

February 17, 2010  
5:30 P.M.

Cowles Council Chambers  
491 East Pioneer Avenue  
Homer, Alaska

## WORK SESSION Advisory Planning Commission AGENDA

1. Call To Order, 5:30 P.M.
2. Discussion of Items on the Regular Meeting Agenda
3. Mary Toll, Kenai Peninsula Borough Platting Officer
4. Staff Report PL 10-05, Draft Ordinance 10-XX, Amending HCC 21.75, Storm Water Plans *(Please refer to page 69 of the regular meeting packet.)*
5. Staff Report PL 10-15, Draft Steep Slope Ordinance *(Please refer to page 57 of the regular meeting packet.)*
6. Public Comments  
The public may speak to the Planning Commission regarding matters on the work session agenda that are not scheduled for public hearing or plat consideration. (3 minute time limit).
7. Commission Comments
8. Adjournment



**REGULAR MEETING  
AGENDA**

- 1. Call to Order**
- 2. Approval of Agenda**
- 3. Public Comment**

The public may speak to the Planning Commission regarding matters on the agenda that are not scheduled for public hearing or plat consideration. (3 minute time limit).
- 4. Reconsideration**
- 5. Adoption of Consent Agenda**

All items on the consent agenda are considered routine and non-controversial by the Planning Commission and are approved in one motion. There will be no separate discussion of these items unless requested by a Planning Commissioner or someone from the public, in which case the item will be moved to the regular agenda and considered in normal sequence.

  - A. Approval of Minutes of February 3, 2010 *Page 1*
  - B. Draft Decision and Findings for an amendment of CUP 86-02 to expand CUP 86-02 from two (2) hotel-motel units to three (3) hotel-motel units under Homer City Code 21.28.030(h) Marine Commercial (MC) at 3815 Homer Spit Road. *Page 7*
  - C. Draft Decision and Findings for an Application for a Conditional Use Permit per HCC 21.14.030(l) for 'more than one building containing a permitted principle use on a lot' at Lot 22-A2 Bunnell's Subdivision No. 22, 4048 Bartlett Street *Page 15*
- 6. Presentations**
- 7. Reports**
  - A. Staff Report PL 10-19, City Planner's Report *Page 21*
- 8. Public Hearings**

Testimony limited to 3 minutes per speaker. The Commission conducts Public Hearings by hearing a staff report, presentation by the applicant, hearing public testimony and then acting on the Public Hearing items. The Commission may question the public. Once the public hearing is closed the Commission cannot hear additional comments on the topic. The applicant is not held to the 3 minute time limit.

  - A. Staff Report PL 10-07, Vacation of a portion of Hough Road *Page 25*
- 9. Plat Consideration**
  - A. Staff Report PL 10-06, Christensen Tracts 2009 Addition Preliminary Plat *Page 53*
- 10. Pending Business**
  - A. Staff Report PL 10-15, Draft Steep Slope Ordinance *Page 57*
  - B. Staff Report PL 10-05, Draft Ordinance 10-XX, Amending HCC 21.75, Storm Water Plans *Page 69*
  - C. Staff Report PL 10-12, BOA Decision on Refuge Room *Page 77*
- 11. New Business**
  - A. Staff Report PL 10-17, Land Allocation Plan *Page 85*
  - B. Staff Report PL 10-16, Draft Ordinance 10-XX, Allowing Schools in GC1 *Page 87*

- C. Staff Report PL 10-20, Appointment to the Transportation Advisory Committee (TAC) *Page 93*

**12. Informational Materials**

- A. Memorandum dated February 10, 2010 to Rick Abboud, City Planner, from Tom Klinkner, City Attorney regarding Refuge Room – Proceedings on Remand from Board of Adjustment *Page 95*
- B. Frank Griswold vs. City of Homer and Don Blackwell, Notice of Appeal *Page 99*

**13. Comments of The Audience**

Members of the audience may address the Commission on any subject. (3 minute time limit)

**14. Comments of Staff**

**15. Comments of The Commission**

**16. Adjournment**

Meetings will adjourn promptly at 10:00p.m. An extension is allowed by a vote of the Commission. The next Regular Meeting is scheduled for March 3, 2010 at 7:00 p.m. in the Cowles Council Chambers. There will be a work session at 5:30p.m. prior to the meeting.

Session 10-02, a Regular Meeting of the Homer Advisory Planning Commission was called to order by Chair Minsch at 7:05 p.m. on February 3, 2010 at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

**PRESENT:** COMMISSIONER BOS, DRUHOT, KRANICH, MINSCH, SINN

**ABSENT:** COMMISSIONER WALKER

**STAFF:** CITY PLANNER ABBOUD  
DEPUTY CITY CLERK JACOBSEN

#### **APPROVAL OF AGENDA**

City Planner Abboud noted that the applicant requested the Quiet Creek preliminary plat be removed from the agenda.

The agenda was approved by consensus of the Commission.

#### **PUBLIC COMMENT**

The public may speak to the Planning Commission regarding matters on the agenda that are not scheduled for public hearing or plat consideration. (3 minute time limit).

There were no public comments.

#### **RECONSIDERATION**

There were no items for reconsideration.

#### **ADOPTION OF CONSENT AGENDA**

All items on the consent agenda are considered routine and non-controversial by the Planning Commission and are approved in one motion. There will be no separate discussion of these items unless requested by a Planning Commissioner or someone from the public, in which case the item will be moved to the regular agenda and considered in normal sequence.

1. Approval of Minutes of January 6, 2010
2. Time Extension Requests
3. Approval of City of Homer Projects under HCC 1.76.030 g.
4. KPB Coastal Management Program Reports

#### **PRESENTATIONS**

Presentations approved by the City Planner, the Chair, or the Planning Commission.

There were no presentations scheduled.

#### **REPORTS**

A. City Planner's Report

City Planner Abboud reviewed his staff report.

**PUBLIC HEARINGS**

The Commission conducts Public Hearings by hearing a staff report, presentation by the applicant, hearing public testimony and then acting on the Public Hearing items. (3 minute time limit) The Commission may question the public. Once the public hearing is closed the Commission cannot hear additional comments on the topic. The applicant is not held to the 3 minute time limit.

- A. Conditional Use Permit (CUP) 10-01, Amending CUP 86-02, 3815 Homer Spit Road, #A, Homer Enterprises, LLC/The Sport Shed

City Planner Abboud reviewed the staff report.

Jeanne See and Tabor Ashment owners of the Sport Shed commented to the Commission. They explained that the amendment clarifies the way they are using the property and this came about in their lease renewal. Currently they rent the rooms out in the summer season. They said they were in attendance to answer questions from the Commission.

Chair Minsch opened the public hearing. There were no public comments and the hearing was closed.

There was brief discussion that the use doesn't meet the definition of hotel/motel. City Planner Abboud responded that it is something that may need to be addressed in the future but the lessees have a legal document saying the use is hotel/motel so they will let it stand.

**KRANICH/BOS MOVED TO ADOPT STAFF REPORT PL 10-01 AMENDING CONDITIONAL USE PERMIT 86-02, INCLUDING FINDINGS.**

There was brief discussion.

**VOTE: YES: MINSCH, DRUHOT, KRANICH, SINN, BOS**

Motion carried.

- B. Staff Report PL 10-08, CUP 10-02, 4048 Bartlett Street/Homer Senior Citizens, Inc., a Request for More than one Building Containing a Principle Permitted Use on a Lot

City Planner Abboud reviewed the staff report.

Fred Lau and Pat Cash from Homer Senior Citizens, Inc. were in attendance to answer questions. Mr. Lau said he understands that they have to have Fire Marshall Approval when they get their permit, and that the project will meet the required setbacks for Swatzell Street.

Chair Minsch opened the public hearing. There were no public comments and the hearing was closed.

**KRANICH/BOS MOVED TO ADOPT STAFF REPORT 10-08 APPROVING CONDITIONAL USE PERMIT 10-02 WITH FINDINGS AND CONDITIONS.**

The Commissioners commended staff for the informative staff report. Comments were made that this is a good service for the community and it achieves the goal of infill.

**VOTE: YES: DRUHOT, MINSCH, KRANICH, SINN, BOS**

Motion carried.

**PLAT CONSIDERATION**

The Commission hears a report from staff, presentation from the applicant and testimony from the public. The Commission may ask questions of staff, applicants and the public.

- A. Staff Report PL 10-09, Barnett Subdivision Quite Creek Addition No. 2 Preliminary Plat

This item was pulled at the request of the applicant.

- B. Staff Report PL 10-12, Fairview Subdivision No. 16 2010 Replat Preliminary Plat

City Planner Abboud noticed pages missing from the staff report and asked for a break to get those pages. Chair Minsch called for a recess at 7:45. The meeting resumed at 7:59.

City Planner Abboud reviewed the staff report.

There was discussion about the carport and shop building on the lot and it raised a conversation about what would prompt a survey. The most likely scenarios are when dealing with a lender or work in an easement. It was expressed that it would be very beneficial to have an asbuilt survey on file with applications.

There was discussion confirming that there is legal access to the property off the right-of-way.

There were no applicant or public comments.

**KRANICH/BOS MOVED TO RECOMMEND APPROVAL OF THE PRELIMINARY PLAT IN STAFF REPORT 10-12 INCLUDING STAFF RECOMMENDATIONS.**

There was further discussion clarifying the legal access to the property.

**VOTE: NON OBJECTION: UNANIMOUS CONSENT.**

Motion carried.

**PENDING BUSINESS**

- A. Staff Report PL 10-08, Draft Spit Comprehensive Plan

Chair Minsch noted for the record that they discussed scheduling a joint worksession with the Port and Harbor Commission on March 3.

There was consensus of the Commission to postpone discussion until after that worksession.

- B. Staff Report PL 10-05, Draft Ordinance 10-xx, Amending HCC 21.75, Storm Water Plans

There was consensus of the Commission to postpone discussion to the next worksession that staff can schedule it.

## **NEW BUSINESS**

The Commission hears a report from staff. Commission business includes resolutions, ordinances, zoning issues, requests for reconsideration and other issues as needed. The Commission may ask questions of staff and the applicants. Any items brought before the commission for discussion are on the floor for discussion following introduction of the item. The Commission will accept presentation on agenda items that involve an applicant (such as acceptance of a nonconformity.) A member of the public wishing to comment on regular business items that do not require a public hearing or public notice may do so under Public Comment.

### **A. Staff Report PL 10-12, BOA Decision on Refuge Room**

Chair Minsch stated that it is her understanding that the City Manger and staff are asking some further questions of the City Attorney. She asked for a motion to postpone.

**KRANICH/BOS MOVED TO POSTPONE ACTION ON STAFF REPORT 10-12 BOA DECISION ON REFUGE ROOM UNTIL BROUGHT BACK BY STAFF.**

Chair Minsch clarified that there are some questions they need answers to before proceeding.

**VOTE: NON OBJECTION: UNANIMOUS CONSENT**

Motion carried.

### **B. Staff Report PL 10-13, Planning Commission Vacancies**

**KRANICH/BOS MOVED THAT THE PLANNING COMMISSION DECLARE A VACANCY DUE TO ABSENCES AS OUTLINED IN STAFF REPORT PL 10-13.**

The Commission briefly discussed their bylaws and procedures.

**VOTE: YES: MINSCH, KRANICH, SINN, BOS, DRUHOT**

Motion carried.

## **INFORMATIONAL MATERIALS**

Items listed under this agenda item can be HCC meeting minutes, copies of zoning violation letters, reports and information from other government units.

### **A. City Manager's Report Dated January 26, 2010 with attachments.**

### **B. Letter from FEMA to Mayor Hornaday regarding National Flood Insurance Program Community Assistance Visit dated January 8, 2010**

### **C. Memorandum 10-xx to Mayor Hornaday and City Council from Rick Abboud, City Planner and Dotti Harness-Foster, regarding Junk Car removal**

## **COMMENTS OF THE AUDIENCE**

Members of the audience may address the Commission on any subject. (3 minute time limit)

There were no audience comments.

**COMMENTS OF STAFF**

There were no staff comments.

**COMMENTS OF THE COMMISSION**

Commissioners may comment on any subject, including requests to staff and requests for excused absence.

Commissioners Druhot and Sinn had no comments.

Commissioner Kranich commended staff on the staff reports for the CUP's in tonight's packet.

Commissioner Bos commented that the staff reports are getting noticeably better, the information seems clear. He welcomed Chair Minsch back. It was a good meeting tonight.

Chair Minsch commended the Commission on their work tonight and in her absence. She opened the door to the possibilities that not only are the reports improving, but the qualifications of the Commissioners and their interpretation of the reports are also improving.

**ADJOURN**

Meetings adjourn promptly at 10 p.m. An extension is allowed by a vote of the Commission. Notice of the next regular or special meeting or work session will appear on the agenda following "adjournment".

There being no further business to come before the Commission, the meeting adjourned at 8:24 p.m. The next Regular Meeting is scheduled for February 17, 2010 at 7:00 p.m. in the City Hall Cowles Council Chambers. There is a worksession at 5:30 p.m. prior to the meeting.

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MELISSA JACOBSEN, CMC, DEPUTY CITY CLERK

Approved: \_\_\_\_\_

DEPARTMENT OF STATE

THE STATE BAR OF TEXAS

COMMISSION OF THE BAR

Section 101.001, Texas Business and Commerce Code, provides that the Commission shall have the authority to regulate the practice of law in this state.

Section 101.002, Texas Business and Commerce Code, provides that the Commission shall have the authority to make and enforce rules of professional conduct for the members of the bar.

Section 101.003, Texas Business and Commerce Code, provides that the Commission shall have the authority to discipline members of the bar who violate the rules of professional conduct.

Section 101.004, Texas Business and Commerce Code, provides that the Commission shall have the authority to suspend or disbar members of the bar who are found to be incompetent or who have been convicted of a crime involving moral turpitude.

Section 101.005, Texas Business and Commerce Code, provides that the Commission shall have the authority to take such other and additional action as may be necessary to protect the public interest in the administration of justice.

ARTICLE 1

Section 101.006, Texas Business and Commerce Code, provides that the Commission shall have the authority to make and enforce rules of professional conduct for the members of the bar.

Section 101.007, Texas Business and Commerce Code, provides that the Commission shall have the authority to discipline members of the bar who violate the rules of professional conduct.

ARTICLE 2



## City of Homer Planning & Zoning

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### HOMER ADVISORY PLANNING COMMISSION Meeting Of February 3, 2010

RE: Conditional Use Permit (CUP) 10-01 amending CUP 86-02

#### DECISION

**Introduction:** Homer Enterprises, LLC, represented by Tabor Ashment and Jeanne See who applied to the Homer Advisory Planning Commission (the "Commission") under Homer City Code 21.28.030(h) Marine Commercial (MC) to expand CUP 86-02 from two (2) hotel-motel units to three (3) hotel-motel units located at 3815 Homer Spit Road.

The application was first scheduled for a public hearing as required by Homer City Code 21.94 before the Commission on January 20, 2010. The January 20, 2010 meeting was cancelled due to lack of quorum. The public hearing was rescheduled for February 3, 2010. Notice of both public hearings was published in the local newspaper and sent to six (6) property owners of ten (10) parcels.

At the February 3, 2010 meeting of the Commission, the Commission voted to approve the request with five (5) Commissioners present, and five (5) Commissioners voted in favor of CUP 10-01, amending CUP 86-02.

After due consideration of the evidence presented, the Homer Advisory Planning Commission hereby makes the following findings of fact and conclusions of law.

## **EVIDENCE PRESENTED**

Introduction: On March 24, 1986, CUP 86-02 was granted to the Kachemak Gear Shed “for two (2) hotel-motel units” even though the 1986 building plan shows three (3) units, which exist today. In review of the 1986 documents, two (2) of the units were used as hotel-motel units, while the third (3<sup>rd</sup>) unit housed a seasonal charter operator, therefore it was not included in CUP 86-02. Since 1995, all three units have been rented out on a nightly basis in the summer months to the general public.

The building plan from 1986 also shows fish processing, freezer and storage areas. All were/are permitted in the MC District, and so were not a part of CUP 86-02. In 2009, the only fish handling was the repackaging of bait into smaller portions for resale, which does not require DEC approval.

CUP 86-02 has three (3) conditions: DEC, Fire Marshal Certification and an approved parking plan. Staff verified compliance with these conditions.

Like other properties on the Spit, a Commercial/Industrial Planned Unit Development (PUD) is needed for decks and stairs that projects into the setback.

## **FINDINGS OF FACT**

Homer City Code §21.52.060(B) provides:

**B. The criteria for granting a Commercial/Industrial PUD is outlined in HCC 21.52.060.**

1. The PUD site shall have direct access to an arterial or collector street.

**Finding #1:** The development has direct access to the Homer Spit Road, an arterial street.

2. Utilities, roads and other essential services must be constructed, installed and available for the immediate use of occupants of the PUD.

**Finding #2:** Fire services and public water and sewer serve the development.

3. The PUD shall be developed with a unified architectural treatment.

**Finding #3:** The existing development is similar in character to other structures on the Spit with a mix of single and two-story structures on a boardwalk.

**C. If topographical or other barriers do not provide adequate privacy for uses adjacent to the PUD, the Commission may impose conditions to provide adequate privacy. These conditions would include, but are not limited to, one or both of following requirements:**

1. Structures located on the perimeter of the planned unit development must be set back a distance sufficient to protect the privacy of adjacent uses;

**Finding #4:** To the north, the Sports Shed boardwalk is connected to the Glacier Drive-In boardwalk. To the south, privacy is protected by a 140 foot separation to the KSMA structure.

2. Structures on the perimeter must be permanently screened by a fence, wall, planting or other measures sufficient to protect the privacy of adjacent uses.

**Finding #5:** The beachfront location requires structures to be elevated on piling (HCC 21.41.250). The flood regulations prevent the use of fences and walls in the intertidal flood area. Planting consists of flower boxes.

**Finding #6:** The 1999 Homer comprehensive Plan Update page 4 states "Recognize and accommodate natural features and processes while providing adequate space for marine commercial and industrial, tourist commercial, transportation, recreation, open space and traditional uses." This development on pilings accommodates the natural features and processes of the beachfront location while providing a structure for commercial use.

**D. Dimensional Requirements. Setbacks and distances between buildings within the development shall be at least equivalent to that required by the zoning district in which the PUD is located unless the applicant demonstrates that:**

1. A better or more appropriate design can be achieved by not applying the provisions of the zoning district; and

**Finding #7:** The structure is located on a raised platform on pilings in a Velocity Flood Zone which is required per the City's Flood Prone Areas, HCC 21.41.250. Due to the topography of the beach, the platform extends higher than sixteen (16) inches above the beach (finished grade). Alternative designs would also require a raised platform on pilings.

2. Adherence to the dimensional requirements of the zoning district is not required in order to protect health, safety and welfare of the occupants of the development and the surrounding area.

**Finding #8:** The purpose of the City's Flood Prone Areas is to protect the public from the risks of flooding and to protect health, safety and welfare of all Homer residents, HCC 21.41.010. Adherence to dimensional requirements of HCC 21.05.020(d) would be detrimental to the health, safety and welfare of the occupants and the surrounding area.

**E. The site development standards of HCC § 21.50.030 shall be met.**

**Finding #9:** This request does not include further development. This project meets the standards of HCC 21.50.030 that applies to existing developments.

**Homer City Code §21.71.030 provides:**

**Review Criteria.** The applicant must produce evidence sufficient to enable meaningful review of the application. Unless exceptions or other criteria are stated elsewhere in this code, the application will be reviewed under these criteria:

**A. The applicable code authorizes each proposed use and structure by conditional use permit in that zoning district.**

**Finding #10:** CUP 86-02 is valid and allows “two hotel-motel units.”

**Finding #11:** Hotels and motels are a Conditional Use in the Marine Commercial District per HCC 21.28.030(h).

**B. The proposed use(s) and structure(s) are compatible with the purpose of the zoning district in which the lot is located.**

**Finding #12:** The hotel/motel is part of a complex that serves and supports water-related activities such as the harbor and Fishing Hole; all of which are in the Marine Commercial district.

**Finding #13:** This development includes retail, bait, storage and the hotel-motel units, all of which support fishing and tourism. The hotel-motel units are accessory to the main retail business.

**C. The value of the adjoining property will not be negatively affected greater than that anticipated from other permitted or conditionally permitted uses in this district.**

**Finding #14:** The business and commerce activity has been ongoing since 1986 and compliments uses such as fishing, seafood processing and tourism. It is not expected that the adjoining property would decrease in value over permitted or conditionally permitted uses such as fish processing and wholesale outlets.

**D. The proposal is compatible with existing uses of surrounding land.**

**Finding #15:** Since 1986 the hotel-motel has proven to be compatible with the existing uses of surrounding land. Fishing and tourism benefit from the retail, hotel-motel complex; while the complex serves the fishing and tourism activity.

- E. Public services and facilities are or will be, prior to occupancy, adequate to serve the proposed use and structure.**

**Finding #16:** Public services and facilities are adequate to serve the project. Public water and sewer serve the property. Homer Spit Road is State maintained.

- F. Considering harmony in scale, bulk, coverage and density, generation of traffic, the nature and intensity of the proposed use, and other relevant effects, the proposal will not cause undue harmful effect upon desirable neighborhood character.**

**Finding #17:** The two story structure is similar in the adjoining shellfish processing building in scale, and bulk.

**Finding #18:** Three units for overnight guests do not generate more traffic than the surrounding campgrounds, fishing hole, and RV parks.

**Finding #19:** No evidence has been presented, past or present, demonstrating that this proposal would cause an undue harmful effect upon the desirable neighborhood character.

- G. The proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area or the city as a whole.**

**Finding #20:** Fire Marshal certification provides assurance that the hotel-motel meets health and safety standards which benefits the city.

- H. The proposal does or will comply with the applicable regulations and conditions specified in this title for such use.**

**Finding #21:** The proposal complies with CUP 86-02 Conditions 1-3 and applicable regulations.

- I. The proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan.**

**Finding #22:** The proposal meets the goal as stated in the 1999 Homer Comprehensive Plan Update, page 4, Homer Spit Plan, to "manage the land and other resources of the spit to accommodate its natural processes, while allowing fish, tourism, other marine related development and open space/recreational uses."

- J. The proposal will comply with all applicable provisions of the Community Design Manual (CDM).**

**Finding #23:** The CDM encourages outdoor furnishings in the Marine Zones, pg 37. Decking connects the retail area to the storage area, but there is no designated outdoor seating area.

**CONCLUSION**

Based on the foregoing findings of fact and law, Conditional Use Permit 10-01 amending CUP 86-02 is hereby approved, subject to the following conditions:

**Condition 1:** Project to be in compliance with local, state and federal regulations.

Date: \_\_\_\_\_

\_\_\_\_\_  
Chair, Sharon Minsch

Date: \_\_\_\_\_

\_\_\_\_\_  
City Planner, Rick Abboud

DRAFT



**NOTICE OF APPEAL RIGHTS**

Pursuant to Homer City Code, Chapter 21.93, any person with interests in land that is affected by this decision may appeal this decision to the Homer Board of Adjustment within thirty (30) days of the date of distribution indicated below. Any decision not appealed within that time shall be final. A notice of appeal shall be in writing, shall contain all the information required by Homer City Code, Section 21.93.080, and shall be filed with the Homer City Clerk, 491 East Pioneer Avenue, Homer, Alaska 99603-7645.

