



City of Homer

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MEMORANDUM AGENDA CHANGES/SUPPLEMENTAL PACKET

TO: MAYOR WYTHE AND HOMER CITY COUNCIL

FROM: MELISSA JACOBSEN, CMC, DEPUTY CITY CLERK

DATE: SEPTEMBER 23, 2013

SUBJECT: AGENDA CHANGES AND SUPPLEMENTAL PACKET

CONSENT AGENDA

Resolution 13-096, A Resolution of the City Council of Homer, Alaska, Requesting that the Kenai Peninsula Borough Assembly Amend the Agreement Between the Borough and the City Regarding the Transfer of Ownership of the Old Middle School Property to Permit the City to Sell the Property and Use the Proceeds for a Public Purpose if the Council Deems it to Be in the Public Interest to Do So. Howard.

Written Public Comment

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COMMISSION REPORTS

Memorandum 13-136 from Parks and Recreation Advisory Commission Re: HERC Site

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PUBLIC HEARINGS

Ordinance 13-37, An Ordinance of the City Council of Homer, Alaska, Amending the Definition of “Discontinued” in Homer City Code 21.61.015, Definitions, to Exclude From the Time for Which a Nonconforming Use May Cease the Time From the Death of Its Operator Until the Use is Legally Available for Transfer to a Successor Operator. Mayor/City Manager.

Memorandum 13-134 as backup

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CITY MANAGER’S REPORT

Kodiak Island Borough Resolution FY2013-13 Tustumena Replacement Fund

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PENDING BUSINESS

Resolution 13-040, A Resolution of the Homer City Council Directing the City Administration to Terminate All Survey, Design, and Cost Estimating Work on the Kachemak Drive Pathway. Mayor.

Memorandum 13-135 from Parks and Recreation Advisory Commission

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Melissa Jacobsen

From: Mary Griswold <mgrt@xyz.net>
Sent: Saturday, September 21, 2013 1:54 PM
To: Melissa Jacobsen
Subject: Council Resolution 13-096 to sell Old Middle School property

I oppose Homer City Council Resolution 13-096 requesting the KPB Assembly to amend the relevant agreements and Quit Claim Deed to allow the city to sell the Old Middle School property and dedicate the proceeds to the use and benefit of the general public. If the city is not going to use the property for public benefit, the borough should regain ownership and the opportunity to use it or sell it for the benefit of all borough residents. This is a prime piece of real estate in an excellent location for a variety of public purposes that city should be grateful to own and develop now or in the future.

Mary Griswold
city resident



City of Homer

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Planning

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Memorandum 13-136

TO: Mayor Wythe and Homer City Council
THROUGH: Julie Engebretsen, Planning Technician
FROM: Parks and Recreation Advisory Commission
DATE: September 20, 2013
SUBJECT: HERC Site

At the Parks and Recreation Advisory Commission meeting of September 19, 2013, the Commission made the following recommendation:

Moved to recommended supporting the use of the HERC Site for recreation and education.

Motion passed with unanimous approval.

Below is an excerpt of the meeting minutes.

D. Discussion on City Council Decision to Use the HERC Site as the New Public Safety Complex Site

Chair Bremicker read the title into the record.

Mr. Illg brought to floor the information of a new resolution to keeping the Gym in Cold Status

Discussion developed on the Council changing the procedures for the CIP, dropping a bomb on the commission and having a public hearing by the commission or council.

Points made were as follows:

- Boys and Girls Club left quietly no one knows why
- More efforts have been made to use that building for Community recreation
- Keep what we have
- Spoke about the tour given by the City Manager and many groups were ready to rent space that were non-profits and recreationally based.
- This has been a conversation for the last two years or more
- It cannot really cost \$10 million to mitigate the asbestos and renovate the building to address the safety and code requirements.
- Deal with the Borough on the land

- Propose another location where the RV dump is that would address the Chief's concern about being further distanced from the Spit
- What happens to the Skateboard Park

During the CC worksession there were four sites considered – Julie participated in that site visits

- Town Center
- Main Street
- HERC Site

BREMICKER/BRANN - MOVED THAT PARKS AND RECREATION ADVISORY COMMISSION SUPPORTS THE USE OF THE HERC SITE FOR RECREATION AND EDUCATION.

Discussion ensued.

