

Session 14-25 a Special Meeting of the Homer City Council was called to order on September 29, 2014 at 6:00 p.m. by Mayor Mary E. Wythe 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: BURGESS, HOWARD, LEWIS, ROBERTS,
VAN DYKE, ZAK (telephonic)

STAFF: CITY CLERK JOHNSON
CITY ATTORNEY LEVESQUE
CITY PLANNER ABBOUD

Councilmember Zak has requested telephonic participation.

Mayor Wythe called for a motion to allow Councilmember Zak to participate by telephone.

BURGESS/LEWIS – SO MOVED.

Appellant Griswold objected from the audience.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

AGENDA APPROVAL. (Only those matters on the noticed agenda may be considered, and HCC 2.08.040(c); 2.08.040(e)(3)).

Mayor Wythe called for a motion to approve the agenda as presented.

LEWIS/ROBERTS – SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

NEW BUSINESS

A. APPEAL TO THE BOARD OF ADJUSTMENT

Regarding the Planning Commission Decision on Conditional Use Permit 14-05 to Build a Covered Deck Which Will Extend 10 Feet Into the 20 Foot Building Setback Along 320 W. Pioneer Avenue, Homer, Alaska. Frank Griswold, Appellant.

This is an Appeal to the Board of Adjustment of the Homer Advisory Planning Commission Decision of May 13, 2014 for Approval of Conditional Use Permit 14-05 to Build a Covered Deck Which Will Extend 10 Feet Into the 20 Foot Building Setback Along 320 W. Pioneer Avenue, Homer, Alaska. We have received opening briefs from the Planning Department and Appellant, Frank Griswold. We also received a reply brief from Frank Griswold. The applicant substantively participated in the commission hearing but did not file any briefing. All parties have standing pursuant to HCC 21.93.060.

Appellant Frank Griswold, Applicants Terry and Jonnie Yager and John Smith, and City Planner Abboud were present.

PRELIMINARY ISSUES

1. Conflicts of Interest

Councilmember Zak declared a potential conflict of interest. As a real estate broker he occasionally has deals with Terry Yager. They just finished one and are working on another one that would result in receiving more than the allowed pecuniary benefit.

Mayor Wythe ruled Councilmember Zak did have a conflict of interest. There was no objection from the Council.

Councilmember Zak was excused from participation.

Councilmember Lewis declared a potential conflict of interest. He met Mr. Yager who is selling his neighbor's house. There is no financial connection.

Mayor Wythe ruled Councilmember Lewis did not have a conflict of interest. There was no objection from the Council.

Councilmember Van Dyke declared a potential conflict of interest. Both Mr. and Mrs. Yager are customers at his mechanic shop. They paid Councilmember Van Dyke more than \$1,000 in the last year.

Mayor Wythe ruled Councilmember Van Dyke did have a conflict of interest. There was objection from the Council.

VOTE: YES. LEWIS, ROBERTS
VOTE: NO. BURGESS, HOWARD

Mayor Wythe broke the tie vote with a YES vote.

Councilmember Van Dyke was excused from participation.

City Clerk Johnson questioned if a quorum vote was required. Attorney Levesque advised four votes are needed.

Appellant Griswold objected from the audience.

Mayor Wythe called for a recess at 6:10 p.m. and reconvened the meeting at 6:12 p.m.

Mayor Wythe announced it has to be a majority vote of a fully constituted vote of the Board, requiring four votes.

Councilmember Van Dyke returned to his seat.

Appellant Griswold objected from the audience.

Mayor Wythe disclosed her potential conflict since the Yager's are members of her church congregation, their children have grown up together, but they have no external activities. There was no objection from the Council.

Councilmember Howard disclosed from 2009 through 2012 Mr. Yager was her landlord. Mayor Wythe identified Mr. Yager was benefitting from her, therefore there was no conflict of interest .

2. Ex Parte communications

There were none stated.

3. Other preliminary issues

Appellant Griswold questioned the legal justification for postponement from September 15 as the decision was made by Attorney Wells. He questioned if it was postponed stating a number of reasons.

Mayor Wythe adjourned the meeting at 6:22 p.m. and reconvened at 6:26 p.m.

Mayor Wythe reviewed the email chain between Attorney Wells and Mr. Griswold. There were concerns about establishing a quorum, therefore, Attorney Wells recommended the meeting be rescheduled.

Appellant Griswold cited HCC 21.93.700 pertaining to quorums and the postponement past the 75-day deadline.

Attorney Levesque advised the Council Mr. Griswold waived days when he requested the original continuance.

Appellant Griswold told the Council the vote on Councilmember Van Dyke was in error. The Council needs a firm ruling on how many votes it takes for a quorum. He cited past cases on appeal.

Mayor Wythe explained a quorum is established as a party of four. A fully constituted board is six people plus the mayor. Any decision that the board made would have to be a consensus vote of four or nothing would be approved pursuant to HCC 21.93.550.

The Council discussed the definition of a fully constituted board.

Mayor Wythe stood corrected.

Councilmember Van Dyke was excused from participation.

Mayor Wythe reiterated the reasons for the reasoning of Attorney Wells to postpone the hearing.

Appellant Griswold objected to the postponement since Attorney Wells had no authority to make the decision. He questioned why Attorney Wells was replaced by Attorney Levesque and Attorney Levesque's role.

Attorney Levesque answered he is not a party; he has an engagement letter with the City, therefore, there is no reason to make an entry of appearance. He talked with Attorney Wells and she felt with the issues before the Board and her limitation on only procedural matters it would be beneficial to have an attorney who could advise the Board on legal and procedural matters and assisting in the writing of a decision.