**CERTIFICATION OF DISTRIBUTION**

I certify that a copy of this Decision was mailed to the below listed recipients on \_\_\_\_\_, 2009. A copy was also delivered to the City of Homer Planning Department and Homer City Clerk on the same date.

Date: \_\_\_\_\_

\_\_\_\_\_  
Shelly Rosencrans, Planning Assistant

Homer Enterprise LLC  
Tabor Ashment and Jeanne See  
3815 Homer Spit Road #A  
Homer, AK 99603

Walt Wrede, City Manager  
491 E Pioneer Avenue  
Homer, AK 99603

Thomas Klinkner  
Birch, Horton, Bittner & Cherot  
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# City of Homer

## Planning & Zoning

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### HOMER ADVISORY PLANNING COMMISSION

February 3, 2010

RE: 4048 Bartlett Street, Bunnell's Subdivision No. 22 Lot 22-A2  
Application for Conditional Use Permit  
Permit Number CUP 10-02

### DECISION

#### Introduction

Homer Senior Citizens, Inc applied to the Homer Advisory Planning Commission (the "Commission") under Homer City Code 21.16.030(h) for more than one building containing a permitted principle use on a lot. The applicant sought a Conditional Use Permit (CUP) to construct a four unit senior housing apartment building on the same lot as an existing nine unit building. The property is zoned Residential Office, pursuant to Homer City Code 21.16.

The application was scheduled for a public hearing as required by Homer City Code 21.94 before the Commission on February 3, 2010. Notice of the public hearing was published in the local newspaper and sent to 35 property owners of 42 parcels.

At the February 3, 2010 meeting of the Commission, the Commission voted to approve the request with five Commissioners present, and five Commissioners voted in favor of the conditional use permit.

After due consideration of the evidence presented, the Homer Advisory Planning Commission, hereby makes the following findings of fact and conclusions of law.

### EVIDENCE PRESENTED

One person testified. Fred Lau spoke on behalf of Homer Senior Citizens, Inc. Mr. Lau said he understood that they have to have Fire Marshall Approval when they get their permit, and that the project will meet the required setbacks for Swatzell Street.

**FINDINGS OF FACT**

**Homer City Code §21.71.030 provides:**

**Review Criteria.** The applicant must produce evidence sufficient to enable meaningful review of the application. Unless exceptions or other criteria are stated elsewhere in this code, the application will be reviewed under these criteria:

**A. The applicable code authorizes each proposed use and structure by conditional use permit in that zoning district.**

**Finding 1:** Homer City code authorizes the proposed multifamily residential use and the presence of both apartment buildings on the lot in the Residential Office District. 21.16.020 (b) lists multifamily dwellings as a permitted use. 21.16.030(h) lists “more than one” as a conditional use. The applicable code authorizes each proposed use and structure by conditional use permit in the zoning district.

**B. The proposed use(s) and structure(s) are compatible with the purpose of the zoning district in which the lot is located.**

**Finding 2:** Two single story buildings, containing a total of thirteen two bedroom and two one bedroom apartment units provide, medium density housing compatible with the purpose of the district.

**Finding 3:** The neighborhood is a mixture of single and two story homes, apartments and professional offices. The four-plex is of similar scale and density as the neighborhood, and will not generate substantial traffic. The addition of four senior housing apartment units to the existing nine unit senior housing development is compatible to the purpose of the district.

**C. The value of the adjoining property will not be negatively affected greater than that anticipated from other permitted or conditionally permitted uses in this district.**

**Finding 4:** The addition of a four unit senior housing apartment building will not have a negative affect on the value of adjoining property that is greater than the potential negative affects other permitted or conditionally permitted uses.

**D. The proposal is compatible with existing uses of surrounding land.**

**Finding 5:** The single story four-plex will provide moderate density multifamily housing that is compatible with existing uses of land.

**E. Public services and facilities are or will be, prior to occupancy, adequate to serve the proposed use and structure.**

**Finding 6:** Public services and facilities are adequate to serve the proposed use and structure. City water and sewer are available and adequate to serve the entire development.

**F. Considering harmony in scale, bulk, coverage and density, generation of traffic, the nature and intensity of the proposed use, and other relevant effects, the proposal will not cause undue harmful effect upon desirable neighborhood character.**

**Finding 7:** The proposed four unit senior housing building is in harmony with the scale, bulk, coverage and density, traffic generation, nature and intensity with the desired neighborhood character, and will have no harmful effect on desirable neighborhood character.

**G. The proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area or the city as a whole.**

**Finding 8:** The addition of a four unit apartment building will not be detrimental to the health, safety or welfare of the surrounding area or of the city as a whole. State Fire Marshal approval is a requirement of Homer City Code and must be provided prior to the issuance of a zoning permit.

**H. The proposal does or will comply with the applicable regulations and conditions specified in this title for such use.**

**Finding 9:** The proposal complies with all Homer City code title 21 requirements.

**I. The proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan.**

**Finding 10:** The comprehensive plan encourages infill development, clustering compatible use types and densities, and protecting the integrity and attractiveness of the residential area. The apartment building creates infill development, is a compatible use and density to the district, and contributes to the attractiveness of the neighborhood. The building has attractive architectural features such as breaks in the roof line, symmetrical window placement, and simulated wood lap siding. The proposal is not contrary to the applicable land use goals and objectives of the comprehensive plan.

**J. The proposal will comply with all applicable provisions of the Community Design Manual.**

**Condition 1:** All lighting on the new structure shall meet the requirements of the Community Design Manual and HCC 21.59.030.

**Finding 11:** The proposal must comply with condition 1 and thereby comply with the applicable provisions of the Community Design manual.

**CONCLUSION**

Based on the foregoing findings of fact and law, Conditional Use Permit 10-02 is hereby approved, subject to the following conditions:

**Condition 1:** All lighting on the new structure shall meet the requirements of the Community Design Manual and HCC 21.59.030.

Date: \_\_\_\_\_

\_\_\_\_\_  
Chair, Sharon Minsch

Date: \_\_\_\_\_

\_\_\_\_\_  
City Planner, Rick Abboud

***NOTICE OF APPEAL RIGHTS***

Pursuant to Homer City Code, Chapter 21.93, any person with interests in land that is affected by this decision may appeal this decision to the Homer Board of Adjustment within thirty (30) days of the date of distribution indicated below. Any decision not appealed within that time shall be final. A notice of appeal shall be in writing, shall contain all the information required by Homer City Code, Section 21.93.080, and shall be filed with the Homer City Clerk, 491 East Pioneer Avenue, Homer, Alaska 99603-7645.

***CERTIFICATION OF DISTRIBUTION***

I certify that a copy of this Decision was mailed to the below listed recipients on \_\_\_\_\_, 2010. A copy was also delivered to the City of Homer Planning Department and Homer City Clerk on the same date.

Date: \_\_\_\_\_

\_\_\_\_\_  
Shelly Rosencrans, Planning Assistant

Walt Wrede, City Manager  
491 E Pioneer Avenue  
Homer, AK 99603

Thomas Klinkner  
Birch, Horton, Bittner & Cherot  
1127 West 7th Ave  
Anchorage, AK 99501

DRAFT

With respect to the  
the following items  
the following items

the following items  
the following items  
the following items



# City of Homer Planning & Zoning

491 East Pioneer Avenue  
Homer, Alaska 99603-7645

Telephone (907) 235-8121  
Fax (907) 235-3118  
E-mail [Planning@ci.homer.ak.us](mailto:Planning@ci.homer.ak.us)  
Web Site [www.ci.homer.ak.us](http://www.ci.homer.ak.us)

---

## STAFF REPORT PL 10-19

**TO:** Homer Advisory Planning Commission  
**FROM:** Rick Abboud, City Planner  
**MEETING:** February 17, 2010  
**SUBJECT:** Planning Director's Report

### February 8<sup>th</sup> City Council Meeting

#### Committee of the Whole:

**Resolution 10-23**, A Resolution of the Homer City Council Modifying the Homer Comprehensive Plan by Changing the Land Use Recommendation Map to Include Conservation Lands, Parks and Recreation Land, and Wetlands, and Keeping All Currently Zoned Rural Residential Land the Same on the New Land Use Recommendation Map and Postponing Adoption of Ordinance 09-40(S) Until the Public is Able to Testify on These Changes at the February 22, 2010 Homer City Council Meeting. Roberts/Zak.

#### Regular Meeting:

**Memorandum 10-26**, from Mayor, Re: Appointment of Roberta Highland to the Planning Commission, Reappointments of John Velsko and Steve Zimmerman to the Port and Harbor Advisory Commission, and Appointment of Kevin Hogan to the Health Benefits Task Force.

APPROVED

#### Roberta Highland, Comp Plan Working Group

Roberta Highland, representing the Comp Plan Working Group, asked for postponement on Ordinance 09-40(S) and support of the idea in Resolution 10-23. She proposed a map with landmarks and returning all areas zoned rural residential back to rural residential

**Ordinance 09-40(S)**, An Ordinance of the Homer City Council Adopting the 2008 Homer Comprehensive Plan and Recommending Adoption by the Kenai Peninsula Borough. City Manager. Introduction September 14, 2009, Public Hearings October 12 & 26, November 23, 2009, January 25, 2010, Worksession November 9, 2009 and Second Reading February 8, 2010.

Memorandum 10-11 from City Planner and Planning Technician as backup.

There were 3 who testified.

AMENDED: removed the neighborhood commercial designation from West Hill and returned it to rural residential as on the Comprehensive Land Use Designation Map.

POSTPONED Second Reading to March 22, Public Hearings on February 22 and March 8.

**Ordinance 10-05**, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 21.40.060 Bridge Creek Watershed Protection District Conditional Uses and Structures to Include More Than One Building Containing a Permitted Principle Use On a Lot as a Conditional Use. City Manager/Planning. Introduction January 25, 2010, Public Hearing and Second Reading February 8, 2010.

Memorandum 10-22 from City Planner and Planning Technician as backup

There was one who testified.

ADOPTED with discussion.

**Ordinance 10-06**, An Ordinance of the City Council of Homer, Alaska, Amending the Following Sections of the Homer City Code Regarding the Residential Office District: 21.16.030, Conditional Uses; 21.16.040, Dimensional Requirements; 21.16.060 (Renumbered 21.16.070), Site Development Standards; and Enacting the Following Sections of the Homer City Code Regarding the Residential Office District: 21.16.060, Traffic Requirements; 21.16.080, Nuisance Standards; and 21.16.090, Lighting Standards. City Manager/Planning. Introduction January 25, 2010, Public Hearing and Second Reading February 8, 2010.

Memorandum 10-23 from City Planner and Planning Technician as backup.

There was one who testified.

ADOPTED with discussion.

**Ordinance 10-08**, An Ordinance of the City Council of Homer, Alaska, Amending the FY 2010 Budget to Appropriate Funds in the Amount of \$15,000 for a Junk Car Program. City Manager/City Planner. Recommended dates: Introduction February 8, 2010, Public Hearing and Second Reading February 22, 2010.

Memorandum 10-33 from City Planner as backup.

ADOPTED with discussion. *Wished to have funds appropriated from account other than General Fund.*

**Ordinance 10-10**, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 21.24.030 to Add Public, Private, Trade, Skilled or Industrial Schools as a Conditional Use in the General Commercial One Zoning District. Zak. Recommended dates: Introduction February 8, 2010, Refer to Planning Commission. ADOPTED without discussion.

**Resolution 10-23**, A Resolution of the Homer City Council Modifying the Homer Comprehensive Plan by Changing the Land Use Recommendation Map to Include Conservation Lands, Parks and Recreation Land, and Wetlands, and Keeping All Currently Zoned Rural Residential Land the Same on the New Land Use Recommendation Map and Postponing Adoption of Ordinance 09-40(S) Until the Public is Able to Testify on These Changes at the February 22, 2010 Homer City Council Meeting. Roberts/Zak.

WITHDRAWN BY MAKER.

### **COMMENTS OF THE CITY ATTORNEY**

City Attorney Klinkner reported on a new case filing. In 2008 the Planning Commission approved a CUP for Kachemak Shellfish Growers Association (KSMA) for a building on the Homer Spit. This became the first test of amendment to Homer City Code regarding standing to appeal zoning matters. Frank Griswold submitted an appeal that the Clerk rejected because it failed to demonstrate the required standing. He appealed the decision to the Superior Court that affirmed the Clerk's decision. He now has appealed to the Supreme Court. Briefing is underway and is expected to close by the end of April.

#### **City Council February 22<sup>nd</sup>:**

##### **Special Meeting:**

**Memorandum 10-**, From City Clerk Re: Request for Executive Session Pursuant to AS 44.62.310(C)(1&5), Matters, The Immediate Knowledge of Which Would Clearly have an Adverse Effect upon the Finances of the Government Unit and Attorney/Client Privilege. (Frank Griswold vs. City of Homer and Don Blackwell - Superior Court Case; Frank Griswold vs. City of Homer; City Clerk Jo Johnson; Kachemak Shellfish Mariculture Association - Supreme Court No. S-13734)

##### **Regular Meeting:**

**Ordinance 09-40(S)**, An Ordinance of the Homer City Council Adopting the 2008 Homer Comprehensive Plan and Recommending Adoption by the Kenai Peninsula Borough. City Manager. Introduction September 14, 2009, Public Hearings October 12 & 26, November 23, 2009, January 25, February 8 & 22, 2010, Worksession November 9, 2009 and Second Reading March 22, 2010.

Memorandum 10-11 from City Planner and Planning Technician as backup.

**Ordinance 10-08**, An Ordinance of the City Council of Homer, Alaska, Amending the FY 2010 Budget to Appropriate Funds in the Amount of \$15,000 for a Junk Car Program. City Manager/City Planner. Introduction February 8, 2010, Public Hearing and Second Reading February 22, 2010.

Memorandum 10-33 from City Planner as backup.

##### **Court Cases:**

It is my understanding that the issue of standing involving Frank Griswold's appeal of the KSMA decision (Frank was denied standing to appeal the decision) will be taken to the Alaska Supreme Court. Additionally,

the acceptance of nonconforming status of Blackwell's Pump Service was upheld by the BOA is being appealed to the Superior Court.

**Activities:**

For Sale vehicles on the Sterling Highway. Typically, these cars are parked in the state ROW, not on private property. Unless the vehicles inhibit the ability to plow, the state does not get involved. We continue to call For Sale "parkers". Dotti is working with the property owners who also inform the "parkers" that this activity is not allowed in the GBD. Ace Towing is installing signs (on private property) You Park-We Tow. Barricades would help alleviate this continue problem and save Police and Planning staff time. So far, neither the AkDOT nor the City's Public Works Department is willing to install barricades.

Hazard Mitigation Plan: Dotti is reviewing the Hazard Mitigation Plan and aligning the Goals, Objections and Action items with the City's flood standards. We are also updating the web Flood Page with information links on flood insurance, mitigation techniques and permitting requirements.

Dotti is encouraging Homer's insurance agents to become FEMA Certified to offer flood policies under the National Flood Insurance Program (NFIP). This will enable property owners to discuss their flood insurance needs with a local agent who can underwrite a subsidized policy under the National Flood Insurance Program (NFIP).

Julie has been working on the Draft Land Allocation Plan with a presentation to the Transportation Advisory Committee next.

I have attended the Economic Development Commission meeting to explain some of the thought behind the Proposed Future Land Use Map. I volunteered to pass along specific concerns regarding zoning to the HAPC. I also encouraged all to read and comment of the Spit Comprehensive Plan.



# City of Homer Planning & Zoning

491 East Pioneer Avenue  
Homer, Alaska 99603-7645

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*Web Site* [www.ci.homer.ak.us](http://www.ci.homer.ak.us)

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## STAFF REPORT PL 10-07

**TO:** Homer Advisory Planning Commission  
**THROUGH:** Rick Abboud, City Planner  
**FROM:** Julie Engebretsen, Planning Technician  
**MEETING:** February 17, 2010  
**SUBJECT:** Vacation of a portion of Hough Road

**Requested Action:** Conduct a public hearing on the vacation of a portion of Hough Road and make a recommendation to the Kenai Peninsula Borough Planning Commission.

**Staff Recommendation:** Recommend approval of the vacation.

## GENERAL INFORMATION

<b>Applicants:</b>	C. Micheal and Shila Hough 3733 Ben Walters Lane #2 Homer, AK 99603	Roger Imhoff, RLS PO Box 2588 Homer, AK 99603
<b>Requested Action:</b>	Vacation of a portion of Hough Road	
<b>Location:</b>	East End Road, between Triton Court and Compass Drive	
<b>Zoning Designation:</b>	Rural Residential	
<b>Existing Land Use:</b>	Vacant	
<b>Surrounding Land Use:</b>	North: Vacant South: Vacant East: Vacant West: Vacant	
<b>Comprehensive Plan:</b>	Homer's transportation system, including, streets, trails, docks and airport, should support future community economic and population growth. (2005 Transportation Plan p. I-21)	
<b>Public Notice:</b>	Notice was sent to 71 property owners of 104 parcels as shown on the KPB tax assessor rolls.	

## ANALYSIS:

This vacation request lies within the rural residential zoning district. A preliminary plat also accompanies this request. The plat will be considered under a separate agenda item. This staff report will only address the vacation of the right of way. The purpose of the vacation is to move the right of way alignment to the west, over an existing driveway. (See cover letter)

The city of Homer does not have code criteria to review a right of way vacation. Applicable Kenai Peninsula Borough Code states:

20.04.010 Purpose of provisions.

*The purpose of this title is to promote an adequate and efficient street and road system, to provide utility easements, to provide minimum standards of survey accuracy and proper preparation of plats, and to protect and improve the health, safety and general welfare of the people.*

**Staff Finding:** An adequate and safe road system has been proposed by the applicant. Hough Road will be replatted and realigned further west.

20.28.150. Vehicular access provision.

*Where a right-of-way is required for logical provision of an existing or future road, the planning commission shall not approve the vacation unless an equal or superior right-of-way will be provided in exchange. Where 2 or more access points are necessary for large vacant or semi-vacant areas of land, the commission shall consider the ultimate density of habitation or use and maintain sufficient rights-of-way to serve such anticipated use.*

**Staff finding:** New Right of way is dedicated by the Christen Tracts 2009 Addition Subdivision with equal or superior access.

**PUBLIC WORKS COMMENTS:** The Public Works Department had no objection to the vacation.

**FIRE DEPARTMENT COMMENTS:** Fire Chief Painter did not comment.

**STAFF COMMENTS**

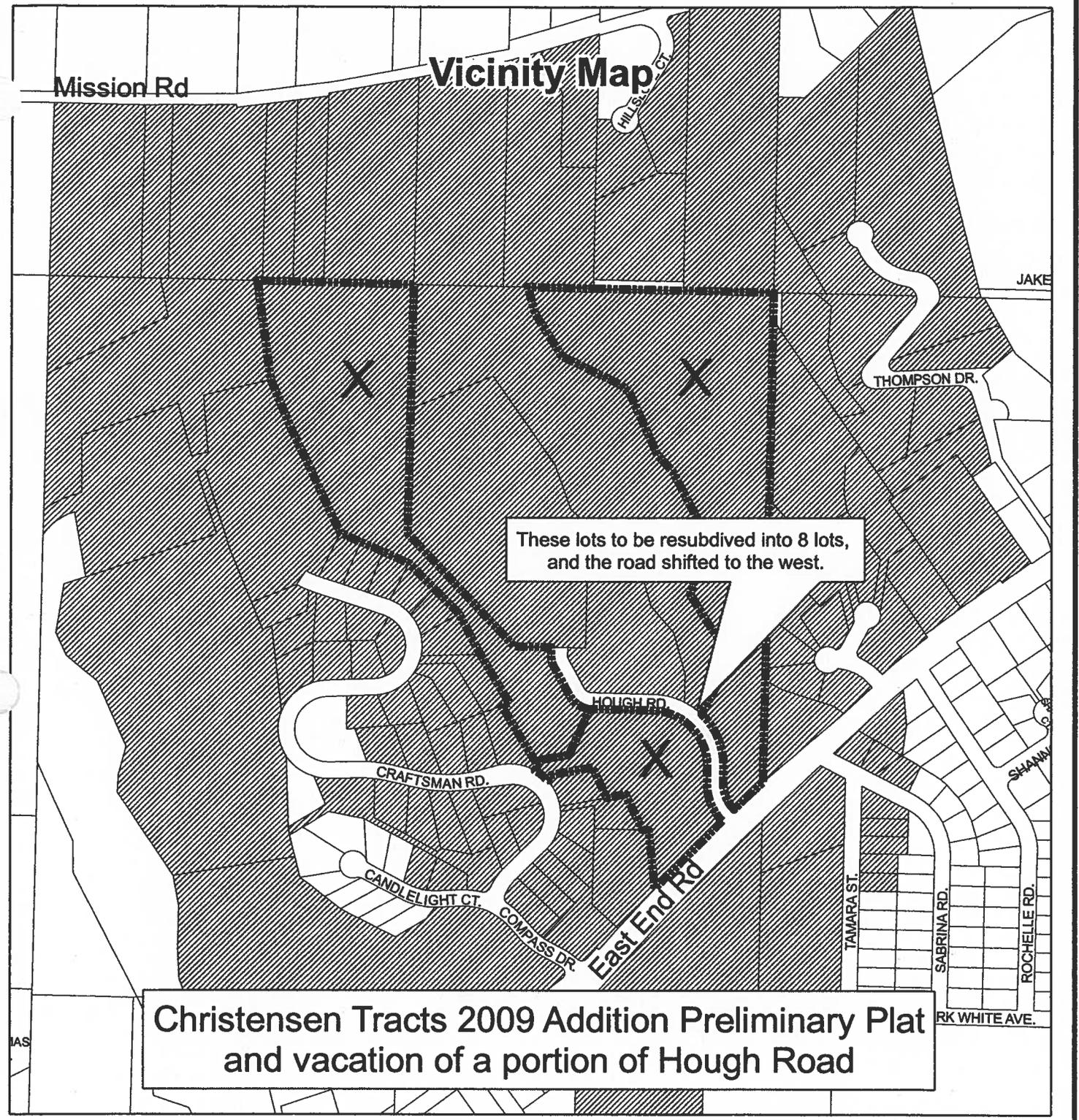
Staff recommends the Commission recommend approval of the vacation of a portion of Hough Road.

**ATTACHMENTS**

1. Vicinity Map
2. Surveyor letter and Vacation Petition
3. Preliminary Plat

# Vicinity Map

Mission Rd



These lots to be resubdivided into 8 lots, and the road shifted to the west.