LILLIBRIDGE/- MOVED TO AMEND THE MOTION TO FOCUS ON KEEPING THE GYM
LOWNEY/STEFFY - MOVED TO AMEND HERC BUILDING TO HERC SITE

Pointed out that there were many comments and council said thank you and continued discussion.

VOTE. (Amendment) YES. LOWNEY, STEFFY, LILLIBRIDGE, BREMICKER, BRANN
VOTE. NO. ARCHIBALD.

Further discussion on it being too weak a statement. The commission has done their work and it is now up to the public to voice their point of view. The commission has already expressed their opinion on the HERC building. Further discussion on the popularity, previous attendance and programs ensued. Chair Bremicker called for the vote.

VOTE. YES. NONOBJECTION. UNANIMOUS CONSENT.

Motion carried.



City of Homer

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MEMORANDUM 13-134

TO: MAYOR WYTHE AND HOMER CITY COUNCIL

FROM: RICK ABOUD, CITY PLANNER

DATE: September 19, 2013

SUBJECT: Amending the definition of “discontinued” in HCC 21.61.0015

Procedural note: This item is considered legislative and not quasi-judicial. It is legislation that affects a large population and consideration any one property should not outweigh the entirety of its effect on the population as a whole. Based on procedural rules, the Planning Commission was not able to stray far from the item as advertised and would gladly consider an opportunity to address items surrounding the proposal if the council wishes.

A public hearing was held by the Planning Commission September 18, 2013 on the proposed ordinance. No one provided public testimony. A spirited debate started in the Work Session and continued at the regular meeting. Several issues were raised including:

- Using the undefined term of “operator”
- Does probate prohibit the operation of a business?
- How long does a probate process last?
- Should nonconformities be allowed to transfer after death?
- Is it in the best interest of the community that nonconformity cease someday?
- After closing, how long is a business viable?
- Is this exception too narrow? Should it be extended to other situations such as disability or other incapacities? Is it fair to offer an exception in this circumstance and not others?
- Has this situation ever happened in your career before? (no)
- Would the type of nonconformity make a difference?
- What is a legal nonconformity? (one that is formally accepted)

Consideration was given to a timeframe to deal with the circumstance such as 5 years. After debate this was not supported as it seemed to be too long of a time.

It is very difficult to analyze what particular legal relationship would constitute the situation which this remedies and that it would not. There is no guidance found in any planning related materials (sample codes, books, papers or presentations) for this circumstance.

The Commission decided not to support the proposed ordinance in its current form. The decision was based on the fact that this was such a specialized exception and other circumstances could be just as compelling yet would not be supported by the ordinance. The commission feels it is best to deal with nonconformities and issues surrounding the entire class rather than one special circumstance.

Recommendation:

The Homer Advisory Planning Commission does not recommend adoption of the proposed amendment to the definition of “discontinued”. It does welcome continued discussion on issues surrounding the proposal such as; review of uses allowed in residential and other districts, review of the city’s expectation as to the continuance of any nonconforming use or structure, or any issue in relevance to the item.

C. Staff Report PL 13-70 Ordinance 13-37 an ordinance of the City Council

Chair Venuti noted that the Commission had some discussion of this topic at the worksession.

City Planner Abboud reviewed the staff report.

There was no audience present for the public hearing.

Discussion ensued regarding the ordinance.

Commissioner Highland confirmed that if the non-conforming use is inactive for 12 months it would be required to be brought into conformance. In the past the city has wanted to eliminate non-conforming uses when this happens.

Commissioner Sonneborn commented that as much as they want to get rid of nonconforming uses, 12 months seems a bit arbitrary and extending it a few months for this situation or other circumstances may be feasible. She suggested the 12 months could start when the property is available to be used.

Commissioner Stead noted the staff report comment that our community has made provisions for nonconformities to cease someday and be replace with those that conform, and asked how they are expected to cease. City Planner Abboud reviewed ways that it could happen.

Commissioner Slone offered proposed language with respect to the definition of discontinued as follows: Discontinued means that a nonconforming use by the current operator has ceased for a continuous period of 12 calendar months, however, when the non-conformity is associated with an existing commercial operation or business the non-conformity shall expire after seven calendar years. Commissioner Slone explained that this provides more opportunity for people who are using a non-conforming structure in conjunction with a business, so their heirs may continue to operate the business for up to seven years.

