

HOMER ADVISORY PLANNING COMMISSION
REGULAR MEETING MINUTES
MAY 18, 2011

Session 11-07, a Regular Meeting of the Homer Advisory Planning Commission was called to order by Chair Minsch at 7:01 p.m. on May 18, 2011 at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

PRESENT: COMMISSIONERS BOS, DRUHOT, HIGHLAND, MINSCH, VENUTI

ABSENT: COMMISSIONER DOLMA

STAFF: CITY PLANNER ABBOUD
DEPUTY CITY CLERK JACOBSEN

**AGENDA
APPROVAL**

APPROVAL OF AGENDA

BOS/DRUHOT MOVED TO CHANGE PENDING BUSINESS ITEM D TO ITEM A.

The amended agenda was approved by consensus of the Commission.

**PUBLIC
COMMENT**

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).

Kenton Bloom, city resident, commented on behalf of his client, Central Charters. He noted that the property meets the parking requirements per city code. The signs on the Central Charters boardwalk have previously been reviewed and approved by the city. The applicant is open to the Commission re-opening the public hearing to discuss possible modifications to the plan as presented. The applicant requested that the Commission take no final action on the CUP tonight and respectfully asked that final consideration of the CUP be postponed to the next Commission meeting.

**RECONSID-
ERATION**

RECONSIDERATION

There were no items for reconsideration.

**CONSENT
AGENDA**

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 the May 4, 2011 minutes
2. Time Extension Requests
3. Approval of City of Homer Projects under HCC 1.76.030 g
4. KPB Coastal Management Program Reports

The Consent Agenda was approved by consensus of the Commission.

**PRESENT-
ATIONS**

PRESENTATIONS

There were no presentations scheduled.

REPORTS

REPORTS

A. Staff Report PL11-62, City Planner's Report

City Planner Abboud commented that there is no written report. He noted that the Spit Plan went through introduction and will have public hearing and second reading at the next meeting. Planning Technician Engebretsen will be gone for the summer and staff is gearing up for the remodel and construction. The Planning office may be moving to the HERC building during the construction.

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.

**PUBLIC
HEARINGS**

A. Staff Report PL 11-55 CUP 11-08 Amending CUP 10-04, University of Alaska, Kachemak Bay Campus College Expansion

Kachemak
Bay
Campus
College
Expansion
CUP Amend

City Planner Abboud reviewed the staff report.

Carol Swartz commented that the City Planner summed it up regarding their project. They want to relocate the dumpster from Heath Street to the south end so it won't be visible from the road. They would like to plant 5 spruce trees that are 5 to 6 feet with room for the branches to spread and replacing the fence in the original proposal. The trees would provide and meet the standard for the visual buffer. She added that there will be a six foot wood fence around the dumpster. The college is thrilled that the project is almost complete and invited anyone who was unable to attend the open house on Friday to come by and see the new facility.

Chair Minsch opened the public hearing.

There were no comments and the public hearing was closed.

BOS/HIGHLAND MOVED TO ADOPT STAFF REPORT PL 11-55 CUP 11-08 AMENDING CUP 10-04, UNIVERSITY OF ALASKA, KACHEMAK BAY CAMPUS COLLEGE EXPANSION WITH STAFF RECOMMENDATIONS.

Commissioner Bos commented in favor of the amended plan.

Chair Minsch commented that there was a lot of discussion about the fence in the previous CUP consideration and she is in favor of keeping the fence. Originally the fence was required as a visual buffer from the road. The trees being planted are minimal and the time for them to be grown is 10 plus years.

Discussion ensued regarding the fence and trees.

- Alders could be used to fill in until the spruce trees mature and alders are good bird habitat.
- Trees will provide better screening of the parking lot than the proposed split rail fence.
- Split rail fences can pose safety issues as kids like to climb on them.
- The fence would be costly and maintain.
- Allowing the trees will not accomplish the same things as what was approved in the original plan.