## Christensen Tracts 2009 Addition Preliminary Plat and vacation of a portion of Hough Road



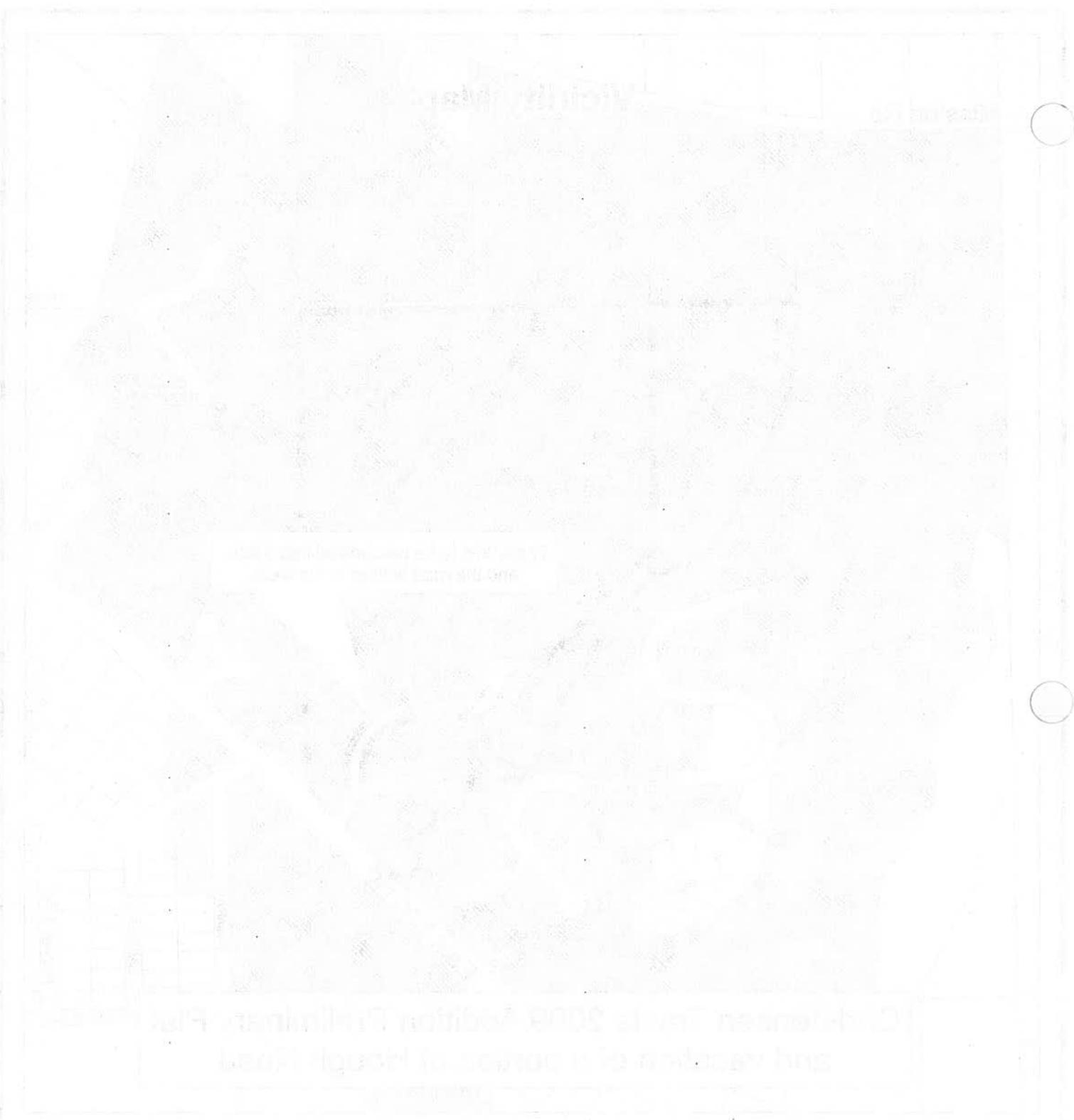
*City of Homer*  
**Planning and Zoning Department**

December 22, 2009

Property owners within  
 500 feet (shaded lots) are notified



*Disclaimer:*  
 It is expressly understood the City of Homer, its council, board, departments, employees and agents are not responsible for any errors or omissions contained herein, or deductions, interpretations or conclusions drawn therefrom.

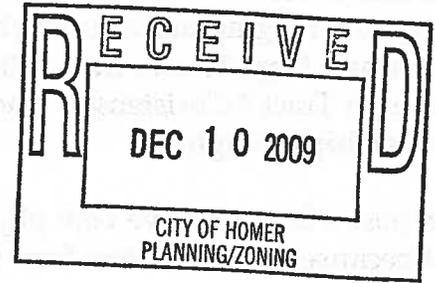


The map shows the proposed location of the child-care facility. The site is located on the east side of the street, adjacent to the existing building. The map also shows the surrounding streets and other buildings in the area.

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*Roger W. Imhoff, RLS*  
PO Box 2588 \* Homer Ak 99603  
ph(907)235-7279 fax(907)235-5254  
rogerimhoff@alaska.net



12-04-2009

Julie Engebretsen  
Planning Dept  
City of Homer

RE: Preliminary Plat  
Christensen Tracts 2009 Addition

Please find enclosed materials for submittal of the above named preliminary plat.

Last year, Christensen Tracts No 5 was submitted and approved by the COH and KPB (see COH Staff Report PL 08-99 and KPB File No 2008-247).

Since then, the owners acquired additional tracts from the Stream Hill Park Subdivision and now wish to incorporate a resubdivision of those Tracts (B and F). We are also cleaning up a long standing situation regarding the primary access off of East End Road.

Due to the timing of the previous subdivisions of Stream Hill Park and Christensen Tracts, the ROW was never dedicated to overlay the existing private easement and driveway. As a consequence the existing driveway was totally outside of the dedication. This plat remedies that situation by vacating the applicable portion of Hough Road and dedicating a new ROW to overlay the centerline of the existing driveway and use the existing curb cut onto East End Road.

The associated 50 ft wide private easement will be relinquished by the owners. The upper portion of Hough Road ROW will remain as is. Recently, the Owners contracted to have the driveway extended to the temporary culdesac and the end of the ROW.

Please note that the utility easements that were associated with the former ROW location are also being vacated. Those easements are not in use. It would be helpful for the paperwork if the Planning Commission approved or had "no-objection" to the utility easement vacation.

Tracts 1-A and 1-B remain pretty much the same in configuration, with the vacated portion being added to the tracts to increase the sizes by a few thousand square feet.

Tract 1-C is identical to the approved plat of Christensen Tracts No 5. The panhandle and easement access was given final approval by the Borough Planning Dept. The exception to the 3:1 length width ratio was approved by the KPB Plat Committee. That exception will be asked for again for Tract 1-C and Tract B (now proposed Lot 5). (Due to topographic constraints the exception is justified).

Former Tract F and the lower portion of Tract B, Stream Hill Park Unit 2, are being divided into 4 large lots ranging in size from about 51000 sf to 98000 sf. The upper portion of former Tract B remains a large 10 acre tract with legal access from Hough Road. The only practical physical access is through Tract 3 Christensen Tracts No 4, as it was prior to subdivision. Tract 3 is under the same ownership (Hough).

Proposed Lots 1-3 have both physical and legal access from Hough Road. Lot 4 is a double frontage lot because it also accesses from Craftsman Road.

Lots 1 and 4 and Tract 1-A have access to City Water Service. All the proposed lots will have on-site wastewater disposal. Pannone Engineering will conduct the remaining soils testing and submit the appropriate findings to the KPB prior to plat recording.

There are steep areas within the subdivision, most typically, the gully sides. 10 ft contours from Aeromap are shown.

The Stream Hill Park Project had some designated wetlands centered along the seasonal drainage that runs through proposed Lots 1 and 2. That was in 2005. Corps permits are valid for 5 years, so I would anticipate that the permit would carry with the land through nearly the end of 2010.

I spoke with Dan Gardner today about the subdivision improvement agreement for Stream Hill Park. There are no improvements within the former tracts B and F that were included in the subdivision agreement (for Stream Hill). However, the replatted portions of former Tracts B and F (proposed lots 1-5) may be subject to a new improvement agreement with Houghs under this "new" proposed plat. Please ask Dan to clarify in the Public Works report whether or not such an improvement agreement is required prior to recording.

Stream Hill Park has quite a packet of covenants, conditions, and restrictions (CCRs). To the best of my knowledge, the only condition that will be carried forward is that the upper portion of former Tract B (now proposed Lot 5), will remain as "open space" or some such designation agreeable to all the parties. Mike Hough stated to me that IF Lot 5 was to be developed as a homesite, that Stream Hill (owners association?) would need to re-designate a corresponding square footage in some other portion of Stream Hill Park S/D to compensate for the difference. This probably has nothing to do with the Subdivision code, but I thought the PC may be interested to know that proposed Lot 5 is not anticipated to be part of a housing development.

If you or Staff have any questions, comments, or suggestions, please advise me prior to the PC meeting.

Sincerely



**COPY**



### Kenai Peninsula Borough Planning Department

144 North Binkley

Soldotna, Alaska 99669-7599

Toll free within the Borough 1-800-478-4441, extension 2200

(907) 714-2200

## Petition to Vacate Public Right-of-Way/Section Line Easement Public Hearing Required

Upon receipt of complete application with fees and all required attachments a public hearing before the Planning Commission will be scheduled. The petition with all required information and attachments must be in the Planning Department at least 30 days prior to the preferred hearing date. By State Statute and Borough Code, the public hearing must be scheduled within 60 days of receipt of complete application.

- Fees - \$300 non-refundable fee to help defray costs of advertising public hearing. Plat fees will be in addition to vacation fees.
- City Advisory Planning Commission. Copy of minutes at which this item was acted on, along with a copy of City Staff Report.
- Name of public right-of-way proposed to be vacated is HOUGH RD.; dedicated by plat of CHRISTENSEN TRACTS NO 3 Subdivision, filed as Plat No. 2003-90 in HOMER Recording District. STREAM HILL PARK UNIT 2, PLAT NO 2008-48
- Are there associated utility easements to be vacated?  Yes  No
- Are easements in use by any utility company; if so which? NO
- Easement for public road or right-of-way as set out in (specify type of document) \_\_\_\_\_ as recorded in Book \_\_\_\_\_ Page \_\_\_\_\_ of the \_\_\_\_\_ Recording District. (Copy of recorded document must be submitted with petition)
- Section Line Easement. Width of easement must be shown on sketch.
- Submit three copies of plat or map showing area proposed to be vacated. Must not exceed 11 x 17 inches in size. In the case of public right-of-way the submittal must include a sketch showing which parcels the vacated area will be attached to. Proposed alternative dedication is to be shown and labeled on the sketch.

- Has right-of-way been fully or partially constructed?  Yes  No
- Is right-of-way used by vehicles/pedestrians/other?  Yes  No
- Has section line easement been constructed?  Yes  No
- Is section line easement being used?  Yes  No
- Is alternative right-of-way being provided?  Yes  No

The petitioner must provide reasonable justification for the vacation. Reason for vacating:

SEE COVER LETTER <12-10-09>

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**COPY**

The petition must be signed (written signature) by owners of majority of the front feet of land fronting part of right-of-way or section line easement proposed to be vacated. Each must include mailing address and legal description of his/her property.

Submitted by: Signature

*[Handwritten Signature]*

As:  Petitioner  Representative

Name

ROGER IMHOFF, RLS

Address

PO Box 2588  
HOMER, AK 99603

*rogerimhoff@alaska.net*

Phone

907 235-7279

Petitioners:

Signature

*[Handwritten Signature]*

Signature

*[Handwritten Signature]*

Name

Michael Hough

Name

Shila Ann Hough

Address

3733 Benwalter Dr #2  
Homer AK 99603

Address

3733 Benwalter Dr #2  
Homer AK 99603

Owner of

\_\_\_\_\_

Owner of

\_\_\_\_\_

Signature

\_\_\_\_\_

Signature

\_\_\_\_\_

Name

\_\_\_\_\_

Name

\_\_\_\_\_

Address

\_\_\_\_\_

Address

\_\_\_\_\_

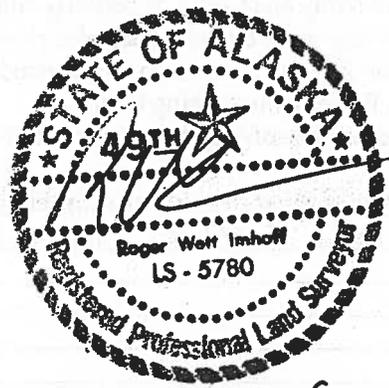
Owner of

\_\_\_\_\_

Owner of

\_\_\_\_\_

PETITIONERS ARE OWNERS OF TRACT 1 CHRISTENSEN TRACTS NO 4, PLAT NO. 2006-44, HRD & TRACT F STREAMHILL PARK UNIT 2, PLAT NO. 2008-48, HRD.



*12-10-09*

*Roger W. Imhoff, RLS*  
PO Box 2588 \* Homer Ak 99603  
ph(907)235-7279 fax(907)235-5254  
rogerimhoff@alaska.net

**COPY**

12-10-09

Mary Toll  
KPB Planning Dept  
144 N. Binkley St  
Soldotna AK 99669

RE: Partial Vacation of ROW Hough Road  
Associated with Preliminary Plat of Christensen Tracts 2009 Addition

This vacation remedies a long standing situation regarding the primary access off of East End Road for the Christensen Tract and Stream Hill Park Subdivisions.

Due to the timing of the previous subdivisions of Stream Hill Park and Christensen Tracts, the ROW was never dedicated to overlay the existing private easement and driveway. As a consequence the existing driveway is totally outside of the present ROW.

Christensen Tracts 2009 Addition remedies that situation by vacating the applicable portion of Hough Road and dedicating a new ROW to overlay the centerline of the existing driveway and utilizing the existing curb cut onto East End Road.

The associated 50 ft wide private easement will be relinquished by the owners. The upper portion of Hough Road ROW will remain as is. Recently, the Owners contracted to have the driveway extended to the temporary culdesac and the end of the ROW.

Please note that the utility easements that were associated with the former ROW location are also being vacated. Those easements are not in use.

Sincerely,



CC: Julie Engebretsen  
COH Planning Dept

**Vinson, Sylvia**

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**From:** Toll, Mary  
**Sent:** Thursday, October 01, 2009 9:14 AM  
**To:** Vinson, Sylvia  
**Subject:** FW: time ext 2008-247

**COPY**

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**From:** rogerimhoff@alaska.net [mailto:rogerimhoff@alaska.net]  
**Sent:** Thursday, October 01, 2009 8:59 AM  
**To:** Toll, Mary  
**Cc:** Michael Hough  
**Subject:** time ext 2008-247

**Christensen Tracts No 5**  
**KPB File No 2008-247**  
**1 year approval at the November 10, 2008 PC Meeting**

The mylar is at the Planning Dept Office.

We request a 1 year time extension.

There have been 2 recent plats that I am aware of from neighborhood.  
**StreamHill PARK Phase 2 and Guy Waddell Tr C Phase 2.**  
The Guy Waddell Tract did not to the best of knowledge dedicate any connecting ROW to the upper portion of the subject property.

Also, you should be aware that the owners, Mike and Shila Hough, have recently purchased adjoining tracts from the Stream Hill Development. So you may be seeing another version coming forward. I don't have any new directions from the owners at this this time, however.

THanks, Roger Imhoff

10/1/2009

**COPY**

**City of Homer  
Planning & Zoning**

491 East Pioneer Avenue  
Homer, Alaska 99603-7645

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[www.ci.homer.ak.us](http://www.ci.homer.ak.us)

**STAFF REPORT PL 08-99**

**TO:** Homer Advisory Planning Commission  
**THROUGH:** Rick Abboud, City Planner  
**FROM:** Julie Engebretsen, Planning Technician  
**MEETING:** October 1, 2008  
**SUBJECT:** Christensen Tracts Subdivision No. 5 Preliminary Plat

**Requested Action:** Recommend approval of the preliminary plat to the Kenai Peninsula Borough Planning Commission.

**GENERAL INFORMATION**

**Applicants:** Mike & Shila Hough, 3691 Ben Walters Lane Ste 2, Homer AK 99603  
Roger Imhoff, RLS, PO Box 2588, Homer AK 99603

**Location:** East End Road and Hough Road

**Parcel ID:** 17902086

**Size of Existing Lot(s):** 15.75 acres

**Size of Proposed Lots(s):** 40,000 sq ft, 40,033 sq ft, and 13.734 acres

**Zoning Designation:** Rural Residential District

**Existing Land Use:** Vacant

**Surrounding Land Use:** North: Vacant/Residential

South: Residential

East: Residential

West: Vacant (new residential lots)

**Comprehensive Plan:** Provide Areas for residential land uses which cluster compatible uses and densities. Continue to encourage infilling.

**Wetland Status:** The 2005 wetland mapping shows drainages on the lot. Drainages are shown on the preliminary plat.

**Flood Plain Status:** Zone D: Areas in which flood hazards are undetermined.

**BCWPD:** Not within the Bridge Creek Watershed Protection District.

Utilities:  
Public Notice:

City water is available.  
Notice was sent to 44 property owners of 51 parcels  
as shown on the KPB tax assessor rolls.

**ANALYSIS:**

This subdivision is within the Rural Residential District. This creates three lots; the large tract is 13.734, and the smaller lots are 40,000 and 43,000 sq feet. The lots meet the dimensional size requirement of a minimum of 40,000 square feet when served onsite water and sewer. City water is available to Tract 1-A. The subdivision meets the 3:1 ratio requirements of KPB code 20.20.180 Lots-Dimensions.

**Preliminary Approval, per KPB code 20.12.0060 Form and Contents Required.**

The commission will consider a plat for preliminary approval if it contains the following information at the time it is presented and is drawn to a scale of sufficient size to be clearly legible.

1. Within the title block:
  - a. Names of the subdivision which shall not be the same as an existing city, town, tract or subdivision of land in the borough, of which a map or plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion;
  - b. Legal description, location, date, and total area in acres of the proposed subdivision;
  - c. Name and address of owner and registered land surveyor;
  - d. Scale.

*Staff Response: The plat meets these requirements.*

2. North point;

*Staff Response: The plat meets these requirements.*

3. The location, width and name of existing or platted streets and public ways, railroad rights-of-way and other important features such as section lines, political subdivision or municipal corporation boundaries abutting the subdivision.

*Staff Response: The plat meets these requirements.*

4. A vicinity map, drawn to scale showing location of proposed subdivision, north arrow if different from plat orientation, township and range, section lines, roads, political boundaries and prominent natural and manmade features, such as shorelines or streams.

*Staff Response: The plat meets these requirements.*

5. All parcels of land including those intended for private ownership and those to be dedicated for public use or reserved in the deeds for the use of all property owners in the proposed subdivision together with the purposes, conditions or limitation of such reservations.

*Staff Response: Private parcels are shown. No public use areas other than Rights of Way are noted.*

6. The names and widths of public streets and alleys and easements including drainage easements existing and proposed, within the subdivision. [Additional City of Homer HAPC policy: Drainage easements are normally thirty feet in width centered on the drainage. Final width of the easement will depend on the ability to access the drainage with heavy equipment. An alphabetical list of street names is available from City Hall.]

*Staff Response: The plat meets these requirements.*

7. The names of adjacent subdivisions or an indication that the adjacent land is not subdivided.

*Staff Response: The plat meets these requirements.*

8. Approximate location of areas subject to inundation, flooding or storm water overflow. Indicate if a recognized flood plain is present. Identify and locate the major drainage systems.

*Staff Response: The plat meets these requirements.*

9. Approximate locations of areas subject to tidal inundation including the mean high water line.

*Staff Response: The plat meets these requirements (not applicable to this area).*

10. Block and lot numbering per Section 20.16.110 of the borough subdivision code.

*Staff Response: The plat meets these requirements.*

11. The general location of existing water and sewer utilities, and the intent and methods of the subdivision to utilize and access such utilities.

*Staff Response: The plat meets these requirements. Lots will be served by onsite water and sewer.*

12. Provide a contour map of the subdivision and road profiles if road grades exceed 6% on arterial and 10% on other streets.

*Staff Response: The plat meets these requirements. No Rights of Way are to be dedicated by this action.*

13. Identify and locate on the plat all areas in excess of 20% grade.

*Staff Response: The plat meets these requirements.*

**PUBLIC WORKS COMMENTS:** No issues. This does not imply any approval of a future right of way alignment or width through the 35' proposed panhandle. Those issues will need to be evaluated with some preliminary engineering at the time that a future plat is proposed within Tract 1-C.

**FIRE DEPARTMENT COMMENTS:** No fire department issues with this plat.

**STAFF COMMENTS/RECOMMENDATIONS:**

Planning Commission recommend approval of the preliminary plat with the following comments:

1. A plat note indicating that this subdivision may contain wetlands. Property owners should contact the Army Corp. of Engineers prior to any on-site development or construction activity to obtain the most current wetlands designation (if any).

**ATTACHMENTS**

1. Preliminary Plat
2. Letter from surveyor
3. Location map
4. Public Notice

**AGENDA ITEM E. SUBDIVISION PLAT PUBLIC HEARINGS**

**3. Christensen Tracts No. 5**

.PB File 2008-247; Imhoff/Hough

Staff Report reviewed by Patti Hartley Plat Committee Meeting: 11/10/08

Location: City of Homer

Proposed Use: Residential

Zoning: Rural Residential

Sewer: On-site

Water: City and On-site

Assessing Use: Vacant

**Supporting Information:**

The proposed plat subdivides a 15.6-acre tract into 3 tracts ranging in size from 40,000 square feet to 13.7 acres. A soils report is required for Tracts 1-A and 1-B, and an engineer will sign the plat. Staff recommends the appropriate wastewater disposal note for Tracts 1-A and 1-B be placed on the final plat. All tracts front Hough Road.

Homer Advisory Planning Commission approved the plat on October 1, 2008 subject to:

1. A plat note indicating that this subdivision may contain wetlands. Property owners should contact the Army Corps of Engineers prior to any on-site development of construction activity to obtain the most current wetlands designation (if any).

Borough staff comments: A plat note to put the public on notice is appropriate. Staff recommends compliance with the Homer Commission's recommendation.

2. Add a plat note indicating a general easement, no definite location disclosed in favor of Homer Electric on this plat.

Borough staff comments: KPB 20.16.120 does not require nonspecific utility easements with no definite location to be noted on the plat. When specific easements are granted that serve the needs of the area, or when utility services are provided in other locations and the easements are no longer needed, HEA has indicated that they will release the blanket easement if requested by landowners.

3. Fifteen-foot easements fronting road rights-of-way be physically depicted on the plat referencing Plat Note 2.

Borough staff comments: Staff recommends compliance with the Homer Commission's recommendation.

Utility easements have been carried forward from the parent plat.

Plat Note 3 alerts the public to contact the City of Homer prior to any development.

Per the Homer City staff report, the plat is within Flood Zone D, areas in which flood hazards are undetermined. Staff recommends the surveyor confirm with the City of Homer whether a floodplain note is required.

Ten-foot contour information has been provided.

11/10/08  
Bor Plat  
Committee  
minutes

The approximate location of the drainage and gully has been shown and labeled.

Development within the subdivision may be subject to the administrative policies and/or enforceable policies of the KPB Coastal Zone Management Program (Ordinance 2007-25).

Tract 1-C accesses Hough Road by a 35-foot wide panhandle. Tract 1-C contains 13.7 acres. Although this tract is subject to topographic challenges, further subdivision is possible. Per the submittal, the property line along the panhandle is subject to a 50-foot wide easement. The existing driveway within the easement has been shown and labeled. The adjoining tract contains more than 12 acres. If Tract 1-C is proposed for further subdivision in the future, the 35-foot panhandle width will only allow dedication of a half right-of-way, which will require notice to the adjoining property owner at that time. If further subdivision of Tract 1-C is desired in the future, staff recommends the panhandle width be increased to 60-feet, to insure that a future dedication is possible.

The 33-foot section line easement along the northern boundary has been shown and labeled. The 33-foot section line easement adjoining the northern boundary of this plat has been labeled as status. Staff did not recommend dedication of the section line easement for the parent plats. The justifications for that recommendation remain unchanged with this replat: steep terrain, the gully, and the drainage. The section line easement will remain in place for access.