City Planner Abboud clarified that the draft ordinance is in the use section, not the structure section. "Discontinued" is not a condition that is used to regulate non-conforming structures, only for a use. A structure wouldn't be discontinued; it would be moved or destroyed.

The Commission briefly reviewed the different types of non-conforming, including non-conforming lots, non-conforming structures, and non-conforming uses. City Planner Abboud believes the term discontinued is only used in reference to uses and cited HCC 21.61.040(d). He explained non-conforming structures address abandonment, moving, damage relating to the structure, not discontinuing. They talked about some different scenarios relating to non-conformity.

SONNEBORN/BOS MOVED TO RECOMMEND LEAVING IT AT 12 MONTHS.

The Commission acknowledged that the issue of non-conformity is an ongoing issue for the city. The Commission felt that it would be more effective to break it down and address non conformity as a whole, rather than this one "fix". It would be the most appropriate way to proceed.

HOMER ADVISORY PLANNING COMMISSION
REGULAR MEETING MINUTES
SEPTEMBER 18, 2013

In a more comprehensive review of the process the Commission can look at the equity issue, and if there are situations where uses need to be reviewed for acceptance in all districts.

Chair Venuti noted that it is important to remember that the issue being addressed in this code amendment is not an ongoing problem, it is a rare instance, and he isn't sure we suddenly need to change the rules for this one thing.

VOTE: YES: BOS, STEAD, HIGHLAND, SONNEBORN, VENUTI, SLONE

Motion carried.

Melissa Jacobsen

From: Walt Wrede
Sent: Monday, September 23, 2013 8:55 AM
To: Melissa Jacobsen
Subject: FW: Resolution supporting a Tustumena Replacement vessel.
Attachments: Resolution No. FY2014-13 Tustumena Replacement Fund.pdf

Melissa:

Please put this e-mail and the attachment in the Council supplemental packet. It is part of the City manager report.

Thanks, Walt

From: Bud Cassidy [<mailto:bcassidy@kodiakak.us>]
Sent: Monday, September 23, 2013 8:05 AM
To: Department City Manager
Subject: Resolution supporting a Tustumena Replacement vessel.

Good Afternoon Manager Wrede -

I have attached a Kodiak Island Borough Assembly resolution that has been sent to the Governor as well as to our legislative delegation supporting banking money in the state's Vessel Replacement Fund for future construction of a replacement Tustumena –class vessel. This vessel would serve Homer, the city of Kodiak, communities on Kodiak Island and those located out the peninsula and the chain. It is hoped that Homer would support such a resolution with one of your own.

Our effort is to work with all communities served by the Tustumena and convey a sense of urgency to the Governor and legislature.

If Homer has adopted a similar resolution, please pass on to me.

I can and would like to discuss this further with you

Drop me a line.

Thanks Walt.

Bud Cassidy
Manager
(907)486-9302

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Introduced by: Manager Cassldy
Requested by: Borough Assembly
Assembly
Drafted by: Special Projects Support
Christiansen
Introduced on: 09/19/2013
Adopted on: 09/19/2013

**KODIAK ISLAND BOROUGH
RESOLUTION NO. FY2014-13**

**A RESOLUTION OF THE KODIAK ISLAND BOROUGH
ASSEMBLY REQUESTING THE GOVERNOR TO INCLUDE IN
HIS FY2015 CAPITAL BUDGET A DEPOSIT OF \$100 MILLION
INTO THE VESSEL REPLACEMENT FUND FOR THE PURPOSE
OF CONSTRUCTING A NEW OCEAN-GOING VESSEL TO
REPLACE THE M/V TUSTUMENA**

WHEREAS, the M/V Tustumena was built in 1964, is approaching its 50th year of service, and has had a hard life servicing the Kodiak and Aleutian communities for the past several decades; and

WHEREAS, the M/V Tustumena provides year-round service to the Kodiak area, and journeys out the Aleutian chain ten times each year, providing a critical transportation and tourism link that affects the economies of each community served by this vessel; and

WHEREAS, the rough and exposed waters of the Aleutians can accelerate the deterioration of any vessel servicing the region; and

WHEREAS, recent vessel aging problems and repair delays are well documented and have created significant, recurring service disruptions and outages in the region; and

WHEREAS, the M/V Tustumena is at the top of the queue in the AMHS Vessel Replacement Fund, and the legislature appropriated \$10 million from this fund in 2013 for the design of a new ocean-going vessel to replace the M/V Tustumena; and

WHEREAS, the Alaska Department of Transportation and Public Facilities has begun the design process and estimates that it will take 18 months to complete; and

WHEREAS, the department estimates construction of the new vessel could cost as much as \$210 million; and

WHEREAS, since it will take another two to three years to construct the new vessel and ready it for service, it is imperative to develop and implement a strategy to ensure construction funding is in place by 2015 to allow an immediate start of vessel construction.