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Kachemak
Bay
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College
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CUP Amend

Question was raised regarding reasoning for the change to trees. Ms. Swartz responded that driving up Heath Street from the highway the elevation is such that to see the parking lot from the road you have to be pretty high up on Heath Street. They felt that the split rail fence wouldn't necessarily provide the visual barrier. The ordinance addresses landscaping which can be related to trees more than a fence. The length of the area requiring buffering isn't the whole length of Heath Street just a portion. Substituting spruce trees and planting them when they are six feet would meet the standard of a visual barrier. Spruce trees are green year round and grow about a foot per year. The trees are taller, denser, and less costly than a fence. The trees could be in a straight line or staggered. Regarding layout Ms. Swartz explained that when she and City Planner Abboud walked the area and measured it out it looked like five or six spruce trees would fit in the area where there was a gap from what was already planted. Because of the location of the bio-swale on one side and easement on the other she does not know if two rows of trees will fit, but they can look at it. They feel the trees will increase the softening effect because the trees will be thicker.

There was further discussion trying to establish what number of trees would accomplish an adequate buffer. It was noted in the discussion that 29 trees referenced in staff report include the trees along the south lot line as well. City Planner Abboud referred to the landscape plan in the packet to help the Commission understand the size of the area that is being addressed.

BOS/DRUHOT MOVED TO AMEND THE MAIN MOTION TO INCLUDE AN ADDITIONAL 8 SPRUCE TREES THAT ARE SIX FEET TALL.

There was brief discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

It was noted that the recommendation regarding the dumpster is still in place.

VOTE (main motion as amended): YES: BOS, MINSCH, HIGHLAND, DRUHOT, VENUTI

Motion carried.

Remand
from BOA
1033
Skyline Dr.

B. Staff Report PL 11-56, A Public Hearing on the Remand from the Board of Adjustment to the Homer Advisory Planning Commission to Consider New Conditions Regarding 1033 Skyline Drive.

City Attorney Wells reviewed the staff report for the Commission. She noted that they are trying to address a technical difficulty with the record and also to address new evidence regarding the public utility easement submitted after the appeal was taken to the Board of Adjustment. The staff recommendation is to give the applicant a "do over" and allow them to submit new evidence on the variance application criteria. It will allow for a clean clear record and ensure that Mr. Becker's rights are respected. The two issues to be dealt with are the variance and the public utility easement recorded after the Commission decision was issued. It needs to be determined if Mr. Becker's enterprises qualify as a public utility. There isn't a lot of guidance from staff except to say that it is a heavily regulated industry by the RCA and is governed by state statute. We just need to ensure that the enterprises are governed and

therefore not handing out easements to just anyone who may label themselves as a public utility. Attorney Wells also noted that there was a request for withdrawal of the variance by Mr. Becker after the public utility easement was recorded. Because the BOA did not address this, the Commission may want to discuss with the applicant his intent in withdrawing the application for the variance given that if the variance is denied they will face enforcement proceedings from the city but she believes the intent was to emphasize that the public utility would make the variance application moot if the Commission chooses to accept the public utility easement. If the Commission does not feel they have enough evidence before them to make a decision regarding whether Mr. Becker's enterprises are public utilities, they may make a stay in proceedings to allow time for the applicant to gather evidence regarding whether or not they are governed by the RCA and qualify as a public utility under the laws of the State of Alaska.

Remand
from BOA
1033
Skyline Dr.

Dan Westerburg, attorney for Mr. Becker, said he received Mr. Abboud's report this morning that contains an interesting discussion of the public utility issue. He believes they have effective responses but being that they just received the letter this morning he accepts the recommendation to stay the matter for 30 days to allow an opportunity to research, respond with analysis of their own and gather evidence.

Chair Minsch opened the public hearing.

No public comment.

The public hearing was not closed to allow further comment at a future meeting.

Chair Minsch asked for a motion to provide a 30 day stay and continue the public hearing until the regular meeting of June 15th to allow the applicant to gather evidence.