Block length (KPB 20.20.160) was not discussed during the reviews for Christensen Tracts No. 3 or 4. Providing an east/west right-of-way that would bring the block closer to compliance with KPB Code is problematic at best. Per the submittal, a sustained 10 percent grade may be achievable with Tract 1-C but not without at least four sharp switchback curves. The submittal further stated that if Tract 1-C is further subdivided, the owner would endeavor to design a safe road given the limitations of the property. Staff recommends the Committee concur that existing conditions justify a variance from the requirement at this time.

The surveyor was uncertain if Tract 1-C required an exception to the 3:1 depth to width ratio (KPB 20.20.180). The Plat Committee granted an exception to the depth to width ratio for the parent tract (Tract B-1C, HM 2003 90). During the plat review for Tract 1 of HM 2006-44, the Committee concurred with staff's determination that Tract 1 did not require an exception to the depth to width requirement. The proposed replat subdivides 2 acres from the southern-most portion of former Tract 1. The non-compliance is reduced with this subdivision. Staff recommends the Committee concur that the exception carries forward for Tract 1-C.

The Certificate to Plat was provided in accordance with Planning Commission Resolution 2000-25. The Certificate to Plat indicates beneficial interests affect this property. They were notified and given 30 days from the date of the mailing of the notification to respond.

**STAFF RECOMMENDATIONS:** Grant approval of the preliminary plat subject to any above recommendations, and the following conditions:

**REVISE OR ADD TO THE PRELIMINARY PLAT IN ACCORDANCE WITH THE PROVISIONS CONTAINED IN KPB 20.12 AS FOLLOWS:**

1. Confirm the names and addresses of the owners (KPB 20.12.060).

**ADDITIONAL REQUIREMENTS FOR ADMINISTRATIVE APPROVAL OF THE FINAL PLAT IN ACCORDANCE WITH TITLE 20 INCLUDE:**

2. Verify that the location of the subdivision on Vicinity Map will be clearly discernible.
3. Correct the spelling of 'wastewater' in Plat Note 8.
4. Correct the status labels to the east: Lot 1 and Tract C.
5. Provide documentation from the city that an improvement installation agreement is in place or is not required

(KPB 20.16.060).

6. State right-of-way. Work with Louise Hooyer at DOT (907-269-0713) to verify the ROW and monumentation shown is correct prior to final plat submittal [louise.hooyer@alaska.gov].
7. Survey and monumentation must meet the ordinance requirements (KPB 20.16.160).
8. If a dedication is not provided within the panhandle, place a note on the plat for lots with a flag lot design: "No structures are permitted within the panhandle portion of the flag lot(s)."
9. Conform to conditions of KPB Planning Commission Resolution 78-6.
10. Comply with Chapter 20.16.155 D and 20.14 Wastewater Disposal regulations.
11. Compliance with Ordinance 90-38 (Substitute) - Ownership.
12. Compliance with Ordinance 93-59 - Payment of all taxes due prior to final approval. If final approval and filing of plat is sought between January 1 and the tax due date, the full amount of the estimated taxes will be on deposit with the Finance Department.

NOTE: Review of a decision of the plat committee may be heard by the planning commission acting as platting board by filing written notice thereof with the borough planning director on a form provided by the borough planning department. The request for review shall be filed within 10 days after notification of the decision of the plat committee by personal service or service by mail.

Any person or agency that participated at the plat committee hearing either by written or oral presentation may file a request for review. The request must have an original signature; filing electronically or by facsimile is prohibited. The request for review must briefly state the reason for the review request and applicable provisions of borough code or other law upon which the request for review is based.

Staff will issue notice of the review hearing to the original recipients of the plat committee public hearing notice. Cases reviewed shall be heard de novo by the planning commission acting as the platting board (KPB 2.40.080).

END OF STAFF REPORT

#### ***VERBAL STAFF REPORT ADDENDUM***

Verbal Staff Report Addendum given by Max Best Plat Meeting: 11/10/08

Staff reevaluated the 50-foot easement that was associated with both lots. The owner has already given up 35 feet in the panhandle portion in addition to a 25-foot easement. There is a 25-foot easement on the adjoining large lot and 25 foot easement on the owners' lot. Their 35-foot panhandle is more than adequate to handle the existing driveway along with the easement.

The lot to the west is subject to half of the 50-foot easement. Staff will get the panhandle or the portion that is needed from the lot to the west.

The 35-foot panhandle width is adequate for access. Staff's amended recommendation would be to not require the panhandle width be increased to 60 feet.

END OF VERBAL STAFF REPORT ADDENDUM

Chairman Foster opened the meeting for public comment. Seeing and hearing no one wishing to comment, Chairman Foster closed the public hearing and opened discussion among the Committee.

**MOTION:** Commissioner Petersen moved, seconded by Commissioner Lockwood to approve the preliminary plat per amended staff recommendations.

Chairman Foster asked if the legal access definition was passed last summer. Mr. Best replied yes. Chairman Foster asked if that had any affect on this access. Mr. Best replied it would not affect the two lots that are being subdivided.

**VOTE: The motion passed by unanimous consent.**

<b>COLLINS</b>	<b>FOSTER</b>	<b>LOCKWOOD</b>	<b>MARTIN</b>	<b>MCCLURE</b>	<b>MURPHY</b>	<b>PETERSEN</b>	<b>4 YES</b>
<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>ABSENT</b>	<b>ABSENT</b>	<b>ABSENT</b>	<b>YES</b>	<b>3 ABSENT</b>

KENAI PENINSULA BOROUGH  
Plat Submittal Form

Firm Name and Address:

Roger W. Imhoff, RLS  
PO Box 2588 \* Homer Ak 99603-2588  
(907)235 7279 FAX (907)235 5254 rogerimhoff@alaska.net

DATE 10 07 08

Plat Name: CHRISTENSEN TRACTS No 5

- Preliminary Plat  
 Revised Preliminary Plat  
 Final Plat - Preliminary Plat Approval Granted \_\_\_\_\_ (Date)  
 Revised Final Plat-Preliminary Plat Approval Granted \_\_\_\_\_ (Date)  
 Plat Filing Fees in amount of \$ 100 Attached  
 Final Plat - fees previously paid on preliminary

OCT 10 2008

Abbreviated Plat  yes  no  
(If yes, use Abbreviated Plat Submittal Form)

KENAI PENINSULA BOROUGH  
PLANNING DEPARTMENT

General Location: HOMER CITY

USE:  Residential  Recreational  Commercial  
 Agricultural  Other: \_\_\_\_\_

3 Copies of the Plat  have  have not been submitted to the City of HOMER

Current Zoning where applicable: \_\_\_\_\_

SEWER:  On Site  City  Community

WATER:  On Site  City  Community

Exceptions Required and Requested:

1. 3:1 see cover letter
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. None

Comments: - cover letter  
- cert. to plat

*Thank you, Roger*

rogerimhoff@alaska.net

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**From:** "Melissa Jacobsen" <MJacobsen@ci.homer.ak.us>  
**To:** <rogerimhoff@alaska.net>  
**Sent:** Wednesday, October 08, 2008 2:31 PM  
**Subject:** 10/1 minutes excerpt

Hi Roger,

Here are the excerpts from the unapproved minutes of 10/1 that you requested.

Melissa

**A. Staff Report PL 08-98, Mountain Park Highland Addition Preliminary Plat**

Planning Technician Harness reviewed the staff report.

There were no applicant or audience comments.

**STORM/KRANICH MOVED TO ADOPT STAFF REPORT PL 08-98 MOUNTAIN PARK HIGHLAND ADDITION PRELIMINARY PLAT WITH STAFF RECOMMENDATIONS.**

It was clarified that this action is to vacate lot lines and is a platting action rather than a subdivision. Commissioner Kranich noted the directions were reversed in the staff report analysis. Planning Technician Harness said she would make the correction.

**KRANICH/ZAK MOVED TO AMEND ADD A RECOMMENDATION THAT THE 15 FOOT UTILITY EASEMENTS FRONTING THE RIGHTS-OF-WAY SHALL BE DEPICTED ON THE PLAT.**

There was brief discussion explaining why the easements are shown on the plat.

**VOTE: (Primary amendment) NON OBJECTION: UNANIMOUS CONSENT.**

Motion carried.

There was discussion regarding the purpose of vacating lot lines. It was noted that there is nothing in code prohibiting this property owner or a future new property owner from coming back to the Commission and subdividing the property again. Point was raised that vacating property lines in an effort to avoid assessments in an LID puts a burden on neighboring property owners and results in less money to the City for services.

**VOTE (Main motion as amended): NON OBJECTION: UNANIMOUS CONSENT.**

Motion carried.

**B. Staff Report PL 08-99, Christensen Tracts No. 5 Preliminary Plat**

City Planner Abboud reviewed the staff report.

Commissioner Moore stated he has a conflict of interest.

**KRANICH/BOS MOVED THAT COMMISSIONER MOORE HAS A CONFLICT OF INTEREST.**

Commissioner Moore stated 2 to 3 years ago he worked with the applicant in clearing another parcel of property the applicant owns and stated that he would do business with the property owner if the opportunity presents itself.

VOTE: YES: MINSCH, KRANICH, SINN, STORM, BOS

NO: ZAK

Motion carried.

Commissioner Moore left the table.

There was discussion regarding the location of the road access, driveway, and wetlands.

STORM/KRANICH MOVED TO ADOPT STAFF REPORT PL 08-99 CHRISTENSEN TRACTS NO. 5 PRELIMINARY PLAT WITH STAFF RECOMMENDATIONS.

Commissioner Kranich commented that the packet information refers to a Homer Electric Easement that is general easement with no definite location disclosed. It is a blanket easement and is not listed as a plat note.

KRANICH/ZAK MOVED TO ADD PLAT NOTE 10 INDICATING A GENERAL EASEMENT, NO DEFINITE LOCATION DISCLOSED IN THE FAVOR OF HOMER ELECTRIC ON THIS PLAT.

Commissioner Kranich clarified that it is a general easement that covers entire parcel and Homer Electric can go anywhere on the property and put in what ever they want. People will be more likely to see it as a plat note rather than having it somewhere in a title report.

VOTE: (Primary amendment) NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

There was discussion regarding the importance of the Borough remembering that if a parcel doesn't have a buildable road, then there is concern about subdividing property. Point was made that there is an existing access to the property. It was noted that Rick Foster is their Borough representative and this concern can be brought to his attention.

KRANICH/ZAK MOVED THAT 15 FOOT EASEMENTS FRONTING ROAD RIGHTS-OF-WAY BE PHYSICALLY DEPICTED ON THE PLAT REFERENCING PLAT NOTE 2.

VOTE: (Primary amendment) NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

VOTE: (Main motion as amended): YES: ZAK, SINN, BOS, STORM, MINSCH, KRANICH

Motion carried.

Chair Minsch requested that after the plat is approved at the Borough that it comes back to the Commission so they can look at it and see what happens to the plats at the Borough level.

Commissioner Moore returned to the table.

**Roger W. Imhoff, RLS**  
**PO Box 2588 \* Homer Ak 99603**  
**(907)235-7279 fax (907)235-5254**  
**rogerimhoff@alaska.net**

10-07-08

Mary Toll, Platting Officer  
KPB Planning Dept  
144 N. Binkley St  
Soldotna Ak 99669

RECEIVED

OCT 10 2008

ALASKA BOROUGHS  
PLANNING DEPARTMENT

**RE: Preliminary Plat**  
**Christensen Tracts Subdivision No 5**

Please find enclosed materials for the above preliminary plat.

The COH Advisory Planning Commission approved this plat at its October 1, 2008 meeting.

The objective of this plat is to subdivide two 40,000 sq ft lots off the lower portion of Tract 1. No new ROW dedication is needed for legal access. Physical access is currently over an existing driveway within a 50 ft wide easement.

A soils report is required for Tracts 1-A and 1-B. A PE has been retained to conduct the testing.

The remaining Tract 1-C is 13.734 Acres and will be accessed via a 35 ft wide panhandle as shown. There is an existing 50 ft easement centered on the property line and it is reasonable to expect that if a dedication is required, that eventually a full 60 ft ROW can be attained. We have no objection to dedicating the 35 ft portion at this time if the Borough desires it.

An exception to the 3:1 length width ratio may be required for 1-C. An exception was granted for Christensen Tracts No 4 because of topographic restrictions on the shape of the tract.

We should address the future subdividing of Tract 1-C, whether or not it will occur. As we increase our knowledge of the slope conditions, we find that accessing the upper portion of Tract 1-C will be difficult. It may be possible to stay within the COH design criteria but I doubt it. A sustained 10 percent grade may be achievable but not without at least 4 sharp switchback curves.

Page 2 of 2 Christensen Tracts No 5

You may recall that when the adjoining Guy Waddell Tract "C" was up for preliminary, we cited KPB 20.20.030 and requested a ROW connection through that property. That request was denied. For whatever reasons it was denied, that does not change the topography.

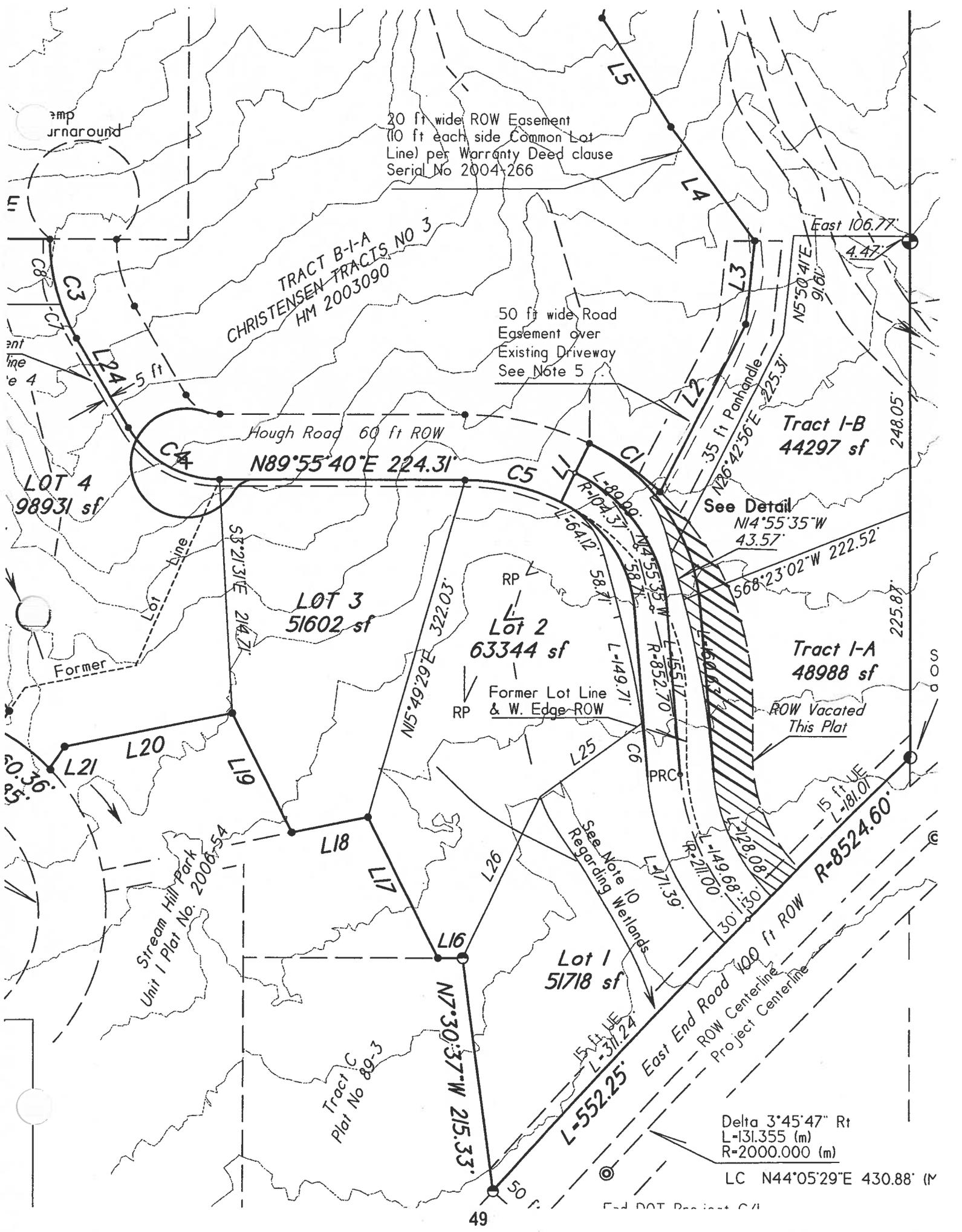
So, all I can state at this time is that if Tract 1-C is further subdivided, we will do our best to design a safe road given the limitations we have to work with.

If you or staff have any questions or suggestions, please feel free to comment.

Sincerely,

A handwritten signature in cursive script, appearing to read "Roger Duley". The signature is written in black ink and includes a long, sweeping horizontal stroke at the end.





20 ft wide ROW Easement  
 (10 ft each side Common Lot  
 Line) per Warranty Deed clause  
 Serial No 2004-266

TRACT B-I-A  
 CHRISTENSEN TRACTS NO 3  
 HM 2003090

50 ft wide Road  
 Easement over  
 Existing Driveway  
 See Note 5

Hough Road 60 ft ROW

Tract I-B  
 44297 sf

LOT 4  
 98931 sf

$N89^{\circ}55'40"E$  224.31'

See Detail  
 $N14^{\circ}55'35"W$   
 43.57'

LOT 3  
 51602 sf

Lot 2  
 63344 sf

Tract I-A  
 48988 sf

Former Lot Line  
 & W. Edge ROW

ROW Vacated  
 This Plat

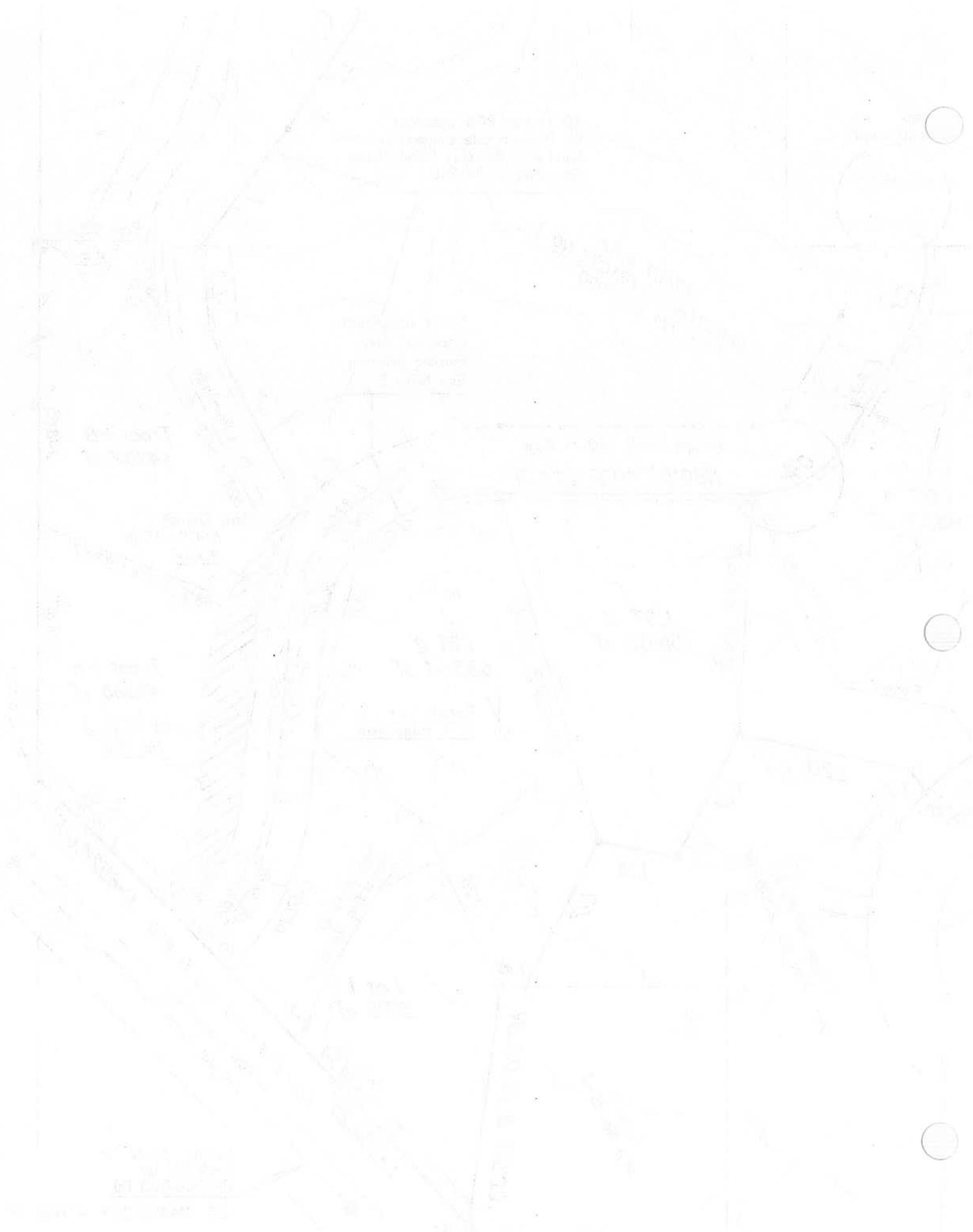
Stream Hill Park  
 Unit 1 Plat No. 2006-54

Lot 1  
 5178 sf

East End Road 100 ft ROW  
 ROW Centerline  
 Project Centerline

Delta  $3^{\circ}45'47"$  Rt  
 L=-131.355 (m)  
 R=2000.000 (m)

LC  $N44^{\circ}05'29"E$  430.88' (M)



## Julie Engebretsen

---

**From:** rogerimhoff@alaska.net  
**ent:** Friday, January 29, 2010 4:27 PM  
**to:** Julie Engebretsen  
**Subject:** christensen tracts  
**Attachments:** christensen1-29-10.PDF

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Julie the heavy red lines will be close to what public works asked for, the red cross hatching will the altered area proposed to vacate (ROW)

No changes to the lot configurations, the areas will slightly change.

THanks, Roger

1. The first part of the document is a list of items. The items are listed in two columns. The first column contains the following items:
 

- 1.1. Item 1
- 1.2. Item 2
- 1.3. Item 3
- 1.4. Item 4
- 1.5. Item 5

 The second column contains the following items:
 

- 1.6. Item 6
- 1.7. Item 7
- 1.8. Item 8
- 1.9. Item 9
- 1.10. Item 10

2. The second part of the document is a paragraph of text. It discusses the importance of maintaining accurate records and the role of the committee in this regard.

3. The third part of the document is a list of recommendations. The recommendations are listed in a single column and include:
 

- 3.1. Recommendation 1
- 3.2. Recommendation 2
- 3.3. Recommendation 3



# City of Homer Planning & Zoning

491 East Pioneer Avenue  
Homer, Alaska 99603-7645

Telephone (907) 235-3106  
 Fax (907) 235-3118  
 E-mail [Planning@ci.homer.ak.us](mailto:Planning@ci.homer.ak.us)  
 Web Site [www.ci.homer.ak.us](http://www.ci.homer.ak.us)

## STAFF REPORT PL 10-06

**TO:** Homer Advisory Planning Commission  
**THROUGH:** Rick Abboud, City Planner  
**FROM:** Julie Engebretsen, Planning Technician  
**MEETING:** January 6, 2010, Feb 17, 2010  
**SUBJECT:** Christensen Tracts Subdivision 2009 Addition Preliminary Plat

**Requested Action:** A recommendation of preliminary plat approval for the creation of eight lots and relocation of a right of way.

