

Session 15-01 a Special Meeting of the Homer City Council was called to order on January 5, 2015 at 5:30 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, LEWIS, REYNOLDS, ROBERTS,
VAN DYKE, ZAK (telephonic)

STAFF: CITY MANAGER YODER
CITY CLERK JOHNSON
CITY ATTORNEY KLINKNER

Councilmember Zak has requested telephonic participation.

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

Mayor Wythe called for a motion to approve the agenda.

LEWIS/REYNOLDS – SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

APPEAL OF CITY MANAGER WALT WREDE'S PARTIAL DENIAL OF FRANK GRISWOLD'S NOVEMBER 6 AND 11, 2014 PUBLIC RECORDS REQUESTS

Appellant Frank Griswold and Attorney Thomas Klinkner, representing city administration, were present.

A. Preliminary Matters

Councilmember Zak disclosed a potential conflict of interest. About a half hour ago he had a call from an individual who had read about this in the paper and wanted to give him his input. He did not discuss it with him.

Mayor Wythe ruled it does not constitute a conflict of interest. There was no objection from the Council.

Appellant Griswold raised preliminary matters in his brief that he submitted today. Mayor Wythe has a conflict of interest/bias since the documents were written to or from her. He asserted Mayor Wythe has an amorous relationship with Mr. Wrede as depicted in the Homer News photo.

Mayor Wythe passed the gavel to Mayor Pro Tempore Roberts.

Mayor Pro Tempore Roberts called for a motion to disqualify Mayor Wythe. There was no motion stated.

Mayor Pro Tempore Roberts returned the gavel to Mayor Wythe.

Appellant Griswold stated Attorney Klinkner has a bias and conflict of interest. His name is in Attorney Levesque's redacted records. The Council should be advised by unbiased independent legal counsel. The decision is due January 9, 2015 and should not be written by Birch Horton Bittner or Attorney Levesque. Legal arguments were presented in his brief; he hopes there is an impartial review of the legal issues before the decision is made.

Mayor Wythe told Mr. Griswold his recommendations will be taken under advisement.

Appellant Griswold clarified there are more parts to his ligation matters; it is laid out in his brief.

B. Oral Argument

Mayor Wythe advised the parties on the procedures for oral argument.

Appellant Griswold would like to rely exclusively on his brief. He was not able to find any procedures in city code if new evidence is allowed. This is similar to a board of adjustment hearing where most procedures are laid out. It may be a good idea to prescribe procedures so they are not made up arbitrarily. He referenced the eight redactions which had bled through, but there were just four redactions disclosed.

28:50 minutes remain.

Attorney Klinkner, on behalf of the City Manager, clarified he is not here to represent or advise the Council. If the Council feels it needs independent representation it is entitled to get it. The issues are straightforward enough that it should not be necessary, but it is the Council's call.

The way the matter has evolved, attorney client privilege is the principal concern, deliberative process secondary if relevant at all. There are two classes of documents: communications between Attorney Holly Wells and the Mayor and/or City Clerk on behalf of the Board of Adjustment regarding its June 14th decision. The documents have been provided to the Council in-camera. The Council will make the call as to if they are privileged. The second call are the invoices for legal services, confined to invoices for litigation matters and two redactions for non-litigation matters. One was a pre-litigation discussion of potential litigation; the other was an ongoing litigation matter that was billed to the wrong account. Finally there is the matter of Joseph Levesque invoices. Mr. Wrede provided those to Mr. Griswold on December 10th with redactions. Attorney Klinkner became aware when Mr. Griswold complained to the Clerk's office the end of December. He has not yet had an opportunity to collect un-redacted copies of those invoices for the Council's inspection. He suggested that we roll that into the current appeal and get it disposed of. He will work with the Clerk to get copies without redactions as part of the in-camera inspection.

He agrees with Mr. Griswold that the Cool Homes case is the most pertinent authority and guidance pertaining to attorney client privilege. He referenced page 5 of his written submission pertaining to attorney client privilege communications. He encouraged the Council to look for discussion of facts and controversy in litigation and litigation strategy. The Council may find things that don't involve either of those in the mails withheld; those documents should be made available to Mr. Griswold. If the Council finds discussion of litigation strategy they should affirm the City Manager's decision to withhold the documents.

Councilmember Roberts noted the records request was filed on November 6th. She asked when Attorney Levesque's billings were received.

Attorney Klinkner answered the Levesque invoices were responsive to Mr. Griswold's November 11th records request. Attorney Levesque's invoices were for his work on Conditional Use Permit 14-05. Mr. Griswold broadened his request for invoices on November 11th. City Manager Wrede overlooked the Levesque invoices when he initially responded to Mr. Griswold's request on December 10th. The Levesque invoices have not been pulled together yet.

Councilmember Zak asked for clarification as to attorney/client privilege on invoices as referenced in Mr. Griswold's brief.

Attorney Klinkner advised invoices for legal services are not privileged just because they are from an attorney. If the invoices indicate that services were provided and the amount

charged, that is not privileged. If the time entries and work description entries reveal privileged facts or litigation strategy there is an issue of privilege.

21:01 minutes remain.

B. Rebuttal

Appellant Griswold objected to the absence of the Levesque invoices well before Christmas. After that he was provided the redacted Levesque invoices. Mr. Wrede claimed there were names that were redacted, but the redactions render most invoices meaningless. It is not the responsibility of the billing attorney to redact his own invoices. Very seldom have any portions of attorney invoices been redacted.

What is unique about this case is the communications with Attorney Holly Wells. Ordinarily communications would be confidential, but in this case she was acting as a neutral attorney because of the dual representation of members of the law firm. She was ethically bound to only provide the Board in a neutral capacity. A non-neutral attorney can do all sorts of things, wherein Attorney Wells was restricted to only providing the Board with procedural advice. She indicated she had done a lot of research on Mr. Griswold's questions and responded, but he never got the responses. Whatever information she provided should have been available to everyone. It is a distinction that probably will not be provided in case law.

Mr. Griswold wished the Council luck in their decision and entertained a motion for extending the Friday deadline.

LEWIS/REYNOLDS - MOVED TO GO TO EXECUTIVE SESSION.

Mr. Griswold objected to Councilmember Zak's participation in executive session.

City Clerk Johnson advised Councilmember Zak is not able to participate in executive session pursuant to city code.

The Council discussed going to executive session for deliberations now or at a later date.

VOTE: YES. LEWIS, BURGESS, ROBERTS, REYNOLDS, ZAK, VAN DYKE

Motion carried.

Mayor Wythe called for a motion to postpone to a date certain for an executive session or adjourn to executive session now.

BURGESS/ ROBERTS - MOVED TO ADJOURN TO EXECUTIVE SESSION.

Councilmember Zak won't return until after January 19th.

VOTE: YES. ROBERTS, REYNOLDS, LEWIS, ZAK, BURGESS, VAN DYKE

Motion carried.

Councilmember Zak was released as he was not eligible to meet in executive session with his telephonic participation.

There being no further business to come before the Council, Mayor Wythe adjourned the meeting at 6:04 p.m. The next Regular Meeting is scheduled for Monday, January 12, 2015 at 6:00 p.m., Committee of the Whole 5:00 p.m., and a Worksession at 4:00 p.m. All meetings scheduled to be held in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

JO JOHNSON, MMC, CITY CLERK

Approved: _____