HIGHLAND/VENUTI SO MOVED.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

C. Staff Report PL 11-54, CUP 11-09, 3406 Main Street for Request to Build Within the 20' Setback and for More Than One Building Containing a Permitted Principle Use on a Lot" per HCC 21.12.030(n)

3406 Main
St. CUP

City Planner Abboud reviewed the staff report.

Jennifer Sonneborn, applicant, said that she was available to answer questions. Ms. Sonneborn explained that she wants to rebuild the two cabins in approximately the same location and approximately the same size. They will look nicer, be on foundations and be more energy efficient.

There was discussion of the application. Question was raised about the 5 year timeframe to complete the project. Ms. Sonneborn explained that staff advised her to include a timeframe. Her goal is to complete one cabin this summer and the other cabin next summer. Regarding

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3406 Main
St. CUP

the issue with setbacks she commented that one is 12 feet from the road and the other is 10 feet. The house on the lot next door encroaches onto this property and putting the house on the corner farther from Bunnell it won't allow the fire department to get between the two houses. She wants to keep them as close to the north side of the lot to allow more southern light and increase energy efficiency. In relation to the foundations she explained she is planning to use shallow frost free foundations. It is technology she has learned about through the Cold Weather Building Research Program. Ms. Sonneborn explained that due to the size of the lot it would be impossible to get out of the setback and replace the structures where they are now. Having the houses too close together poses safety issues in the event of a fire. She considered a duplex for the project but prefers keeping the two cabins to offer inexpensive rent and more privacy than a duplex.

Chair Minsch opened the public hearing.

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

City Planner Abboud commented that the applicant mentioned some of the principles about planning which include light and spatial aspects. This area is noted for things up to the front of the lot and according to many public meetings and deliberations in Old Town there is a motif there and they want to create a pedestrian friendly environment. You don't need a big open area in front that would push the parking places right in front. The applicant is working around the encroaching structure rather than suing to tear it down. Regarding the use of the setback City Planner Abboud reminded the Commission that there is a specific exception to allow this in CBD only.

The drawing provided as a laydown was labeled as the proposed site plan for 3406 Main Street.

BOS/DRUHOT MOVE TO ADOPT STAFF REPORT PL 11-54, CUP 11-09, 3406 MAIN STREET FOR REQUEST TO BUILD WITHIN THE 20' SETBACK AND FOR MORE THAN ONE BUILDING CONTAINING A PERMITTED PRINCIPLE USE ON A LOT" PER HOMER CITY CODE AND INCLUDE THE 3406 MAIN STREET SITE PLAN.

There was clarification made that CUP's don't expire but can have conditions for completion timeframes. It was noted that a CUP stays with the land and is not transferrable.

VOTE: YES: HIGHLAND, DRUHOT, MINSCH, VENUTI, BOS

Motion carried.

D. Staff Report 11-49, 1295 Mission Road, Alaska Bible Institute, for "more than one building containing a permitted principle use on a lot" per HCC 21.12.030(n)

Commissioner Venuti advised that he may have a conflict of interest.

BOS/DRUHOT MOVED THAT COMMISSIONER VENUTI HAS A CONFLICT OF INTEREST.

Alaska
Bible
Institute
CUP

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Alaska
Bible
Institute
CUP

Commissioner Venuti explained that he was contacted by the applicant and has the potential to be participating in their project. There is not a contract in place at this time. The financial interest does fall within the limits outline in Homer City Code.

VOTE: YES: DRUHOT, MINSCH, BOS, HIGHLAND

Motion carried.