### GENERAL INFORMATION

Applicants:	C. Micheal and Shila Hough 3733 Ben Walters Lane #2 Homer, AK 99603	Roger Imhoff, RLS PO Box 2588 Homer, AK 99603
Location:	East End Road, between Triton Court and Compass Drive	
Parcel ID:	1790 2086, 2154, 2158	
Size of Existing Lot(s):	15.57, 12.29, and 4.59 acres	
Size of Proposed Lots(s):	13.735 and 10.445 acres, and various sizes from 1-2+ acres	
	(Three lots subdivided into eight lots)	
Zoning Designation:	Rural Residential District	
Existing Land Use:	Vacant	
Surrounding Land Use:	North: Residential South: Residential East: Residential West: Vacant	
Comprehensive Plan:	Continue to encourage infilling of residential areas.	
Wetland Status:	The 2005 wetland mapping shows streams and a low wet area.	
Flood Plain Status:	Zone D: Flood Hazards undetermined.	
BCWPD:	Not within the Bridge Creek Watershed Protection District.	
Utilities:	City water is available to serve lots 1, 4 and tract 1-A.	
Public Notice:	Notice was sent to 71 property owners of 104 parcels as shown on the KPB tax assessor rolls.	

### ANALYSIS:

This subdivision is within the Rural Residential District. This plat creates eight lots from three larger lots. The new lots meet the dimensional size requirement of a minimum of forty thousand square feet when served by onsite water and wastewater. City water is available to lot 1, 4 and tract 1-A.

**Background:** Please read the surveyor's cover letter. This staff report will address only issues covered by code. There are other items of interest in the letter however no other action is needed by the Commission. For example, any future land use issues with lot 5 are outside any city or Borough permitting and subdivision code and are a covenant issue that is between land owners.

The HAPC reviewed a previous preliminary plat, Christensen Tracts No 5, in October of 2008. That plat only addressed the eastern lots of the subdivision – Tracts 1-A, 1-B and 1-C. That plat was never recorded. The current proposal has the same lot configuration, but the location of the Hough Road Right of Way has changed, to follow the actual driveway that is already there. Since 2008, the property owner has also purchased two large tracts to the west, part of the Stream Hill Park Subdivision. Those two tracts are being subdivided, and become lots 1-5 on the west side of Hough Road.

Public Works has worked with the applicant on road alignment and construction. The applicant will construct Hough Road to city standards up to the first cul-de sac. The existing right of way beyond that is much too steep to meet city standards.

This plat also vacates the utility easements that were associated with the right of way that is being vacated.

**Preliminary Approval, per KPB code 20.12.0060 Form and Contents Required.** The commission will consider a plat for preliminary approval if it contains the following information at the time it is presented and is drawn to a scale of sufficient size to be clearly legible.

1. Within the title block:
  - a. Names of the subdivision which shall not be the same as an existing city, town, tract or subdivision of land in the borough, of which a map or plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion;
  - b. Legal description, location, date, and total area in acres of the proposed subdivision;
  - c. Name and address of owner and registered land surveyor;
  - d. Scale.

*Staff Response: The plat meets these requirements. The surveyor noted Tract B should be included in the title block. He will correct this prior to submittal to the Borough.*

2. North point;

*Staff Response: The plat meets these requirements.*

3. The location, width and name of existing or platted streets and public ways, railroad rights-of-way and other important features such as section lines, political subdivision or municipal corporation boundaries abutting the subdivision.

*Staff Response: The plat meets these requirements.*

4. A vicinity map, drawn to scale showing location of proposed subdivision, north arrow if different from plat orientation, township and range, section lines, roads, political boundaries and prominent natural and manmade features, such as shorelines or streams.

*Staff Response: The plat meets these requirements.*

5. All parcels of land including those intended for private ownership and those to be dedicated for public use or reserved in the deeds for the use of all property owners in the proposed subdivision together with the purposes, conditions or limitation of such reservations.

*Staff Response: Private parcels are shown. No public use areas other than Rights of Way are noted.*

6. The names and widths of public streets and alleys and easements including drainage easements existing and proposed, within the subdivision. [Additional City of Homer HAPC policy: Drainage easements are normally thirty feet in width centered on the drainage. Final width of the easement will depend on the ability to access the drainage with heavy equipment. An alphabetical list of street names is available from City Hall.]

*Staff Response: The plat meets these requirements.*

7. The names of adjacent subdivisions or an indication that the adjacent land is not subdivided.

*Staff Response: The plat meets these requirements.*

8. Approximate location of areas subject to inundation, flooding or storm water overflow. Indicate if a recognized flood plain is present. Identify and locate the major drainage systems.

*Staff Response: The plat meets these requirements.*

9. Approximate locations of areas subject to tidal inundation including the mean high water line.

*Staff Response: The plat meets these requirements (not applicable to this area).*

10. Block and lot numbering per Section 20.16.110 of the borough subdivision code.

*Staff Response: The plat meets these requirements.*

11. The general location of existing water and sewer utilities, and the intent and methods of the subdivision to utilize and access such utilities.

*Staff Response: The plat meets these requirements. Lots will be served by onsite water and wastewater. Lot 1, and Tract 1-A have access to city water from East End Road, although it is not shown. Lot 4 has access from Craftsman Road, although the building site is off of Hough Road and it is not likely that the Craftsman Road water service can be used. There is a large gully between the Craftsman Road and the optimal building site.*

12. Provide a contour map of the subdivision and road profiles if road grades exceed 6% on arterial and 10% on other streets.

*Staff Response: The plat meets these requirements. The surveyor has provided a scaled profile drawing to Public Works.*

13. Identify and locate on the plat all areas in excess of 20% grade.

*Staff Response: The plat meets these requirements. Steep ravines are shown.*

**PUBLIC WORKS COMMENTS:** A subdivision development agreement or construction agreement shall be required.

**FIRE DEPARTMENT COMMENTS:** Fire Chief Painter did not comment.

**STAFF COMMENTS/RECOMMENDATIONS:**

Planning Commission recommend approval of the preliminary plat with the following comments:

1. No objection to public utility easement vacation, along the Hough Road Right of Way vacation, and dedication of new easements following the new right of way alignment.
2. A construction agreement of subdivision development agreement for road construction is required.

**ATTACHMENTS**

1. See SR 10-07, Hough Right of Way vacation attachments.







# City of Homer

## Planning & Zoning

491 East Pioneer Avenue  
Homer, Alaska 99603-7645

Telephone (907) 235-8121  
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E-mail [Planning@ci.homer.ak.us](mailto:Planning@ci.homer.ak.us)  
Web Site [www.ci.homer.ak.us](http://www.ci.homer.ak.us)

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### STAFF REPORT PL 10-15

**TO:** Homer Advisory Planning Commission  
**THROUGH:** Rick Abboud, City Planner  
**FROM:** Julie Engebretsen, Planning Technician  
**MEETING:** February 3, 2010, 2/17/10  
**SUBJECT:** Draft Steep Slope Ordinance

#### GENERAL INFORMATION

Staff and the Planning Commission have been working on a draft ordinance to regulate development on steep slopes. This effort has been on-going for a few years. The Commission finished their review in May last year, and staff has been working with a consultant to perform a final review the draft ordinance. Staff has now (finally) received the consultant's comments on the ordinance. The consultant will also provide some written comments which will be a lay down at the meeting.

Note: this staff report is rather brief! The consultant's comments were received at the last minute before the meeting packet was copied. So this report is a very brief review of the changes! Please feel free to ask questions. The Commission may chose to continue discussion at a meeting or work session, or forward for city attorney review and then public hearing. Staff also recommends discussion or at least a review of the discussion during the regular meeting so there are meeting minutes. Staff recommends attorney review soon as there are code mechanics that he may want to change.

For those Commissioners that recall the discussion of the definition of steep slope, the consultant had some comments on that and it will be addressed in his report. He will be available by telephone to answer questions.

There is some history with this ordinance, but in summary, the ordinance seeks to address the following problems with existing code.

1. Existing code limits the percent of the lot that can be developed, based on the amount of steepness. Therefore if you had a large lot but were limited to developing 10% of your land, you could develop a large area, whether it was safe to do so or not. Example: if someone had a 10 acre lot, they could still bulldoze 1 acre of that land.

2. A steep lot might have a great building location, such as a bluff lot that is flat on top, and then drops to the beach. The % slope rules would limit how much someone could develop their lot, even though a perfectly good building area exists.

3. Nothing in current code regulates how close someone can build to the bluff edge.

4. Little in current code keeps someone from running a bulldozer up a steep slope – ie the road above Karen Hornaday Park.

The new code is not based on the size of the lot. It is based on the presence of steep slopes and coastal bluffs, whether it is on your building site or not. The ordinance has three main parts.

1. Defines what a steep slope is.
2. Creates bluff/steep slope setback standards.

3. If someone wants to build/construct/develop on steep slopes, engineering will be required. Code does not dictate how these steep areas can or should be developed, but it does require a qualified licensed professional to be involved in the process, to ensure the safety of the land owner and other area property owners. A land owner can avoid this expense and effort by choosing to not develop on slopes of 50% or greater.

#### **STAFF COMMENTS/RECOMMENDATIONS:**

Planning Commission review the draft ordinance. When ready, forward for attorney review, and public hearing when brought back by staff.

#### **ATTACHMENTS**

1. January 29, 2010 draft ordinance

1 January, 2010 Draft Version

2  
3 HOMER, ALASKA

4  
5 Planning/

6 ORDINANCE 10-xx

7  
8 AN ORDINANCE OF THE OF THE CITY COUNCIL  
9 DELETING 21.050.20 (a) (1-4) AND DELETING 21.030(b)(1-4)  
10 AND AMENDING 21.020.040 AND AMENDING SECTION  
11 21.44 STEEP SLOPES  
12

13 WHEREAS,; and (STAFF TO WORK ON THIS PRIOR TO PUBLIC HEARING)

14  
15 WHEREAS,.

16  
17 NOW, THEREFORE, THE CITY OF HOMER ORDAINS:

18  
19 Section 1. Homer City Code Zoning and Planning 21.50.020 (a)(1-4) Site Development  
20 Standards Level one, Slopes, is hereby amended to read as follows:

21  
22 **Delete 21.50.020 a (1-4) and renumber that section accordingly.**

23  
24 ~~a. Slopes. All development on lots with slopes of 15 percent more is~~  
25 ~~subject to the following standards:~~

26 ~~1. For lots with slopes of 15 to 30 percent, the area used for~~  
27 ~~development shall not exceed 25 percent of the lot. If the~~  
28 ~~development site includes more than one lot, a conditional use permit~~  
29 ~~is required.~~

30 ~~2. For lots with slopes of greater than 30 percent, the area~~  
31 ~~used for development shall not exceed ten percent of the lot. If the~~  
32 ~~development site includes more than one lot, a conditional use permit~~  
33 ~~is required.~~

34 ~~3. Vegetation shall remain undisturbed except as necessary to~~  
35 ~~construct improvements and to eliminate hazardous conditions, in which~~  
36 ~~case it must be replanted with approved materials including ground~~  
37 ~~cover, shrubs and trees. Native vegetation is preferred for~~  
38 ~~replanting operations, and will be used where practicable.~~

39 ~~4. Grading shall not alter the natural contours of the terrain~~  
40 ~~except as necessary for building sites or to correct unsafe~~  
41 ~~conditions. The locations of buildings and roads shall be planned to~~  
42 ~~follow and conform to existing contours as nearly as possible.~~

43

44  
45 Section 2. Homer City Code Zoning and Planning 21.50.020 (a)(1-4) Site Development  
46 Standards Level two, Slopes, is hereby amended as follows:

47  
48 Delete 21.50.030 b (1-4), and renumber code accordingly.

49  
50 ~~b. Slopes. All development on lots with slopes of 20 percent or~~  
51 ~~more shall be subject to the following standards:~~

52 ~~1. For lots with slopes of 20 percent to 30 percent, the~~  
53 ~~area used for development shall not exceed 25 percent of the lot. If~~  
54 ~~the development site includes more than one lot, a conditional use~~  
55 ~~permit is required.~~

56 ~~2. For lots with slopes greater than 30 percent, the area~~  
57 ~~used for development shall not exceed ten percent of the lot. If the~~  
58 ~~development site includes more than one lot, a conditional use permit~~  
59 ~~is required.~~

60 ~~3. Vegetation shall remain undisturbed except as~~  
61 ~~necessary to construct improvements and to eliminate hazardous~~  
62 ~~conditions, unless replanted with as much native vegetation as~~  
63 ~~practicable including ground cover, shrubs and trees.~~

64 ~~4. Grading shall not alter the natural contours of the~~  
65 ~~terrain except as necessary for building sites or to correct unsafe~~  
66 ~~conditions. The locations of buildings and roads shall be planned to~~  
67 ~~follow and conform to existing contours as nearly as possible.~~

68 Section 3. Homer City Code Zoning and Planning 21.05.040, Measuring Slopes, is hereby  
69 amended to read as follows:

70  
71 21.02.040 Measuring Slopes. Slope is measured by calculating the vertical change in  
72 elevation (H) over the horizontal run (L) across the steepest portion of the lot and  
73 multiplying this decimal result by 100 to determine percent (%) slope. Percent Slope =  
74 (H/L)x100

75 ~~When calculating the slope of a lot, an average slope is used based on~~  
76 ~~the elevations at the corners of the lot. The average slope of a lot,~~  
77 ~~expressed as a percentage, is calculated by subtracting the average~~  
78 ~~elevation of the uphill lot line and the average elevation of the~~  
79 ~~downhill lot line and dividing the sum by the average distance between~~  
80 ~~the two lot lines. The average elevation of the uphill or downhill~~  
81 ~~lot line is calculated by adding the elevations at the ends of the lot~~  
82 ~~line and dividing by two. See Figure 1.~~

83  
84  
85 Section 4. Homer City Code Zoning and Planning Title 21.03 Definitions and Rules of  
86 Construction, is hereby amended include the following:

87

88 **Definitions to add under 21.030.040:**

89 Steep slope: A steep slope is defined as a slope where ~~there is a~~ the average vertical change in  
90 topography of ~~more than 25 feet with an average slope is~~ equal to or greater than one foot of rise  
91 for every two feet of horizontal travel ~~for one foot of rise (50% slope)~~. Steep slopes can be  
92 naturally occurring or man-made by excavating into naturally sloping ground or by filling over  
93 naturally sloping ground. >>> Reference line drawing here??? (To be inserted)<<<  
94

95 Bluff: An abrupt vertical change in topography of more than 25 feet with an average slope  
96 steeper than two feet of rise for one foot of horizontal travel (steeper than 50/200%).  
97

98 Coastal Bluff: a bluff along the beach.  
99

100 (Diagrams will be included here for bluff and coastal bluff)  
101

102 Ravine: a long, deep hollow in the earth's surface with sharply sloping walls that has a drop in  
103 elevation from the top ravine edge equal to or greater than ~~two~~ five feet vertical for every ~~ten~~  
104 feet one foot (500%) horizontal, and is at least ten feet in height.  
105

106 Section 5. Homer City Code, Zoning and Planning Title 21.44 Steep Slopes is hereby amended  
107 to read as follows:  
108

109 **21.44.010 PURPOSE**

110 The purpose of this chapter is to regulate the development activities and structures in areas with  
111 steep slopes, and along coastal bluffs, to protect the health and safety of Homer residents.  
112

113 **21.44.020 APPLICABILITY**

114 a. This chapter applies to development, grading, and any other land disturbing activity under any  
115 of the following conditions:

- 116 1. On steep slopes.
- 117 2. Within forty (40) feet of the top or within fifteen (15) feet of the toe of steep slopes,  
118 ~~the top of~~ a bluff, coastal bluff, or ravine.
- 119 3. ~~On sites~~ At locations where adverse conditions associated with slope stability, erosion,  
120 or sedimentation are present as determined by the City Engineer.

121 b. The requirements of this chapter apply in addition to all other applicable codes, rules, acts or  
122 ordinances.  
123

124 **21.44.030 STANDARDS**

125 a. Site Grading and Development Activity

- 126 1. On all sites regulated under this chapter, no development, including clearing and  
127 grading and clearing, shall occur without a site plan approved under 21.73.010 Site  
128 Plan, and a zoning permit.
- 129 2. Prior to any development on a steep slope of 50% or greater the applicant shall  
130 submit a site development plan meeting the requirements of 21.44.040 prepared by a  
131 civil engineer licensed in the State of Alaska.

132 b. Natural Drainage Patterns. Site design and development activity shall not change  
133 restrict natural drainage patterns, except as provided below.

134 1. To the maximum extent feasible, development activity shall preserve  
135 the natural surface drainage pattern unique to each site and lot as a result of topography  
136 and vegetation. Grading shall ensure that drainage flows away from all structures for a  
137 distance of at least 10 feet, especially structures— where building pads that are cut into  
138 hillsides. Natural drainage patterns may be modified on a site only pursuant to permit  
139 approved by the [WHO?] upon a showing that there will be no significant adverse  
140 environmental impacts on the lot, site or on adjacent properties. If natural drainage  
141 patterns are modified, appropriate stabilization techniques shall be employed.

142  
143 2. Development activity shall not cause an substantial adverse effect on  
144 adjacent land and surrounding drainage patterns.

145 ~~Site grading and development activity shall preserve the natural \_\_\_\_\_ surface~~  
146 ~~drainage pattern unique to each site as a result of topography and vegetation.~~

147 c. Erosion control.

148 1. Erosion control methods shall be used during construction and site development to  
149 protect water quality, control erosion, and reduce soil erosion. Sediment traps, small  
150 dams, barriers, or other methods approved by the City Planner and City Engineer  
151 shall be located to control the velocity of runoff.

152 2. Winter Erosion Control Blankets. If development on a slope is not stabilized by  
153 October 15, erosion control blankets (or a product with equivalent performance  
154 characteristics) must be installed upon completion of the seasonal work, but no later  
155 than October 15. The erosion control blankets shall remain in place until at least the  
156 following May 1.

157 d. Setbacks

158 1. Structures near ravines and non-coastal bluffs must be setback from the top of the  
159 bluff at least 40 feet or one third (1/3) the height of the bluff, whichever is less, but no  
160 less than 15 feet. Structures near the toe must be setback at least 15 feet or one half  
161 (1/2) the height of the bluff.

162 2. Structures near coastal bluffs must be setback from the top of the bluff at least 40  
163 feet. >>> Can there be any structures at the toe??? <<<

164 3. Setback exceptions. Exceptions to the setback requirements of this title include:

165 a. Decks may extend up to five feet into the setback required.

166 b. Unoccupied accessory structures up to two hundred square feet may be placed  
167 within the setback area but must be at least 15 feet from the top of the bluff,  
168 coastal bluff or ravine.

169 c. Boardwalks, sidewalks, foot paths, stairways, etc, generally at ground level or  
170 slightly elevated, that provide access to the beach or bluff area, or to accessory  
171 structures.

172 d. Further setback exceptions may be granted by Conditional Use Permit.

173

174 21.44.040 Steep Slope SITE PLAN REQUIREMENTS

175 a. The ~~steep slope~~ site plan, for sites with development on steep slopes (slopes of 50% or  
176 greater), or within 40 feet of the top of a bluff or coastal bluff, at a minimum must include the  
177 following:

- 178 1. Location of all watercourses, water bodies, and wetlands within 100 feet of the  
179 proposed development.
- 180 2. Location of all existing and proposed drainage structures and patterns.
- 181 3. Site topography shown in minimum of 5 foot contours.
- 182 4. Location of all proposed and existing buildings, utilities (including well and septic)  
183 driveways and streets.
- 184 5. Location of all existing vegetation types including meadow, forest and scrub lands,  
185 identifying all areas of vegetation that will be removed as well as vegetation to be  
186 preserved or replaced. Specifications for revegetation shall also be included.
- 187 6. Specific methods that will be used to control soil erosion, sedimentation, and  
188 excessive stormwater runoff both during and after construction.
- 189 7. A description of the stability of the existing soils on site and a narrative and other  
190 detail sufficient to demonstrate the appropriateness of the development and  
191 construction methods proposed.
- 192 8. Grading plan for the development, the construction site(s) and all development and  
193 construction access routes.
- 194 9. A geotechnical engineering report.

195 b. The site plan shall be reviewed by the City Engineer to determine if it complete and in  
196 conformance with the ordinance requirements. The City Engineer shall accept or reject the plan  
197 as submitted or may require that specific conditions be complied with in order for the plan to  
198 meet approval.

199 c. No zoning permit shall be issued and no grading, clearing, or other development shall occur  
200 until a site plan has been reviewed and approved by the City.

201 Section 6. Land development plans that received final approval prior to the effective date of this  
202 ordinance shall be exempt from these requirements.

203 Section 7. If the provisions of any part of this ordinance shall be judged invalid by a court of  
204 competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of this  
205 ordinance.

206  
207 ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA this \_\_\_\_\_ day of  
208 \_\_\_\_\_, 2009.

209  
210 CITY OF HOMER

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215 \_\_\_\_\_  
JAMES C. HORNADAY, MAYOR



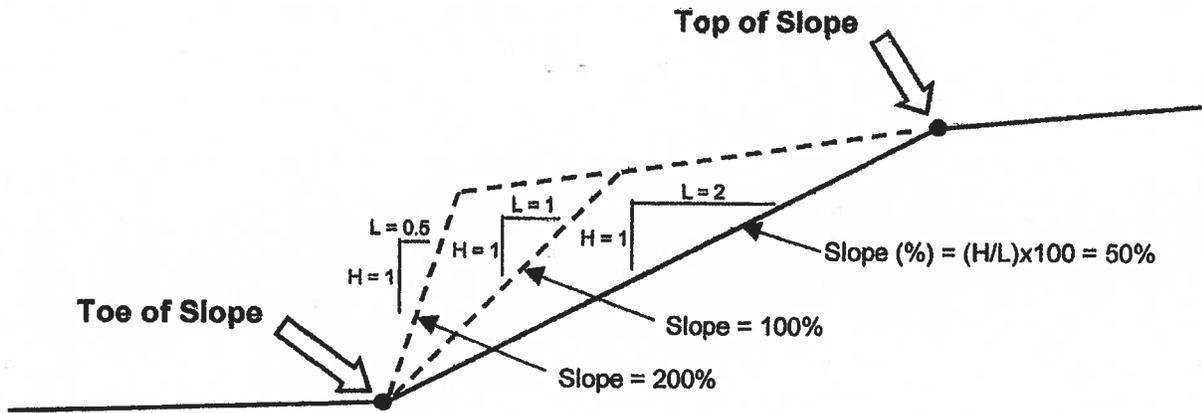


Figure 1, Slope Definitions and Nomenclature

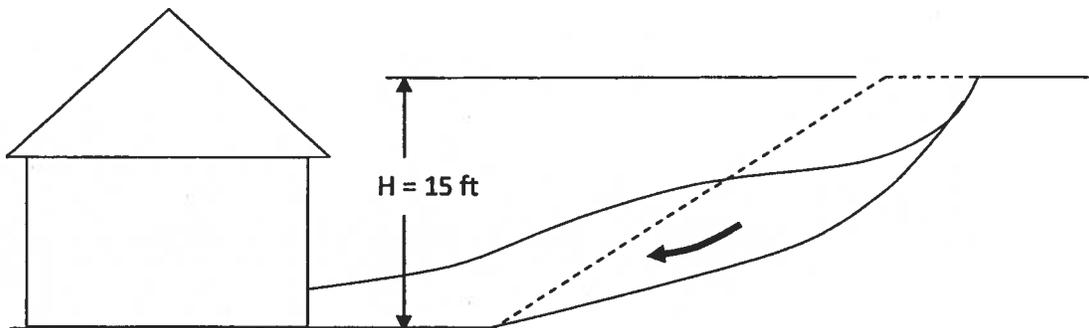


Figure 1. Section through the wall at the top of the stone.