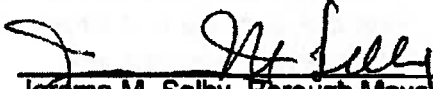
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NOW, THEREFORE BE IT RESOLVED, BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH, that the Kodiak Island Borough hereby requests that Governor Parnell include in his FY2015 capital budget a deposit of \$100 million into the Vessel Replacement Fund for the purpose of constructing a new ocean-going vessel to replace the M/V Tustumena; and

BE IT FURTHER RESOLVED that the Kodiak Island Borough requests Governor Parnell plan to include in his FY2016 capital budget another deposit into the Vessel Replacement Fund to provide the remaining amount of funding needed to construct a new ocean going-vessel to replace the M/V Tustumena.

**ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH
THIS NINETEENTH DAY OF SEPTEMBER, 2013**

KODIAK ISLAND BOROUGH



Jerome M. Selby, Borough Mayor

ATTEST:



Nova M. Javier, MMC, Borough Clerk



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Planning

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Memorandum 13-135

TO: Mayor Wythe and Homer City Council
THROUGH: Julie Engebretsen, Planning Technician
FROM: Parks and Recreation Advisory Commission
DATE: September 20, 2013
SUBJECT: Resolution 13-040

At the Parks and Recreation Advisory Commission meeting of September 19, 2013, the Commission made the following recommendation:

Moved to recommend the City Council fail Resolution 13-040.

Motion passed with unanimous approval.

Below is an excerpt of the minutes of the meeting:

NEW BUSINESS

- A. Discussion on Resolution 13-040, Directing City Administration to Terminate All Survey, Design, and Cost Estimating Work on the Kachemak Drive Pathway

Chair Bremicker read the title into the record.

Chair Bremicker commented that the committee was disbanded. The outside group was formed. The trail has not been removed from multiple plans. The City Manager has noted the safety aspects in a memo to the Airport Manager regarding removal of trees hampering sight lines for the runway approach. Chair Bremicker believes that to have the City cut it off was the wrong direction. He stated it was one of the main reasons he joined this commission. Further he believes that there are funds for trails that could be used. Chair Bremicker believed that with the city's backing and the use of volunteer efforts this trail could be done. He cited as an example the ski trails.

Chair Bremicker stated that Council should get behind this and it should be made a priority. He wanted City Council to say "yes, it's a good idea what do we need to do to get this done what can we do to help." He is not sure where the antagonism has come from. He stated that the people of Homer want this trail.

Commissioner Brann agreed with the key points of the trail being in the plans; but by Council stating that the commission cannot talk about the trail is negating those approved plans; he is not asking them to fund it, but to allow the commission to speak with and a work with the non-profit group on the trail. He believes that volunteers can do what the city won't.

Commissioner Lillibridge commented on removing or recommending amending the last two whereas's to state they will not fund it at this time.

Mr. Illg stated that this is both symbolic and would set precedent and passing this Resolution would stonewall additional future efforts for parks and recreation.

Ms. Engebretsen stated the commission can make a recommendation that City Council fail this resolution.

Further discussion on what direction the commission would like to have Council take for Resolution 13-040 was held with points made on safety concerns, hampering funding options, postponement, the resolution containing non-specific other issues; non-support from the City.

Chair Bremicker stated that this resolution does not have the majority support of Council. It is supported by the mayor but she doesn't vote. They are not asking for funds right now. They don't need this to cut off future help from the city.

Chair Bremicker requested a motion. He opined strongly that the motion should be voted down.

Additional comments on commenting on the Resolution during the Council meeting.

BREMICKER/BRANN - MOVED TO REQUEST CITY COUNCIL DO NOT PASS RESOLUTION 13-040.

Commissioner Archibald asked to amend the motion to include the wording "or postpone". The commissioners then entertained discussion on the motion.

VOTE. YES. LOWNEY, STEFFY, LILLIBRIDGE, ARCHIBALD, BRANN.

Motion carried