Appellant Griswold questioned why Attorney Wells was restricted to advising the Board on procedural matters when Attorney Levesque's role was different.

Attorney Levesque told Appellant Griswold he knew the answer since he had filed an ethics complaint against Attorney Wells. Under the bar ruling the only thing the second member of

the firm of Birch Horton can provide is procedural advice. Mr. Klinkner will be representing the planning commission and Ms. Wells will be representing the Board.

Appellant Griswold asserted Mayor Wythe has a bias against him since she nominates people to the Planning Commission. He avowed she has a long-standing animosity towards him pertaining to large box stores, the Blackwell appeal, and his complaint to APOC about the Town Center brochure.

Mayor Wythe passed the gavel to Mayor Pro Tempore Roberts.

Mayor Wythe stated Mr. Griswold keeps a much better record of every activity that has ever engaged him. Her incense with the Council was due to a member of the Council saying the citizens had no idea what they were voting for. That councilmember could not be inside her head to know what she was thinking.

The Council noted they all vote on the appointments of commissioners.

Attorney Levesque advised Mayor Wythe to adequately state if she was impartial and could be fair in issuing a decision.

Mayor Wythe stated when in these situations there is no partiality that comes with her. No one knows how she performs and presents herself better than the people at this table.

Mayor Pro Tempore Roberts asked for a motion regarding Mayor Wythe's partiality. In the absence of a motion the Board accepted her membership in the proceeding.

Mayor Pro Tempore Roberts passed the gavel back to Mayor Wythe.

Appellant Griswold asserted Councilmember Burgess' animosity towards him at the April 14, 2014 city council meeting. The transcript of his comments at that meeting was introduced for procedural purposes and Appellant Griswold read the quote.

Mayor Wythe asked Councilmember Burgess if he could be impartial for the hearing. Councilmember Burgess stated he would be as impartial as any other reasonable person. There was no objection from the Council.

Appellant Griswold requested that the record be supplemented with the corrected minutes of the Homer Advisory Planning Commission (April 15, 2014) for a correction in a footnote.

BURGESS/LEWIS – MOVED THAT WE ADD THE AMENDED MINUTES TO THE PACKET.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

Mayor Wythe called for a recess at 7:07 p.m. and reconvened the meeting at 7:13 p.m.

PRELIMINARY RULINGS ON PROCEDURAL MATTERS

1. Standing and jurisdictional matters

Mayor Wythe read the definition of standing per HCC 21.93.060. She asked Appellant Griswold how he was aggrieved by the granting of CUP 14-05 since there is not proof within the notice.

Appellant Griswold stated his notice of appeal was not rejected by the Clerk. He owns seven properties in the CBD (Central Business District) in the same zoning district as the subject lot. His properties are closer to this property than Blackwell's property where the superior court ruled he had standing. Approval of CUP 14-05 will set a precedent for other properties in the surrounding neighborhood. If the setback continues throughout the CBD it will affect his enjoyment of walking and bicycling around the CBD. He enjoys areas with green grass and landscaping. He cited HCC 21.01.030, purposes of the zoning code. Approval of the CUP would devalue his property; in time it could lead to total reduction of setbacks detrimental to property values.

Mayor Wythe asked for a motion on Mr. Griswold's standing.

ROBERTS/BURGESS – MOVED THAT MR.GRISWOLD HAS STANDING.

Attorney Levesque referenced page 9 of the record on appeal where Mr. Griswold referenced a superior court had ruled on Blackwell property being 5,000 ft. away yet he still had standing. That was prior to the ordinance change for standing. Since the requirement for standing was passed by the City Council there was a supreme court case *Griswold vs. COH, City Clerk Jo Johnson and the Kachemak Shellfish Agricultural Association*. The supreme court held the standing requirements of the City of Homer as adequate. Mr. Griswold was four miles from Kachemak Shellfish. The Clerk rejected it twice and it went to superior court and then to supreme court. The only difference in that case and this case is that the court acknowledged Mr. Griswold was outside the same zoning district. The key difference here is that Mr. Griswold's property is in the same district. The court ruled that the way someone has to prove standing is that they must show proof of the adverse action taken under the zoning code. That is of the use, enjoyment, and the value of the real property. If the interest is no different than anyone else in the community, that is not standing. To have standing it is reasonable to assume you would have to have proof instead of a belief. It is subjective and speculative as to what will happen to his property. The code requires proof.

Appellant Griswold asked how someone could show proof on a project under appellant review. If he had not shown standing to the Clerk she would have rejected the appeal. Both

cases mentioned were outside of his zoning district. Mr. Griswold corrected Attorney Levesque's description of the appeals that were filed.

Mayor Wythe asked the Clerk if there was a question as to Mr. Griswold's standing.

City Clerk Johnson answered there was a question and she was unable to make a determination if Mr. Griswold had standing.

Mayor Wythe advised the Council they were to make a decision regarding standing.

Appellant Griswold pointed out there was no objection to his standing by any other party.

VOTE: YES. ROBERTS, BURGESS

VOTE: NO. HOWARD, LEWIS

Mayor Wythe broke the tie vote with a NO vote.

Motion failed.

The hearing concluded with the Board's determination that Appellant Griswold had no standing.

ADJOURNMENT

There being no further business to come before the Council, Mayor Wythe adjourned the meeting at 7:34 p.m.

JO JOHNSON, MMC, CITY CLERK

Approved: _____