### Notes on Minimum Slope Height

The stability of a cut or fill slope in soil is a function of the vertical height of the slope, the angle of the slope and the materials that form the slope. In general, higher slopes are less stable than lower slopes and steeper slopes are less stable than flatter slopes. If an earth slope should fail, a mass of soil along the face of the slope would move down and horizontally out from the original slope face. The distance the slide material would travel horizontally and the height of the accumulated slide material at the toe of a failed slope would depend in part on the original height of the slope. In order to limit the impact of potential slide debris (height and dynamic force) on permanent structures constructed at the toe of steep slopes, I recommend that slopes equal to or steeper than 50% and higher than 15 feet from toe to top should be considered to be Steep Slopes for the purpose of this ordinance.

As an aside, the federal Occupational Safety and Health Administration (OSHA) allows unsupported slopes only 20 feet high to be utilized *temporarily* during construction. However, the slopes considered in this ordinance are *permanent* slopes, and in my opinion it would be prudent to include steep slopes of 15 feet or more in height in the ordinance.







# City of Homer Planning & Zoning

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## STAFF REPORT PL 10-05

**TO:** Homer Advisory Planning Commission  
**THROUGH:** Rick Abboud, City Planner  
**FROM:** Julie Engebretsen, Planning Technician  
**MEETING:** January 6, 2010, February 3, 2010  
**SUBJECT:** Draft Ordinance amending storm water plan requirements

### GENERAL INFORMATION

Please note: the draft ordinance appears fairly straight forward. But it has a lot of small changes from current code. There are a lot of complicated issues involved!

Please ask staff ahead of time if you have questions so we can be prepared to answer them at the meeting.

For new commissioners: In an ordinance, bold underline text is a **new addition**; bold underline strikeout means the word is being **deleted**.

### Background

#### What is a Storm Water Plan (SWP)?

City code 21.75 describes the requirements a developer must meet – how much on site storm water detention is needed, basic pollution control measures, etc. The plans are intended to minimize runoff problems (and other issues) after the construction project is completed. Unlike silt fencing or methods used during construction, a storm water plan in Homer deals with the long term affects of the new impervious surface.

Conceptually, if Fred Meyer comes to town and makes a huge impervious area (think several acres of building and parking lot) the bonding would ensure that if they did not build their storm water ponds, the city would have a mechanism to pay a third party to get the work done. The community health welfare and safety would certainly be affected by the increase storm water runoff from such a development. The bond is a mechanism to ensure public safety, and downstream property rights.

HCC 21.50.030, level two site development requirements, states when an SWP is required. If a development triggers any one of the six criteria, and SWP is required.

**Note:** The state requires Storm Water Pollution Prevention Plans (SWPPP's) which are completely different, separate, and much more extensive than city requirements. If you speak with developers about this issue, 'storm water plan' means something quite different than the draft ordinance in front of you.

**What does an SWP entail from the developer standpoint?** The developer must hire a civil engineer licensed in the State of Alaska. The developer contacts the engineer, and arranges for the SWP to be drawn up. It's up to the engineer and the contractor to figure out an inspection schedule for the engineer. At the end of the construction project, the engineer must provide a written (generally certified) statement to Planning that the SWP was constructed correctly and will do the job the plan was designed to address.

The developer must also provide a bond for the cost of the storm water plan improvements. (Planning has also recently used an escrow account in place of a bond). When the engineer has provided finished project documentation, the bond/escrow funds are released to the developer.

## **Draft Ordinance**

### **Line 27 -30**

This section clarifies that an engineer shall prepare the plan, and provide a written statement of completion and compliance after construction. Current code requires that only part of the plan be prepared by the engineer (in practice they do it all) and then requires the engineer to sign off on the whole plan after completion. It's a bit convoluted, and code does not clearly state what is required by whom or when. The new code language clearly states what the engineer must do.

**Line 37-38.** "Rainfall Events" are measured by how much rain is predicted/observed to fall within a specific time frame. City code is currently inadequate because it does not specify what event to design for. There has been a lot of variation in the storm water plans submitted.

The table below has the published data from NOAA, which is the one reference an engineer would use. The hyperlinks lead to maps showing rainfall. More rain is going to fall for a 100 year storm event than for the 2 year event, and how long it rains also matters! There needs to be a clear standard in city code, so that all storm water plans are engineered to the same basic storm. Notice there is no 3 hour event data. Staff chose this number because it is the standard figure engineers have been using and has been calculated as 0.5 inches per hour. The end result is every storm water plan will be designed to a uniform standard.

<http://aprfc.arh.noaa.gov/general/probmax.html>

### **Rainfall-Frequency Maps for Southcentral Alaska** (select maps are an attachment)

Years	1 hour	6 hour	24 hour
2 yr	SC AK	SC AK	SC AK
10 yr	SC AK	SC AK	SC AK
100 yr	SC AK	SC AK	SC AK

**Line 40** is a housekeeping change: the engineer will provide the information as part of the storm water plan submittal. This is generally how it works now.

**Lines 61- end.** (See ordinance for two different word variations. Suggestions welcome on which the Commission prefers.) Three things are accomplished in this section. First, escrow funds may be used in lieu of bonding. Second, a developer must bond/provide security for 150% of the estimated project cost.

Third, projects with less than ½ acre of impervious coverage are exempt from the bonding requirement. Each of these will be discussed separately below.

1. **Escrow funds.** Staff recommends financial flexibility for developers. For some, it is easier to come up with cash to be held in an escrow account, than to provide bonding, particularly for smaller, less expensive projects. Staff has worked out an escrow system with the Finance Department and a local bank.

2. **150% vs 100% financial security.** It is common for storm water plan completion to take as least as long if not longer than the actual building construction. The cost could be underestimated. As the cost of construction rises, 100% bonding the year of project permitting may be inadequate a few years later, if the plan was not installed.

\*Note: New code language requires an “engineer’s cost estimate.” This means when the engineer designs the storm water plan, they also work up a cost estimate for construction. This cost estimate is additional work and increases engineering cost for the developer. However, it also provides third party information on actual costs and how large the bond should be.

3. **Bonding exemption. (Line 63) Needs Commission Discussion.** Currently, every project that needs an SWP, no matter how small or inexpensive, is required to have a bond. **Idea:** bonding for small projects is not a productive use of time and money. **Discussion:** it takes a lot of staff time, and developer time and expense to bond for a project. **Recommendation:** Create an exemption from bonding for small storm water plans. Some options:

**A. Allow an exception based on the amount of impervious coverage.** When the impervious surface of a parcel is less than ½ an acre, the developer would not need to bond for the storm water plan. The ½ acre area is arbitrary – it could be bigger or smaller – open for discussion!

**OR**

**B. Allow an exemption based on the estimated cost of storm water plan construction.** The dollar value of the improvements could be used to figure out when a project would be exempt from bonding, rather than impervious area. IE, storm water plan improvements costing more than \$10,000 could be required to bond/escrow; those costing less would not. The engineer’s cost estimate would be used to make this determination.

An alternative would be under a certain dollar value/impacted area, the city planner would have discretion to require bonding or not. The difference would be that bonding/escrow is required, unless waived by the city planner, instead of an automatic waiver for smaller projects. The city retains the right to require bonding/escrow.

**STAFF COMMENTS/RECOMMENDATIONS:** Discuss the draft ordinance. When ready, forward to public hearing.

## ATTACHMENTS

1. January 6 2010 Draft Ordinance
2. Rainfall frequency maps

The first part of the document is a list of the items that are to be included in the report. This list is based on the information provided in the brief and is intended to provide a clear and concise overview of the project.

The second part of the document is a detailed description of the project. This section provides a comprehensive overview of the project's objectives, scope, and deliverables. It also includes a discussion of the project's risks and a plan for how these risks will be managed.

The third part of the document is a detailed description of the project's methodology. This section provides a clear and concise overview of the project's approach and the tools and techniques that will be used to complete the project.

The fourth part of the document is a detailed description of the project's budget. This section provides a clear and concise overview of the project's financial requirements and a plan for how these requirements will be met.

The fifth part of the document is a detailed description of the project's timeline. This section provides a clear and concise overview of the project's schedule and a plan for how the project will be completed on time.

The sixth part of the document is a detailed description of the project's communication plan. This section provides a clear and concise overview of the project's communication strategy and a plan for how the project will be kept up-to-date.

The seventh part of the document is a detailed description of the project's risk management plan. This section provides a clear and concise overview of the project's risk management strategy and a plan for how the project's risks will be managed.

The eighth part of the document is a detailed description of the project's quality management plan. This section provides a clear and concise overview of the project's quality management strategy and a plan for how the project's quality will be managed.

The ninth part of the document is a detailed description of the project's stakeholder management plan. This section provides a clear and concise overview of the project's stakeholder management strategy and a plan for how the project's stakeholders will be managed.

The tenth part of the document is a detailed description of the project's closing plan. This section provides a clear and concise overview of the project's closing strategy and a plan for how the project will be closed.

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January 6, 2010 DRAFT

CITY OF HOMER  
HOMER, ALASKA

Planning/

ORDINANCE 09-

(language to change) AN ORDINANCE OF THE CITY COUNCIL OF HOMER,  
ALASKA, AMENDING HOMER CITY CODE 21.75.030 FINANCIAL  
RESPONSIBILITY, RELATING TO STORM WATER PLAN BONDING  
REQUIREMENTS.

WHEREAS, Homer City Code 21.75.030 requires a bond for storm water plan improvements in  
the amount of 100% of the cost of improvements; and

WHEREAS, The city has been advised this is an insufficient amount of bonding to cover future  
project costs should the bond be needed to complete improvements; and

WHEREAS, (to be completed prior to public hearing)

NOW, THEREFORE, THE CITY OF HOMER ORDAINS:

Section 1. HCC. 21.75.010 (c) is hereby added to read:

**(c) When a SWP is required, a State of Alaska registered civil engineer shall design  
and submit all Storm Water Plans, and provide written post construction  
documentation that the installed mitigation methods meet the intent of the SWP  
standards and the requirements of the plan.**

Section 2. HCC 21.75.020 Standards for storm water plan subsection (i) and (m) are hereby  
amended to read:

i. The post development stormwater discharge rate shall not exceed the pre-development peak  
discharge rate (PDR) for the ten-year **three hour** frequency storm event, **calculated as 0.5  
inches per hour.**

m. A schedule of monitoring and maintenance practices necessary to maintain the SWP control methods  
**will be supplied by the developer to the City.**

Section 3. Homer City Code 21.75.070 financial responsibility is hereby amended to read as  
follows:

47 (Current code reads: 21.75.030 Financial responsibility. A performance bond  
48 and payment bond shall be required for all projects on which a Storm  
49 Water Plan is required to ensure compliance with the Storm Water  
50 Plan. The developer shall be released from the bonding requirements  
51 at the completion of site development activities and written  
52 confirmation from a State of Alaska registered civil engineer that the  
53 installed mitigation methods meet the intent of the SWP standards and  
54 the requirements of the plan. The performance bond and payment bond  
55 shall each be in the amount of 100% of the estimated cost of  
56 installation of mitigation methods and structures sufficient to ensure  
57 that the plan and SWP standards are satisfied.)

58

59 Suggested new language:

60

61 21.75.030 Financial responsibility. Bonding or escrow funds shall be required for all projects on  
62 which a Storm Water Plan is required to ensure compliance with the Storm Water Plan.  
63 Exception: No bonding is required when The total (pre and post) impervious surface coverage  
64 does not exceed 0.50 acres. (JE comment: this is not very smooth code; require \$\$ for all SWP's but then  
65 right away state an exception. See below).

66

67 Alternate language?....

68

69 21.75.030 Financial Responsibility. When a storm water plan is required, bonding or escrow funds  
70 are required for all projects that result in a site containing impervious surface coverage greater  
71 than 0.50 acres. These funds or financial guarantees are required to ensure compliance with the  
72 Storm Water Plan.

73

74 a. The performance bond, and payment bond, or escrow funds in a city-held account  
75 shall each be in the amount of ~~100%~~ 150% of the engineer's estimated cost of  
76 installation of mitigation methods and structures sufficient to ensure that the plan and  
77 SWP standards are satisfied.

78

79 b. The developer shall be released from the financial responsibility requirements when a  
80 State of Alaska registered civil engineer provides written confirmation that

81

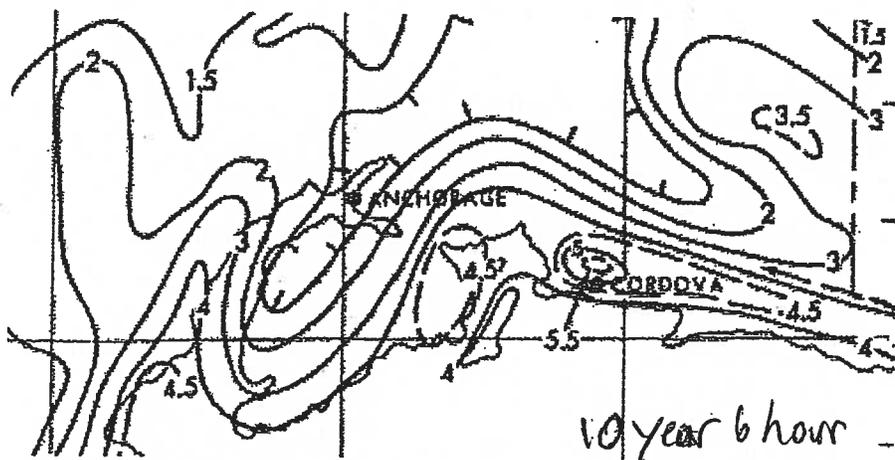
82 ~~i. At the completion of site development activities~~ the installed mitigation  
83 methods meet the intent of the SWP standards and the requirements of the plan.

84

85 Section 4. This Ordinance is of a permanent and general character and shall be included in the  
86 City Code.

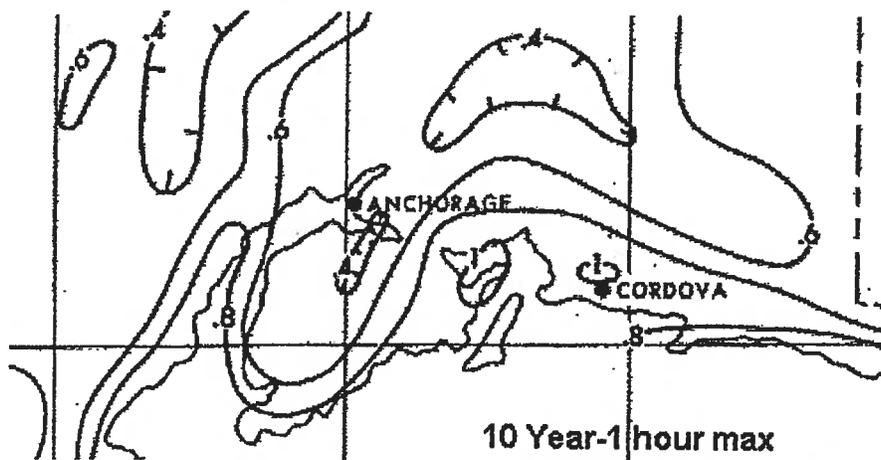
87

88



rainfall

10 year 6 hour



rainfall

10 Year-1 hour max





# City of Homer Planning & Zoning

491 East Pioneer Avenue  
Homer, Alaska 99603-7645

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## STAFF REPORT PL 10-12

**TO:** Homer Advisory Planning Commission  
**FROM:** Rick Abboud, City Planner  
**MEETING:** February 3, 2010  
**SUBJECT:** BOA Roominghouse Determination

*Reminder – This is an informational staff report of a quasi-judicial issue regarding procedure only. The rules of ex parte communication apply!*

### Introduction

The BOA issued a decision regarding the appeal of the HAPC non-decision of my determination that the Refuge Room constitutes a rooming house. The BOA determined that the 2-3 vote was sufficient to overturn my determination that the Refuge room constituted a rooming house. It was also noted that it was up to the Planning Commission (barring a vote to rescind the decision) to determine if the use constitutes a Shelter for the Homeless or something else.

### Staff Comments

If no other action is taken by the HAPC, it is my intent to wait out the appeal period for the BOA decision, and then act upon the CUP application currently on file, unless the Refuge Chapel decides to withdraw or submit a new application. After the appeal timeline has expired, the first opportunity for a public hearing is the first meeting in March.

City of Houston

Planning & Zoning

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Houston, Texas 77002



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Houston, Texas 77002  
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Fax: (713) 877-1000

City of Houston, Texas

Mayor: Ann R. Rasmussen  
City Manager: Robert D. White  
City Clerk: Patricia A. Smith  
City Treasurer: Robert D. White

City of Houston, Texas  
City of Houston, Texas

City of Houston, Texas  
City of Houston, Texas  
City of Houston, Texas  
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City of Houston, Texas

## HOMER BOARD OF ADJUSTMENT

City of Homer  
491 East Pioneer Avenue  
Homer, Alaska 99603-7645

### **APPEAL OF A NON-DECISION OF A ROOMING HOUSE DETERMINATION FOR THE REFUGE CHAPEL AT 397 E. PIONEER AVENUE, LOTS 4 AND 5, BLOCK 6; AND LOT 5, BLOCK 7, GLACIER VIEW SUBDIVISION NO. 2**

#### DECISION ON APPEAL

This Decision is made pursuant to Homer City Code (HCC) §21.93.110. As such it includes an official written statement of findings and reasons supporting this decision.

#### INTRODUCTION AND BACKGROUND FACTS

1. This is the second time that issues regarding the Refuge Chapel have been brought before the Homer Board of Adjustment (Board).
2. On or about September 5, 2007, this Board reversed a conditional use permit decision by the Homer Advisory Planning Commission (Commission). In that appeal, the Commission had approved a conditional use permit for the Refuge Chapel to operate a dormitory-style housing facility for men. On appeal, the Board reversed and remanded the Commission's decision after it determined, among other things, that a planning department staff member, primarily responsible for working on the conditional use permit had a disqualifying conflict of interest.
3. HCC §21.93.560 governs remands from the Board. In its remand, the Board requested that the Commission reconsider the application for a conditional use permit after presentation of a new staff report. Pursuant to HCC §21.93.560 (c) the Commission was mandated to prioritize its reconsideration of the remanded conditional use permit.
4. Rather than follow the express request by the Board, the new City Planner issued a letter on April 9, 2009, (over one and one-half years after the Board's remand) which appears to abandon the need for a conditional use permit by determining that the Refuge Chapel meets the definition of a "Rooming house" under HCC §21.03.040.
5. In his letter, the City Planner also determined that a new conditional use permit application would be required to deal with expansions of the Refuge Chapel building that exceed 30% lot coverage and on remand, the Refuge Chapel's conditional use application should be dismissed as moot.

6. On or about April 13, 2009, Frank Griswold appealed the City Planner's April 9, 2009, determination letter to the Commission.
7. The Commission scheduled the appeal hearing for June 17, 2009, and all parties were provided adequate notice.
8. The appeal hearing date was rescheduled to take place on June 3, 2009. At the June 3, 2009, appeal hearing, the City Planner appeared and presented oral argument. Frank Griswold did not appear and the appeal hearing was conducted in his absence. A review of the record revealed that Frank Griswold was not given adequate notice pursuant to HCC §21.93.100.
9. The Commission continued the appeal hearing to allow Frank Griswold an opportunity to present his oral argument. Frank Griswold appeared and presented written material and oral argument on June 17, 2009.
10. One Commission member, Commissioner Moore was ultimately found to have a conflict of interest. A decision by the Commission, on July 1, 2009, disqualified Commissioner Moore from taking part in the appeal hearing and deliberations. Because one Commission seat was vacant, the determination that Commissioner Moore had a conflict of interest left five (5) Commission members to deliberate and render a decision.
11. Apparently, after deliberations the Commission made a motion to support the City Planners determination that the Refuge Chapel was a "Rooming house". Two (2) members voted in support of the City Planner and three (3) members voted not to support the City Planner's determination.
12. Based upon a reading of Paragraph K of the Commission's bylaws, that four (4) affirmative votes were required to pass an ordinance, resolution or motion, the Commission determined that its 2-3 vote was not sufficient to affirm or reverse the City Planner's determination.
13. Therefore, the Commission reasoned that since under its bylaws it neither affirmed nor reversed the City Planner's determination, that the City Planner's determination remained in effect.
14. The Commission issued its decision on August 5, 2009.
15. Frank Griswold filed a request for reconsideration on August 6, 2009. The request for reconsideration was denied by the Commission.
16. A notice of appeal was timely filed by Frank Griswold on September 15, 2009. Frank Griswold is the appellant and the City Planner Rick Abboud, and Darrin Williams of the Refuge Chapel are the appellees in this appeal.
17. The Board heard oral argument on this matter at a Special City Council Meeting at 5:30 P.M. on Monday, November 30, 2009. The appellant and the appellees were given an opportunity to present written briefs and oral argument at that time.

18. Prior to the start of oral argument, the appellant, Frank Griswold, challenged and questioned whether three (3) Board Members should be excused due to potential conflicts of interest. The Board determined that all three (3) (Board Member Hornaday, Board Member, Hogan and Board Member Zak) did not have conflicts of interest. Board Member Hornaday asked to be excused and did not participate.

19. At the conclusion of the appeal hearing, the Board reviewed the matter and performed its deliberation.

### **ISSUES ON APPEAL**

The Board is asked to answer the following questions in this appeal:

1. Was the Planning Commission's 2-3 vote sufficient to overturn City Planner Rick Abboud's determination?
2. Does the Refuge Room constitute a shelter for the Homeless, or a Rooming House?
3. Does the City Planner Rick Abboud have authority to determine that the expansion of the Refuge Chapel building to exceed 30% lot coverage requires a conditional use permit?
4. Was the June 3, 2009, Planning Commission Hearing illegal?
5. Does City Planner Rick Abboud have a disqualifying bias?

### **STATEMENT OF FINDINGS**

The Board finds that:

1. The Planning Commission's 2-3 vote was sufficient to overturn City Planner Rick Abboud's April 9, 2009 determination.
2. It is still up to the Commission to determine whether the Refuge Room constitutes a Homeless shelter or something else.
3. Yes, the City Planner does have the authority to determine that a certain use requires a conditional use permit.
4. Yes, the June 3, 2009, Planning Commission Hearing was an improper meeting and appeal hearing.
5. No, City Planner Rick Abboud does not have a disqualifying bias.

## REASONS SUPPORTING THIS DECISION

The Board's findings are supported by the following reasons:

1. The Board accepts the fact that the HCC §1.76.050(b) authorizes the Commission to adopt its own rules of procedure and recognizes that the Commission has done so by adopting its own Bylaws (which were approved by the Homer City Council on June 8, 2008). However, Paragraph K of the Commission's Bylaws does not state that it covers quasi judicial proceedings or appeals to the Commission. Further, the Board does not believe that Paragraph K was ever intended to govern anything other than Regular Planning Commission meetings.

