 ft. from the water's edge.

NEW BUSINESS

- A. **Ordinance 11-49**, An Emergency Ordinance of the Homer City Council Adopting Homer City Code Chapter 15.10, Ocean Drive Loop Special Service District, to Create a

Differential Property Tax Zone to Levy Property Taxes to Fund Special Services Provided in the District. City Manager/City Attorney.

ROBERTS/WYTHER – MOVED TO ADOPT ORDINANCE 11-49 FOR FIRST AND FINAL READING.

Councilmember Hogan called attention to the emergency ordinance that is drafted of a permanent nature. By statute, an emergency ordinance is limited to 60 days.

Attorney Klinkner advised the emergency ordinance goes into city code and is subject to a sunset provision. In addition to moving to adopt the emergency ordinance he suggested Council introduce the ordinance as a regular permanent ordinance and set it for public hearing at the next available meeting. A subsequent ordinance will levy the mil rate.

Asked by Councilmember Lewis if it was possible to exclude individuals from the special service district and the homeowners take ownership, Attorney Klinkner answered he should get advice from city administration on financial and otherwise.

Councilmember Roberts asked if the district can be modified after the vote. Attorney Klinkner advised the district can be modified at any time.

Councilmember Lewis asked City Manager Wrede about the exclusion of individuals. City Manager Wrede answered there are both practical and legal implications of excluding people. One question is if you can have a district where lots are not contiguous. Public Works Director Carey Meyer and he talked about the history of the wall over the last 10 years. The majority of damage is at the eastern end of the wall. Due to the way the wall is built waves generate speed that impact the downstream neighbors. We could have everyone at the west end opt out. When the seawall was built it was understood it was one for all, all for one.

Councilmember Lewis asked if anyone has looked at Beluga Slough to see how the wall has affected the change of water flow. City Manager Wrede answered he was asked to do some surveys to see if the beach line is changing, but that has not happened yet.

Attorney Klinkner advised the emergency ordinance will sunset in 60 days. Levying a tax will be a separate action from establishing a special service district.

VOTE: YES. ROBERTS, WYTHER, HOWARD, HOGAN, LEWIS
VOTE: NO. ZAK

Motion carried.

HOWARD/WYTHER - MOVED TO INTRODUCE ORDINANCE 11-49 AS A REGULAR PERMANENT ORDINANCE FOR PUBLIC HEARING AT THE SECOND MEETING IN JANUARY.

HOWARD/WYTHER – MOVED FOR A FRIENDLY AMENDMENT FOR THE FIRST MEETING IN JANUARY.

HOWARD/WYTHER – MOVED TO WITHDRAW THE FRIENDLY AMENDMENT.
There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

VOTE: YES. HOGAN, ROBERTS, WYTHER, HOWARD, LEWIS

VOTE: NO. ZAK

Motion carried.

COMMENTS OF THE AUDIENCE

Marilyn Hueper, resident of seawall, commented at the beginning they were told they were getting a 50 year maintenance free wall. There was no plan for maintenance. The ordinance is only a short term solution since most of the westerly properties will opt out. The easterly properties will end up being vacated and the City will still pay assessments.

Paul Hueper, resident of the seawall, commented the attorney will be busy as the ordinance has holes all over it. It is private property. Everyone has the right to say no to fixes. Will this legally stand up? Do you have the right to come on my property and do something without a legal instrument in place? What is just? What was the original intent and what does the Army Corps permit say? The City has to be responsible for maintaining and paying for it, not passing the bill out to the neighborhood.

Donna Rae Faulkner, resident of the seawall, commented one size may not fit all and there are a lot of things that may be addressed. If the Army Corps is going to do good faith transfers she asked that homeowners be invited to the meeting. The long term solution may be an LID or federal funding. There is no way the City or property owners can afford to do the patches forever. She hates being against the neighbors and the City, but everyone is just trying to figure out the best way with the situation.

Don McNamara, resident of the seawall, commented we should try to make it into a win/win situation. The homeowners on the east end have had 8 years to do maintenance and have chosen not to. The first fix by FEMA was \$240,000. Five different people have worked on the wall, one of them being the City. One 20 ft. board is flopping in the breeze with fiberglass blown through with holes. He chose the west end due to less erosion even before the wall was there. The wall was supposed to be maintenance free. It did fail. All the people signed off on the wall. They all paid less than 50 cents on a dollar to buy the wall. Everyone knew they were buying a failed project. The as-built survey is not where the wall was to be. People all knew they had to maintain the wall, but have been dragging their feet. In 2000 and 2001 council meetings the homeowners said the City would not have to worry about maintenance. The Army Corps of Engineers said to

keep the wall above the 20 ft. tide line, yet it was moved down to the impact zone. When they put armor rocks in front of their property they called all the neighbors to ask if they wanted some. All the neighbors declined, saying the City would take care of their property. He asked to be let out and he will not bother Council or the other homeowners. A trail is the best aspect, yet not everybody wants a trail.

Sunny Bourgeois, resident of the seawall, commented she is on the east end of the wall with the worst section and has spent money on repairs. She is paying a second mortgage for \$60,000 worth of steel. They put another \$16,000 in repairs to keep the main property from falling in. She would like a long term fix and find some way to find the funds. Everyone is willing to make phone calls. Everyone in town says they don't want to pay for a wall that is not doing anything for us. It would be nice to have a path that connects to the Spit.

Pat Irwin, resident of the seawall, asked if there was a max on the mil rate.

Attorney Klinkner answered Council could choose to place a cap on the mil rate. There is a statutory limitation on the total amount of real property taxes that can be levied by a city or borough, either 30 mils or determined by other factors depending on the characteristics of the municipality.

COMMENTS OF THE CITY ATTORNEY

City Attorney Klinkner had no comment.

COMMENTS OF THE CITY CLERK

City Clerk Johnson had no comment.

COMMENTS OF THE CITY MANAGER

City Manager Wrede commented there are holes in the seawall. Carey has been down there with Troy Jones. One estimate would fix the immediate damage. The next estimate would be for preventative maintenance. He has been told not to go down there. It is way beyond an amount he is willing to spend himself. Council will see an emergency ordinance at the next meeting asking for a money expenditure. As the Corps of Engineers interprets the permit the City of Homer has the obligation. Money left over in the 2011 budget from personnel and travel may be spent for furniture at City Hall.

Mayor Hornaday commented no money should be spent on furniture. We should use the old furniture. The Council did not agree.

City Manager Wrede stated Assemblyman Smith mentioned cruise ship tax at the last council meeting. Seldovia is looking at getting some of Homer's money to build a shelter. The Borough asked if Homer and Seldovia can get together to make a recommendation to the Assembly. It would be sharing the \$35,000 Borough allotment. The City already gets \$35,000 in addition to the \$6M.

COMMENTS OF THE MAYOR

Mayor Hornaday wished everyone a Merry Christmas and Happy New Year.

COMMENTS OF THE CITY COUNCIL

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

Councilmember Hogan commented while in the south of France he viewed their seawall that was built in the 1400's and goes as far as the eye can see. It was built by hand and is still standing. If we could just get the Department of Defense to come in all the problems would be solved.

ADJOURNMENT

There being no further business to come before the Council, Mayor Hornaday adjourned the meeting at 6:12 p.m. The next Regular Meeting is scheduled for Monday, January 9, 2012 at 6:00 p.m. The next Committee of the Whole is scheduled for Monday, January 9, 2012 at 5:00 p.m. A Worksession is scheduled for Monday, January 9, 2012 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: _____