A close review of Paragraph K shows that it is almost identical to the City Council's adopted procedure found at HCC §1.24.040 (h) which provides in part, that:

Four Councilmembers shall constitute a quorum. Four affirmative votes are required for the passage of an ordinance, resolution, or motion.

This provision applies to Councilmembers at Council meetings. Were it to apply to the City Council serving in a quasi judicial role it would say so. Instead, the HCC expressly provides that when acting in the Board of Adjustment role, a decision is determined by a majority vote. In other words, only a majority of board members who are not disqualified for conflict is required to "reverse or modify the action or determination appealed from." HCC §21.93.550 (a) [governing Board of Adjustment decision].

The same majority rule applies to Board of Ethics decisions. Under HCC §1.79.010:

A quorum of the Board shall be a majority of all members who are not excused for cause, such as being the complainant, the respondent, a witness, having a conflict of interest, or other cause for recusal. However, in no event may a quorum be less than three.

Therefore, even though the City Council restricts itself to four (4) affirmative votes to pass an ordinance, resolution, or motion, HCC does not require the same when the City Council acts in a quasi judicial capacity.

Accordingly, the Commission had five (5) members present during its deliberations and a simple majority vote was sufficient to affirm or reject the City Planner's determination.

The Board's conclusion is also supported by the differences between open and closed meetings; that is while quasi judicial bodies are allowed to deliberate and make decisions in a closed meeting; the Council and the City's Boards and

Commissions are required to usually act in the open when they conduct their normal business. A review of the above referenced Bylaws provisions directs its members to vote by roll call when voting on ordinances, resolutions or motions; it does not address the Commissions' quasi judicial role.

Finally, during deliberations a quasi judicial body does not have to reveal who voted for or against. In fact, the decisions are required to be prepared in a written form outlining the decision and findings. The vote of the Commission to adopt the City Planner's determinations was 2-3; therefore the Commission rejected the City Planner's determinations by a simple majority vote. It is now up to the Commission to decide whether to rescind / reconsider its August 5, 2009 decision or not.<sup>1</sup>

2. Having determined that the Commission rejected the City Planner's determinations, it is not for the Board to decide whether or not the Refuge Room is a Rooming House – the Commission rejected that classification. As to whether or not the Refuge Room is a Homeless Shelter, the answer to that question lies with the Commission. Although the City Planner was recommending that the Refuge Chapel's application for a conditional use permit should be dismissed as moot, the Record on Appeal does not show that it was dismissed. This leaves the application where it was on September 5, 2007. The remand requesting that the Commission reconsider the matter is still in effect unless the Refuge Chapel has voluntarily withdrawn its application.
3. In reviewing the City Code, the Board finds that the City Planner is given certain powers in order to fulfill his duties. These broad powers include, among other things, authority to interpret and enforce Title 21 of the HCC. Accordingly, it is part of his power to interpret the Code to determine that a certain land use requires a conditional use permit. The Board's review of the Record on Appeal does not show that the City Planner granted any conditional use permits, only that he advised the Refuge Chapel that it was required to apply for a conditional use permit for expansions that occurred in the past.
4. The Board takes the public notice requirements very serious. If a certain type of notice is required to be given to parties or adjacent land owners those notices must be given. At the start of all appeals, the Commission must determine whether sufficient notice was provided to all concerned parties. If it is revealed that sufficient notice was not provided then the appeal hearing must be rescheduled. It is simply not appropriate to conduct part of the appeal hearing without all parties being present. Therefore, the Board concludes that the June 3, 2009, appeal hearing was not proper under the HCC.
5. The Board has reviewed the Record on Appeal and can find no evidence to support any assertion that the City Planner Rick Abboud has a bias. The fact

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<sup>1</sup> Usually a motion to reconsider must be made within a certain time period. A motion to rescind, however, can be made as long as it is not impossible to undo. See Generally: Robert's Rules of Order.

that the Commission took almost one and one-half years to deal with the Board's remand concerns the Board; however, realizing that positions were changing and that new personnel was hired to address this and other important matters explains and justifies some of the delay.

APPROVED by the Homer Board of Adjustment January 13, 2010.

  
Mary E. (Beth) Wythe, Chair

### NOTICE OF APPEAL RIGHTS

Pursuant to Homer City Code §21.91.130 titled Appeals to Superior Court:

- (a) An appeal from a final decision of the Board of Adjustment may be taken directly to the Superior Court by a party who actively and substantively participated in the proceedings before the Board of Adjustment or by the City Manager, City Planner or any governmental official, agency, or unit.
- (b) An appeal to the Superior Court shall be filed within 30 days of the date of distribution of the final decision to the parties appearing before the Board of Adjustment.
- (c) An appeal from a final decision of the Board of Adjustment to the Superior Court is governed by court rules.

### CERTIFICATION OF DISTRIBUTION

I certify that a copy of this Decision was mailed to Frank Griswold and Darren Williams of the Refuge Chapel on January 14, 2010. A copy was also delivered to the City of Homer Planning Department, Homer City Clerk and the City Attorney on the same date.

Dated: January 14, 2010





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**STAFF REPORT PL 10-17**

**TO:** Homer Advisory Planning Commission  
**FROM:** Rick Abboud, City Planner  
**MEETING:** February 17, 2010  
**SUBJECT:** Land Allocation Plan

Attached you will find a copy of the 2010 Draft Land Allocation Plan for your review. Every year, the City Council requests all the advisory commissions to review city owned land. Commissions may make recommendations on how the city should use its land, which should be leased, sold, turned into parks, etc. Some years there are a lot of recommendations; other years there are very few. The Council holds a joint work session for the Land Allocation Plan with all the Commissions, and this year it is scheduled for Monday, March 22nd. When the Council has heard or read the recommendations from the Commissions, they pass a resolution, which lists any properties to be sold, leased, etc.

The Planning and Zoning Department puts together the Land Allocation Plan, so if you questions about a particular property, please email staff.

The Planning Commission should have a discussion in regards to recommendations, and participation in the joint work session. Recommendations from the Commission will be forwarded in a memo to Council. The Commission should also figure out who will attend the work session. All commissioners are invited, but the Commission should ensure that at least one Commissioner will attend to represent its views. (Staff can remind the Commission closer to the meeting).

So far, the Port and Harbor and Lease Committee have reviewed the draft plan, and arrived at the following recommendation: the northwest corner of the harbor from Freight Dock Road to within 150 feet of Ramp 5 be designated for short term leases, one to two years, for small kiosk buildings under 500 square feet.

**Recommendation:**

Planning Commission review land allocation plan, formulate recommendations if any, and figure out who will attend the work session.

**ATTACHMENTS**

1. 2010 Land Allocation Plan – Review Draft



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# City of Homer Planning & Zoning

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## STAFF REPORT PL 10-16

**TO:** Homer Advisory Planning Commission  
**THROUGH:** Rick Abboud, City Planner  
**FROM:** Dotti Harness-Foster, Planning Technician  
**MEETING:** February 17, 2010

**SUBJECT:** Public and private schools in General Commercial 1

On February 8, 2010 the City Council referred Ord. 10-10 to the Homer Advisory Planning Commission. If approved, Ord. 10-10 would add *public and private schools* as a Conditional Use in the GC1 district. This staff report provides a summary of the current areas and uses in the GC1 district, explores the impact of public and private schools in the GC1 district. Findings are provided for both: Support (S) and Deny (D) for *public and private schools* to the GC1 district.

### Background:

General Commercial 1 district covers three commercial-industrial areas in Homer. From west to east:

Baycrest GC1 area at the top of Baycrest Hill includes the landfill, KPB maintenance yard, a RV park, and gas station.

Ocean Drive GC1 area south of Beluga Lake includes residences, auto repair, commercial storage units, mechanical repair shops, restaurants and retail.

East End Road GC1 area is approximately 3 miles east of Homer's core and extends for approximately 1.3 miles along the south side of East End Road. The areas includes residences, boat yard, excavation site, storage units, warehouses, bar, and retail.

Currently, trade, skilled or industrial schools are permitted in the GC1 district per HCC 21.24.020.

"*School, trade, skilled or industrial*" means a school for the teaching of industrial, construction, technical and skilled trades, including schools operated by or for labor unions. Examples include welding, carpentry, electrician, and similar training schools.

Proposed is the addition on "*public and private school*" as a Conditional Use in the GC1 district:

"*School, private*" means a school that provides a complete educational curriculum and is owned and operated by private educational, religious, charitable, or other institution. It may provide elementary, secondary or post-secondary levels of education.

“School, public” means a school owned and operated or chartered by the Kenai Peninsula Borough or the state or University of Alaska for the purpose of public education.

**Review Standards:**

“A balanced decision on a rezone request is one that is not arbitrary, has legitimate public purpose and is consistent with the comprehensive plan.” (HAPC, Policies and Procedures)

The Planning Commission’s Policies and Procedures Manual requires that the Commission provide the City Council with a written recommendation based on:

1. The public need and justification for the proposed change.

Existing schools in Homer are in the residential districts. Public, private and commercial schools are permitted outright in the Central Business District (CBD) and Town Center District (TCD). A Conditional Use Permit (CUP) is required in the Rural Residential (RR), Residential Office (RO) and the Gateway Business District (GBD).

The average size of a public school site in Homer is approximately 30 acres.

The CBD, TCD, GBD and the residential districts and are capable of supporting additional schools.

Type of school & permit requirements	RR	UR	RO	CBD	TCD	GBD	GC1	GC2	MI	MC	BCW
CUP: Public or private	X		X			X					
Permitted: Public or private		X									X
Permitted: Public, private & commercial				X	X						
Permitted: Trade, skilled or industrial							X	X			
Not a listed use									No	No	

2. The effect on the public health, safety and welfare.

To insure public health, safety and welfare schools often include: playgrounds, safe, secure and observable walking and bike paths, school bus access, quiet areas for teaching, loud areas for play and music. In-town school sites maximize the proportion of students who can use safe routes to school on foot or by bicycle.<sup>i</sup>

In land use conflicts, the 1999 Homer Comprehensive Plan states “that industrial uses are given priority.” Priority of permitted uses that range from auto repair, restaurants, hotel, manufacturing, banks, to dormitories (HCC 21.24.020) does not provide a safe environment for school children.

If an adjacent property developed as auto repair, building supply and/or warehouse, that commercial-industrial use would be given priority. This potential mix of industrial use with schools may not be conducive to the public health, safety and welfare of school children.

3. The effect of the change on the district and surrounding property.

The purpose of the GC1 district is to “provide sites for businesses that require direct motor vehicle access and may require larger land area, and to provide business locations in proximity to arterials and transportation center” per HCC 21.24.010.

Schools are pedestrian-bike oriented with high motor vehicle traffic before and after school.

Property owners in the GC1 district have an elevated right to development their property for commercial-industrial.

4. The relationship to the Comprehensive Plan and purposes of the zoning regulations.

Location of a school is an important community decision and must be consistent with the 1999 Homer Comprehensive Plan Public. When selecting potential school sites, preference should be given in-town sites to maximize the number of students who can use safe routes to school on foot or bike.

The Industrial Land Use section of the 1999 Homer Comprehensive Plan (p3) seeks to “encourage and promote businesses with industrial uses.” One of the goals is to “minimize land use conflicts, to the extent possible between industrial and other land uses.” Allowing public and private schools in the GC1 district does not promote businesses with industrial uses. Land use conflicts could arise between child safety and hazards associated with industrials heavy equipment use, welding and mechanical repair.

An Action Item in the Homer Comprehensive Plan (p3) states: “Revise the zoning code to allow for residential and other land uses, with the stipulation that industrial uses are given priority in land use conflicts.” Priority given to industrial uses may be in conflict with the health, safety and welfare of school children.

The purpose of the GC1 district “is primarily intended to provide sites for businesses that require direct motor vehicle access and may require larger land area, and to provide business locations in proximity to arterials and transportation centers. It is also intended to minimize congestion and adverse effects on adjacent residential districts and on the appearance of the community” per HCC 21.24.010.

Existing schools in Homer are in the residential districts on large tracts for play grounds and are pedestrian-bike oriented.

**Staff Opinion:**

While private and public schools themselves may have minimum impact on the demeanor of business and businesses in the GC1 District, it may reduce opportunities for other commercial

and industrial uses in the future and may expose school children to hazards not present in the other districts where schools are now allowed.

Att: Ord. 10-10 with edits.

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<sup>i</sup> *Planning and Urban Design Standards* by the American Planning Association, 2006, pg 203.

**CITY OF HOMER  
HOMER, ALASKA**

Zak

**ORDINANCE 10-10**

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA, AMENDING HOMER CITY CODE 21.24.030 TO ADD PUBLIC, PRIVATE, TRADE, SKILLED OR INDUSTRIAL SCHOOLS AS A CONDITIONAL USE IN THE GENERAL COMMERCIAL ONE ZONING DISTRICT.

THE CITY OF HOMER ORDAINS:

Section 1. Homer City Code 21.24.030, Conditional uses and structures, is amended by adding a subsection (p) to read as follows:

p. Public, private, trade, skilled or industrial schools.

Section 2. This ordinance shall take effect upon its adoption by the Homer City Council.

Section 3. This Ordinance is of a permanent and general character and shall be included in the City Code.

ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this \_\_\_\_\_ day of \_\_\_\_\_ 2010.

CITY OF HOMER

\_\_\_\_\_  
JAMES C. HORNADAY, MAYOR

ATTEST:

\_\_\_\_\_  
JO JOHNSON, CMC, CITY CLERK

YES:

NO:

ABSTAIN:

ABSENT:

First Reading:

Public Hearing:

Second Reading:

Effective Date:

Reviewed and approved as to form:

\_\_\_\_\_  
Walt Wrede, City Manager

\_\_\_\_\_  
Thomas F. Klinkner, City Attorney

Date: \_\_\_\_\_

REVENUE

ALL INFORMATION OF THE CITY OF PARK COUNTY IS TO BE KEPT IN THE PUBLIC RECORDS OF THE CITY OF PARK COUNTY AND IS TO BE AVAILABLE TO THE PUBLIC AS A MATTER OF PUBLIC RECORDS. THE CITY OF PARK COUNTY IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION CONTAINED HEREIN.

THE CITY OF PARK COUNTY

Section 1. The City of Park County, Colorado, hereby certifies that the following information is true and correct to the best of its knowledge and belief.

Section 2. The City of Park County, Colorado, hereby certifies that the following information is true and correct to the best of its knowledge and belief.

Section 3. The City of Park County, Colorado, hereby certifies that the following information is true and correct to the best of its knowledge and belief.

Section 4. The City of Park County, Colorado, hereby certifies that the following information is true and correct to the best of its knowledge and belief.

Section 5. The City of Park County, Colorado, hereby certifies that the following information is true and correct to the best of its knowledge and belief.

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Section 22. The City of Park County, Colorado, hereby certifies that the following information is true and correct to the best of its knowledge and belief.



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## STAFF REPORT PL 10-20

**TO:** Homer Advisory Planning Commission  
**FROM:** Rick Abboud, City Planner  
**MEETING:** February 17, 2010  
**SUBJECT:** Transportation Advisory Committee (TAC)

### Volunteer:

Now that Kent Haina has resigned, the Planning Commission now needs a new representative to the Transportation Advisory Committee. This committee meets quarterly and is scheduled to meet from 5:30 – 7:00pm on May 20<sup>th</sup>, August 19<sup>th</sup>, and November 18<sup>th</sup> in 2010. Appointments to this committee are for three years and start in April.

### Action:

The Commission does not necessarily have to take action tonight, but should forward a volunteer before the end of March. If a nomination is not made at this meeting, postpone until an appropriate time.



# City of Homer Planning & Zoning

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City of Homer, Alaska

Planning & Zoning Commission  
1000 Homer Highway  
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Fax: 907-336-1112

11/13/2011

On this date, the Planning & Zoning Commission met in a public hearing to consider the proposed rezoning of the property located at 1000 Homer Highway, Homer, Alaska. The property is currently zoned R-1 and the proposed rezoning is to R-2. The rezoning is being proposed for the purpose of allowing for the construction of a new residential building on the property. The rezoning is being proposed in accordance with the City of Homer's Comprehensive Zoning Ordinance. The rezoning is being proposed by the City of Homer Planning & Zoning Commission.

11/13/2011

The rezoning is being proposed in accordance with the City of Homer's Comprehensive Zoning Ordinance. The rezoning is being proposed by the City of Homer Planning & Zoning Commission.

## MEMORANDUM

**TO:** Rick Abboud, City Planner  
City of Homer

**FROM:** Tom Klinkner

**DATE:** February 10, 2010

**FILE NO.** 506,742.550

**RE:** Refuge Room—Proceedings on Remand from Board of Adjustment

---

### *1. Introduction.*

I offer the following advice on how to present this matter to the Homer Advisory Planning Commission ("Commission") on remand after the Decision on Appeal of the Homer Board of Adjustment ("Board").

- The Commission should not proceed on remand until the time to appeal the Board's decision has expired.
- Any action by the Commission to change its July 1, 2009 vote overruling the City Planner's determination that the Refuge Room is a rooming house must be supported by a reasoned analysis of why that vote constituted clear error.
- The Refuge Chapel has withdrawn its conditional use application, so there is nothing further for the Commission to do with regard to that application.
- The Board affirmed the City Planner's authority to determine that a conditional use was required for the Refuge Chapel to exceed maximum lot coverage. The Refuge Chapel has presented additional evidence regarding the continuing nonconforming status of the Refuge Chapel structure, which the City Planner should review under HCC 21.61.050(b)(3).

I explain each of these recommendations below.

### *2. Time to Appeal Board of Adjustment Decision.*

The Commission should proceed on the remand of this matter only if there is no appeal of the Board's decision. The Board's decision may be appealed until Monday, February 15, 2010. Due to the time required for mailing, it will not be known with certainty as of February 17, 2010, the date of the next regular Commission meeting, whether a timely appeal has been filed. Therefore, I recommend that the Commission not take this matter up on remand until its March 3, 2010 regular meeting.

**3. *Rescission or Reconsideration of Commission's July 1, 2009 Vote.***

The City Planner determined that the Refuge Room was a rooming house for which no conditional use permit was required. On July 1, 2009, the Commission rejected a motion to support that determination by a vote of 2-3. The Board decided that this vote overturned the City Planner's determination.

While it ruled that the Commission's July 1, 2009 vote overturned the City Planner's determination, the Board expressly refrained from ruling on the merits of the Commission's action. Instead, the Board stated the following regarding the Commission's July 1, 2009 vote:

The vote of the Commission to adopt the City Planner's determinations was 2-3; therefore the Commission rejected the City Planner's determinations by a simple majority vote. It is now up to the Commission to decide whether to rescind/reconsider its August 5, 2009 decision or not.

Having determined that the Commission rejected the City Planner's determinations, it is not for the Board to decide whether or not the Refuge Room is a Rooming House—the Commission rejected that classification. As to whether or not the Refuge Room is a Homeless Shelter, the answer to that question lies with the Commission.

In a footnote, the Board also suggested that the Commission's authority to rescind its July 1, 2009 vote might be subject to the requirements for a motion to rescind in Robert's Rules of Order.

With regard to reconsideration, Paragraph G of the Commission's Bylaws provides that notice of reconsideration shall be given within 48 hours from the time the original action was taken. Thus, the time under the Bylaws for reconsideration of the Commission's July 1, 2009 vote clearly has expired. Paragraph B of the Bylaws provides that the Commission is to "abide by Robert's Rules of Order, so far as this treatise is consistent with Homer City Code." Under Robert's Rules, one may move to rescind, or to amend something previously adopted, regardless of how much time has elapsed since the action originally was taken. Thus, under the Bylaws the Commission at any time could move to rescind or amend its July 1, 2009 vote overturning the City Planner's determination.

However, the Board also decided that Paragraph K of the Bylaws, regarding the number of votes required for Commission action, does not apply to quasi-judicial proceedings or appeals to the Commission. In this context the Board decided that the Commission was subject to the common law rule that a body acts by vote of a majority at a meeting where quorum present. By the same reasoning, the adoption of Robert's Rules of Order in Paragraph B of the Bylaws would not apply to quasi-judicial proceedings of the Commission—particularly since court decisions specifically address the authority of an adjudicative body to reconsider or rescind its previous decision in the same case:

This law of the case doctrine maintains that issues previously adjudicated can only be reconsidered where there exist "exceptional circumstances" presenting a "clear error constituting a manifest injustice." Once a case has been heard, there are strong policy reasons for refusing to rehear it.<sup>1</sup>

Thus, if the Commission is to revisit and modify its July 1, 2009 vote, it must provide a reasoned analysis of why that vote amounted to "clear error constituting a manifest injustice." It would be an abuse of discretion to revisit the July 1, 2009 vote simply because, for example, the composition of the Commission has changed since that time.

**4. *The Refuge Chapel's Conditional Use Application.***

The Board's decision also stated that the Refuge Chapel's original conditional use application remained before the Commission, unless withdrawn by the Refuge Chapel:

Although the City Planner was recommending that the Refuge Chapel's application for a conditional use permit should be dismissed as moot, the Record on Appeal does not show that it was dismissed. This leaves the application where it was on September 5, 2007. The remand requesting that the Commission reconsider the matter is still in effect unless the Refuge Chapel has voluntarily withdrawn the application.

By a letter dated February 8, 2010, the Refuge Chapel withdrew its conditional use application. Therefore, there is nothing more for the Commission to do with regard to that application.

**5. *The Requirement of a Conditional Use for the Refuge Chapel's Excess Lot Area.***

In addition to addressing the categorization of the Refuge Room as a rooming house under the City's zoning ordinance, the City Planner's April 9, 2009 decision discussed the requirement of a conditional use to permit the Refuge Chapel to exceed the maximum building area allowed in the CBD zoning district:

**Future Action Required**

I have also determined that a conditional use permit is required to deal with the expansion of the Refuge Chapel building to exceed 30% lot coverage. This building expansion occurred in 2006. The existing conditional use permit application does not address the lot coverage issue, so the Refuge Chapel will be asked to file a new conditional use permit application to permit the excess lot coverage of its expanded building. When a new conditional use permit application has been received, it will be brought forward to the Homer Advisory Planning Commission, and it will be noticed as a public hearing agenda item.

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<sup>1</sup> *State, Commercial Fisheries Entry Commission v. Carlson*, 65 P. 3d 851, 859 (footnotes omitted).

The Board's decision affirmed the City Planner's authority to determine that a conditional use was required for the Refuge Chapel to exceed the maximum building area.

By a decision dated January 10, 2008, affirmed by the Board on April 18, 2008, the Commission accepted the Refuge Chapel structure as a nonconforming structure under the City zoning ordinance. With regard to the Refuge Room addition, the Commission's decision stated the following:

An addition on the south side of the building was permitted in 2005. It meets the setback requirements, and the building has been expanded on the legal lot which contains the structure as of September 27, 1982. The use of this addition is not subject to the acceptance of the non-conforming status for the original structure.

By amendment to HCC 21.48.040, effective in June 2002, structures larger than 8,000 square feet and developments with a building area covering more than 30% of the lot were required to obtain a conditional use permit within the Central Business District. This structure covers over 34% of the lot area. The original structure was built prior to June 2002. The addition on the south side of the building should be addressed through the conditional use permit process.

Thus, the Commission's decision accepting the Refuge Chapel as a nonconforming structure did not include the Refuge Room addition to the structure. The status of the addition was left for later determination.

The enlargement or alteration of a nonconforming structure is governed by HCC 21.61.030(a), which provides:

A nonconforming structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

a. A nonconforming structure may be enlarged or altered, but only if it does not increase its nonconformity

In another February 2, 2010 letter to the City Planning Department, the Refuge Chapel asserts that the Refuge Room was constructed entirely within the existing footprint of the Refuge Chapel structure. If that is the case, the construction of the Refuge Room would not increase the nonconformity of the Refuge Chapel structure, and no conditional use permit for excess building area would be required. The City Planner would make the determination of the Refuge Chapel's continuing nonconforming status under HCC 21.61.050(b)(3), as the Commission has determined that the Refuge Chapel structure is a nonconforming structure that existed lawfully on or before September 27, 1982.

Frank Griswold  
519 Klondike Avenue  
Homer, Alaska 99603  
(907) 235-7627

SCANNED

RECEIVED

FEB 11 2010

Birch Horton  
Bittner & Cherot

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

FRANK GRISWOLD,

Appellant,

v.

CITY OF HOMER and DON BLACKWELL,

Appellees.

Case No. 3AN-10- CI

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**NOTICE OF APPEAL**

Appellant Frank Griswold hereby gives notice that he is appealing to the Superior Court, Third Judicial District in Homer, a final decision by the Homer Board of Adjustment affirming the Homer Advisory Planning Commission's formal acceptance of nonconforming status for uses at 1440 East End Road. The Board's decision was issued on February 9, 2010. The party taking this appeal is Frank Griswold, 519 Klondike Avenue, Homer, Alaska 99603.

DATED: February 10, 2010.

By: Frank Griswold

Frank Griswold

**CERTIFICATE OF SERVICE**

I hereby certify that I served by mail a true and correct copy of the foregoing on Homer City Attorney Tom Klinkner, 1127 West 7<sup>th</sup> Avenue, Anchorage Alaska 99501 and on Don Blackwell, P.O. Box 3238, Homer Alaska 99603 this 10th day of February, 2010.

Frank Griswold

Frank Griswold  
519 Klondike Avenue  
Homer, Alaska 99603  
(907) 235-7627

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

FRANK GRISWOLD,

Appellant,

v.

CITY OF HOMER and DON BLACKWELL,

Appellees.

Case No. 3AN-10- CI

---

**STATEMENT OF POINTS ON APPEAL**

1. The Planning Commission's delay in hearing this matter on remand prejudiced Griswold's ability to oppose Blackwell's application and therefore was not harmless error.
2. The provisions of code that were in effect when the Commission issued its decision on April 17, 2008 govern because the provisions of code enacted thereafter were specifically designed to thwart Griswold's appeal.
3. The City Clerk's refusal to prepare the transcript for Griswold after the Clerk's Office had previously prepared it for Blackwell was discriminatory and prejudicial, as was the Board's refusal to delay proceedings to allow the Clerk's Office more time to prepare the transcript.
4. The Board erred in determining that the location of the use on the same legal lot is immaterial; nonconforming status expired when the subject lot was replatted.
5. The Board erred in finding that Blackwell's use is "repair of mechanical equipment."

6. The generic classification "repair of mechanical equipment" is not sufficiently specific to establish that there was no change of use.
7. It was an abuse of discretion for the Board to determine that Blackwell's use was "repair of mechanical equipment" when that particular use had never been claimed by Blackwell nor considered by the Commission.
8. The Board's findings that the use of the subject lot was not changed, discontinued or expanded are inadequate and not supported by substantial evidence; the use was changed, discontinued and expanded.
9. The use(s) at the subject site were discontinued for more than a 12-month period.
10. On November 14, 2005 the Board erroneously remanded the matter to the Commission to hold a new hearing and consider new evidence.
11. The Board erroneously redefined "new evidence" and erroneously determined that former HCC 21.68.065(a) did not apply to the Commission's hearing of this matter on remand.
12. The Commission was required to vote on whether to consider new evidence.
13. Blackwell should not have been allowed to present oral argument or otherwise participate in the proceedings before the Board because he filed no brief or entry of appearance.
14. Board member Wythe has a bias/partiality as a result of her relationships to Commissioner Kranich and the Blackwells and should not have participated in the matter.

DATED: February 10, 2010.

By:



Frank Griswold

**CERTIFICATE OF SERVICE**

I hereby certify that I served by mail a true and correct copy of the foregoing on Tom Klinkner, 1127 West 7<sup>th</sup> Avenue, Anchorage Alaska 99501 and on Don Blackwell, P.O. Box 3238, Homer Alaska 99603 this 10th day of February, 2010.

Frank Griswold

Frank Griswold  
519 Klondike Avenue  
Homer, Alaska 99603  
(907) 235-7627

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

FRANK GRISWOLD,

Appellant,

v.

CITY OF HOMER and DON BLACKWELL,

Appellees.

Case No. 3AN-10- CI

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**DESIGNATION OF RECORD TO BE TRANSCRIBED**

Appellant Frank Griswold intends to transcribe the entire Board of Adjustment hearing that took place on January 11, 2010.

DATED: February 10, 2010.

By:

Frank Griswold  
Frank Griswold

**CERTIFICATE OF SERVICE**

I hereby certify that I served by mail a true and correct copy of the foregoing on Tom Klinkner, 1127 West 7<sup>th</sup> Avenue, Anchorage Alaska 99501 and on Don Blackwell, P.O. Box 3238, Homer Alaska 99603 this 10th day of February, 2010.

Frank Griswold

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA AT ANCHORAGE

FRANK GRISWOLD  
Appellant (person bringing appeal)

vs.

CITY OF HOMER; DON BLACKWELL  
Appellees

APPEAL CASE NO. 3AN-10- CI

CASH DEPOSIT ON APPEAL

I am depositing cash in lieu of a bond as described below. I understand that if the appeal is dismissed or if the judgment/decision is affirmed or modified, the court may order that part or all of this cash deposit be paid to the appellee to cover appeal costs, and if the cash deposit is in lieu of a supersedeas bond the court may also order that it be paid to the appellee to pay the judgment, post-judgment costs and interest. If the court reverses the judgment/decision, the money I am depositing will be returned to me without interest.

- Cash deposit in the amount of \$ 750<sup>00</sup> in lieu of a **Cost Bond**. I understand that this deposit will not result in a stay of execution of the judgment.
- Cash deposit in the amount of \$ \_\_\_\_\_ in lieu of a **Supersedeas Bond**. I understand that this deposit will stay execution of the judgment.

I am the owner of the cash deposited. I submit myself to the jurisdiction of the court and irrevocably appoint the clerk of court as my agent upon whom any papers affecting this deposit may be served. I agree that it is not necessary for an independent action to be filed in order for this deposit to be used as described above.

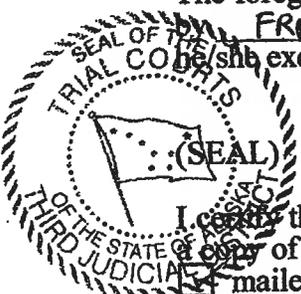
2/10/10  
Date

Frank Griswold  
Signature of Owner of Cash

<u>FRANK GRISWOLD</u>	<u>235-7627</u>	<u>519 KLONDIKE AVE HOMER AK 99603</u>			
Type or Print Name	Telephone No.	Mailing Address	City	State	Zip

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this date, February 10, 2010, by FRANK GRISWOLD, who personally appeared before me and acknowledged that he/she executed the instrument for the purposes stated in it.



Don J. Bards  
Clerk of Court/Notary Public  
My commission expires: W/ office

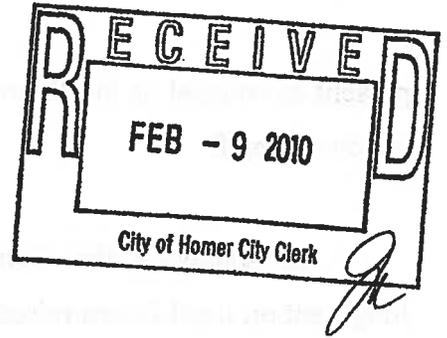
I certify that on 2/10/10 of this form was  mailed  personally delivered to (list names):

Tom Klinkner  
Don Blackwell

By: Frank Griswold

Amt. Deposited \$ _____	Date _____
Receipt No. _____	Clerk _____

**CITY OF HOMER  
BOARD OF ADJUSTMENT**



In the Matter of )  
 )  
DON BLACKWELL )  
 )  
NONCONFORMING USE )  
 )  
APPLICATION )  
 )  
\_\_\_\_\_ )

**DECISION ON APPEAL**

**INTRODUCTION AND SUMMARY OF PROCEEDINGS**

Frank Griswold appealed to the Board of Adjustment ("Board") the April 17, 2008 decision of the Homer Advisory Planning Commission ("Commission") (R. 35-39),<sup>1</sup> accepting a nonconforming use at 1440 East End Road, Lot 5, Mutch-Gangl Tract Neptune Addition Subdivision ("Property"). The applicant, Don Blackwell, operates a business known as D.L. Blackwell Pump Service on the Property. The Property is located in the Rural Residential ("RR") zoning district. Mr. Blackwell's commercial use of the Property is not permitted in the RR district. The Commission found that, "from the evidence presented, and statements provided, it appears that 1440 East End Road has been used continuously as a garage, shop, warehouse and store since sometime before 1965, and as early as 1950" (R. 38).

The City Clerk prepared the record on appeal consisting of 154 pages, and a supplemental record of appeal, consisting of seven pages. Mr. Griswold filed a brief with the Board. Pursuant to notice to the parties, the Board convened on January 11, 2010. The Board members present were Mary E. (Beth) Wythe, Kevin Hogan, David Lewis and Francie Roberts. Mayor James Hornaday excused himself from participating due to partiality. Board members Barbara Howard and Bryan Zak were excused from participating because they previously had participated in the matter as members of the Commission. City Attorney Thomas Klinkner was

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<sup>1</sup> Between the original application in 2005 and the present appeal, there were two appeals and remands in this matter regarding procedural issues that are not pertinent to the present appeal.

present as counsel to the Board. Mr. Griswold and Mr. Blackwell each appeared and spoke on his own behalf.

### STANDARD OF REVIEW

In reviewing the Commission's decision, the Board may exercise its independent judgment on legal issues raised by the parties. HCC 21.93.540(d). The Board will not consider allegations of new evidence or changed circumstances and will make its decision based solely on the record. HCC 21.93.510(a). The Board shall defer to the findings of the Commission regarding disputed issues of fact. HCC 21.93.540(e). Findings of fact adopted expressly or by necessary implication by the Commission shall be considered as true if they are supported by substantial evidence. *Id.* If the Commission fails to make a necessary finding of fact and substantial evidence exists in the record to enable the Board to make the finding of fact, the Board may do so in the exercise of its independent judgment, or, in the alternative, the Board may remand the matter for further proceedings. *Id.* Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.*

### DISCUSSION

#### **The Governing Law.**

Following the Commission's decision in this matter, the Council on August 12, 2008 adopted Ordinance 08-29, which comprehensively rewrote Title 21 of the Homer City Code. Under the general rule that an appellate body will apply the law as it exists at the time of its decision, rather than the law existing at the time the case was commenced,<sup>2</sup> the Board has decided this appeal under the provisions of HCC Title 21 that presently are in effect, rather than those that were in effect at the time of the Commission's decision.

#### **The Date as of Which the Nonconforming Use of the Property Must Be Established.**

Kenai Peninsula Borough ("Borough") Ordinance No. 33, adopted on May 2, 1967, first established zoning regulations that specified permitted uses of property in the City. Borough Ordinance No. 33 divided the City into three zoning districts: Residential, Commercial and Industrial. Commercial uses were not permitted in the Residential district. The Commission found that an unofficial zoning map produced by Alaska Housing in 1967 showed the Property to be zoned "Suburban Residential," and that the officially adopted Borough zoning map from

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<sup>2</sup> *University of Alaska v. Tumeo*, 933 P.2d 1147, 1151 (Alaska 1997).  
Homer Board of Adjustment / Don Blackwell Nonconforming Use Application  
Decision on Appeal

1977 showed the Property to be zoned residential (R. 36). The record does not indicate any dispute regarding the residential zoning of the Property by the Borough. Thus, the commercial use of the Property became nonconforming as of the adoption of Borough Ordinance No. 33 on May 2, 1967, and the continuation of its nonconforming status must be established from that date.

#### **The Use Classification that the Commission Applied to the Property Was Too General.**

Mr. Blackwell stated that he currently uses the property for a shop, warehouse and retail sales for a water system business (R. 81). Before Mr. Blackwell occupied the Property, it was used for auto, truck and marine repair (R. 76), and the repair of other equipment (R. 93). HCC 21.61.010 provides that a previously lawful use that no longer is allowed as a result of a change in the law "may continue, subject to the requirements of this chapter and any other provisions of the Homer Zoning Code that expressly apply to nonconforming lots, structures, or uses." HCC 21.61.040(d) provides in relevant part, "[i]f at any time a nonconforming use is...changed...the use of that lot shall thereafter conform to the code provisions applicable in the zone in which the lot is located."

Whether the nonconforming use of the Property has changed so that the subsequent use of the Property must conform to its current zoning depends on how broad a category of activities constitutes a single "use" for this purpose. HCC 21.61.015 defines "change" with respect to a nonconforming use to mean that "the nonconforming use has been converted to a different use...", and defines "use" as "activity conducted on a lot or in a structure, and for which the lot or structure is actually occupied and maintained..." These Code definitions do not provide much guidance on this point, so one must refer to the applicable case law.

The principal Alaska case on this subject is *Kelly Supply Company, Inc. v. City of Anchorage*.<sup>3</sup> The court in *Kelly Supply* considered whether the use of property as a blood bank constituted such a change from the former use of the property by the Alaska Crippled Children's Association ("ACCA") for a diagnostic, treatment and educational center for handicapped children, as to terminate the property's nonconforming status. The court discussed how to classify uses to determine whether a change in use has occurred as follows:

Appellant implies that since the ACCA and the blood bank are both 'medical uses,' no change of use occurred. This suggested generic classification

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<sup>3</sup> 516 P.2d 1206 (Alaska 1973).

Homer Board of Adjustment / Don Blackwell Nonconforming Use Application  
Decision on Appeal

of uses has, however, been rejected by numerous decisions. *Most courts define 'use' narrowly, consistent with the general policy that nonconforming uses are to be restricted and terminated as quickly as possible.* It is the particular use, and not its general classification, that is contemplated by provisions like section 21-7 of the Zoning Ordinance of the Greater Anchorage Area Borough. Thus, the transition from ACCA to the blood bank was a change of use, and the superior court did not err in finding that the blood bank was the 'existing nonconforming use.'<sup>4</sup>

To support its decision that a change in use had occurred, the court cited two cases from other jurisdictions. Both cases rejected the argument that the continuation of the commercial use of the property preserved its nonconforming status, instead holding that continuation of a specific use, rather than a general category of use, was required to continue a use's nonconforming status.<sup>5</sup>

The Commission concluded that, "[f]rom the evidence presented, and statements provided, it appears that 1440 East end Road has been used continuously as a garage, shop, warehouse and store since sometime before 1965, and as early as 1950" (R. 38). Under *Kelly Supply* and the cases that it cites, the continuous use of the property in the generic classification of "garage, shop, warehouse and store" would not be sufficient to establish Mr. Blackwell's right to his nonconforming use of the Property.

Because the Commission did not make more specific findings regarding the use of the Property since 1967, the Board must determine whether substantial evidence exists in the record to enable it to make the necessary findings in the exercise of its independent judgment. HCC 21.93.540(e). The Board has determined that the necessary substantial evidence exists in the record, so it will make its own findings regarding the use of the Property.

Mr. Blackwell stated that he operated a water system business on the Property since 1989 (R. 76), and that the prior use of the Property was for a shop, warehouse and retail sales and service for an automobile parts and repair business (R. 81). Evidence in the record shows that the structure on the Property was constructed as a service garage, either as of 1965 according to Borough tax records (R. 102), or in the mid 1950's, according to a letter from Mr. Blackwell to the Commission (R. 89). The Record includes a written statement by Nicholas J. Gangl that the building on the Property was built in the mid '50's for a school bus garage and maintenance

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<sup>4</sup> 516 P.2d at 1210 (footnote omitted, emphasis added).

<sup>5</sup> *Id.*

shop, and thereafter continued to be used as a garage maintenance shop and heavy equipment storage area, and beginning in 1970 as an auto, truck, marine garage, storage and maintenance shop (R. 126). There also is a statement by Erle Cooper that the Property was used "for a variety of businesses almost all being connected with repair and sales of equipment" (R. 93). Robert Reinhart stated that from 1981 through 1988 he operated a business on the Property providing repair of all types of mechanical devices including but not limited to valves, pumps and compressors, as well as wholesale and retail sales of related components (R. 97). Mr. Blackwell described the preceding business operated by Mr. Reinhart as follows:

Prior to my occupancy of the property, Robert Reinhart operated Homer Auto Truck and Marine Repair on the property. As the name implies, Mr. Reinhart worked on cars, trucks and boats. The commercial activities on the lot were very broad as Mr. Reinhart basically kept things running for his customers, whatever those things were. This included working on boats, marine bilge pumps, marine circulation pumps and marine fuel pumps. Similarly, if a car or truck had a pump, of whatever kind, Mr. Reinhart would have worked on it in the course of his commercial activities on the property. Mr. Reinhart's commercial activities also included the sale of mechanical parts and pumps (R. 76).

The Board concludes that while several businesses have operated on the Property from 1967 to the present, each of these businesses included as a principal use the repair of mechanical equipment, and the accessory uses of equipment sales and storage. The Board further concludes that this classification of use is both more specific than the generic classification of "medical uses" that the court rejected as too general in Kelly Supply, and sufficiently specific so that there has been no change of use of the Property that would defeat its nonconforming status under HCC 21.61.040(d).

**The Location of the Use on the Same Legal Lot is Immaterial under the Present Code.**

Former HCC 21.64.030(a) referred to the continuation of a nonconforming use "only on the legal lot which contains the use or structure as of September 27, 1982..." Mr. Griswold argued that the use of the Property has not been continued on the same legal lot because the Property has been replatted since 1982. However, the Commission found that "[t]he structure is still physically on the same ground as when it was first constructed, sometime before 1965" (R. 37), and Mr. Griswold did not argue that the use had been expanded or moved.

As discussed above, the 2008 revision of HCC Title 21 superseded former HCC 21.04.030(a). The present HCC Chapter 21.61 regarding nonconforming uses contains no

reference to the continuation of a nonconforming use on the same legal lot. Instead, HCC 21.61.040(a) provides that “[n]o nonconforming use shall be...extended to occupy a greater area of land than was occupied as of the date it became nonconforming,” and HCC 21.61.040(b) provides that “[n]o nonconforming use shall be moved in whole or in part to any other portion of the lot that was not occupied by the nonconforming use as of the date it became nonconforming.” The Board concludes that the location of the use on the same legal lot is not material to its nonconforming status, so long as it has not been expanded or moved. Since the use has not been expanded or moved, the replatting of the lot on which it is located did not affect its nonconforming status.

**The Commission’s Delay in Considering the Matter on Remand Was Harmless.**

The Board remanded this matter to the Commission on November 14, 2005. The Commission did not hear the matter on remand until February 20, 2008. The record does not explain the reason for this delay of approximately 27 months, which appears to be excessive. However, Mr. Griswold does show that this delay resulted in any prejudice to his ability to oppose Mr. Blackwell’s application, or that the delay affected the merits of the Commission’s decision on remand. The Board therefore concludes that the Commission’s delay in hearing this matter on remand was harmless error.

**The Commission Was Not Required to Vote on Whether to Consider New Evidence.**

Former HCC 21.68.065(a), which governed the Commission’s procedure at the time the Commission considered this matter on remand, stated in relevant part that, upon remand of a matter from the Board due to new evidence or changed circumstances, the Commission “shall determine whether to rehear the matter.” The minutes of the meeting where the Commission considered this matter on remand (R. 41-43) do not reflect any formal decision by the Commission to rehear the matter.

However, the Board did not remand the matter to the Commission because of an allegation of new evidence. The Board remanded to correct a procedural error—that the Planning staff had led Mr. Blackwell to believe that he did not need to appear at the hearing and present evidence to the Commission (R. 70-71). The evidence that Mr. Blackwell presented on remand was not new in the sense that term is used in former HCC 21.68.065(a)—that is, it was not newly discovered evidence. Instead, it was previously existing evidence that had not been placed in the record because of Mr. Blackwell’s absence from the prior Commission hearing.

Thus, the Board's reference to "new evidence" in its remand order (R. 71) does not accurately describe the purpose of the remand, and former HCC 21.68.065(a) did not apply to the Commission's hearing of this matter on remand.

**Commissioners Kranich and Minsch Had No Disqualifying Conflict of Interest or Bias.**

Mr. Griswold did not provide any evidence or argument supporting his allegation of conflict of interest or bias on the part of Commissioner Kranich. There is no reference to this issue in either the transcript of the August 17, 2005 Commission hearing (R. 53-61) or the minutes of the February 20, 2008 Commission hearing (R. 41-43). The Board therefore finds no basis for finding a disqualifying conflict of interest or bias on the part of Commissioner Kranich.

Commissioner Minsch was not a member of the Commission at the time of its August 17, 2005 hearing on this matter (R. 53-61). At the February 20, 2008 Commission hearing, Commissioner Foster made a motion that Commissioner Minsch had a potential conflict of interest "because she lives across the street [from the Property]" (R. 42). The motion was not seconded (*Id.*). After the motion was made, City Planner McKibben stated that "[b]ased on the scale used in the aerial photo...Mrs. Minsch's property is over 400 feet from the subject property" (*Id.*). The Commission took no further action on Commissioner Foster's motion (*Id.*).

Regarding conflicts of interest, HCC 1.18.030(b)(1) prohibits a member of the Commission from participating in any official action in which the person has a substantial financial interest. HCC 1.18.030(b)(5) provides in part that this provision "does not prohibit any gain or loss that would generally be in common with other property owners on property that is further than three hundred feet from the periphery of any property that is the subject of the action." HCC 1.18.030(b)(5) appears to resolve this issue in favor of Commissioner Minsch's participation, and Mr. Griswold provided no argument to the contrary. The Board finds no error in Commissioner Minsch's participation in this matter.

**DECISION AND ORDER**

For the reasons stated above, the decision of the Commission accepting the nonconforming use of the Property is modified to provide that, "1440 East End Road has been used continuously since 1967 for the principal use of repair of mechanical equipment, and the accessory uses of equipment sales and storage," and as so modified, the decision is affirmed.

ADOPTED by the Board of Adjustment by a vote of 4 in favor and 0 opposed, with two excused.

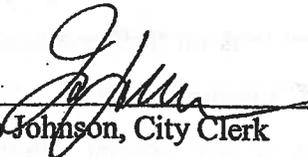
  
\_\_\_\_\_  
Mary E. (Beth) Wythe, Chair

**NOTICE OF APPEAL RIGHTS**

This is the final decision of the Board of Adjustment in this matter. Pursuant to Homer City Code 21.91.130, an appeal may be taken directly to the Superior Court for the State of Alaska by any party to this appeal. An appeal to the Superior Court shall be filed within thirty days of the date of distribution of this decision indicated below. A notice of appeal must be filed with the Superior Court and conform to the applicable requirements of the Rules of Appellate Procedure promulgated by the Alaska Supreme Court.

**CERTIFICATE OF DISTRIBUTION**

I certify that a copy of this Decision was sent by first class mail to Frank Griswold and Don Blackwell on February 9, 2010. A copy was also delivered to the City of Homer Planning Department.

  
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Jo Johnson, City Clerk