Chair Minsch noted that five yes votes are needed to adopt a CUP and the excusal of Commissioner Venuti leaves only four Commissioners. There was discussion of procedure in relation to exercising the rule of necessity. City Attorney Wells assisted Deputy City Clerk Jacobsen in ensuring the process was understood by the Commission. The Commission was advised that pursuant to HCC 1.18.048 the rule of necessity may be used only when no other body of the city has jurisdiction and authority to take the official action on the matter, when the official action cannot be set aside to a later date, within a reasonable time and when the body could obtain the minimum number of members to take action who are not excused for partiality. Deputy City Clerk Jacobsen advised the Commission that at this time there are no applications pending for Planning Commissioner appointments. The Commission was advised that there needs to be an opportunity for the applicant or public to express any disagreement to the conflicted Commissioner's participation. City Attorney Wells stated that the rule of necessity is highly suspect in the legal world but is necessary at times in our small communities. She expressed that it needs to be very necessary before it is used. Erring on the side of caution is encouraged and if the action can be postponed for three to six months that would be best to allow for the vacancy on the Commission to be filled.

The Commission acknowledged that per HCC 21.71.040(a) they are the only body who will act on a conditional use permit. They discussed the issue of Commissioner Dolma's absence Commissioner Druhot's pending resignation. Commissioner Druhot explained that she had contacted the Planning office to express her intent to resign immediately, but she was asked to stay on for this meeting to assist in getting through the CUP. She agreed that she could stay on for one more meeting if needed. Chair Minch explained that Commissioner Dolma had to leave the state unexpectedly because his father is ill and it is unknown to the Commission or to staff when he might be returning. Chair Minsch called upon the applicant for more information regarding their timeframe.

Lance Prouse, representative for Alaska Village Missions, explained that they have volunteers from all over the country who have spent money to get here to start this building. They are supposed to break ground this coming week. The CUP was put off at the last meeting because of this situation. If reasonable is 3 to 6 months then they can't break ground this year. It puts them in a bad situation when all the people have gone through a lot of work and expense to get here for this project.

Chair Minsch asked if there was any person who objects to the Commission proceeding with Commissioner Venuti participating. There was no objection or opinion expressed from the audience.

Mr. Prouse stated he has no objection to Commissioner Venuti participating

Commissioner Highland noted that all these arrangements have been made for this project before the applicant even had their CUP in hand, and it has pushed the Commission into

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Alaska
Bible
Institute
CUP

having to make these decisions. This process could have been done earlier, but since we are here we will do what we have to do.

City Attorney Wells encouraged the Commission to check in with all Commissioners to make sure they are not going to be able to participate within the next month. Chair Minsch explained that they received an email from Commissioner Dolma that he was leaving state to be with his ailing father. There was discussion that Commissioner Dolma probably won't know if he will be back for the next meeting because it will be determined by the status of his father. It was also pointed out that he may be back at the next meeting and Commissioner Druhot will have to resign because of her circumstances, leaving the Commission in the same situation. It was discussed whether to attempt to make contact with Commissioner Dolma. Commissioner Bos expressed that he would not want to be part of the action of calling Commissioner Dolma to ask him whether he thinks he will be here or not. The other Commissioners were in agreement with Commissioner Bos.

BOS/DRUHOT MOVED TO INVOKE THE RULE OF NECESSITY.

Commissioner Bos stated he doesn't know that anyone has any idea when we are going to have a fifth Commissioner without Commissioner Venuti. Commissioner Dolma's father is ill and he may not be back in two or three weeks.

Commissioner Highland expressed that they have no clue when they might have the appropriate number of Commissioners to act. She stated that there is no other body who can act on this.

Commissioner Druhot added that not only is there no other body who can act on this but also that we have only six Commissioners at this time with no applicants waiting to be appointed. With one person out she does not see any time that we will have enough people to vote without a non conflicted member.

Chair Minsch expressed that she does not want to use the rule of necessity but there is no expectation of when they can have a full Commission. The best guess is what we have tonight and if the group wants to proceed she will support the motion.

VOTE: YES: MINSCH, HIGHLAND, BOS, DRUHOT

Motion carried.

Deputy City Clerk Jacobsen noted for the record that Commissioner Venuti would participate in the action.

Chair Minsch called for a short break at 9:03 p.m. The meeting resumed at 9:08 p.m.

City Planner Abboud recommended that based on the events with Mr. Venuti that all deliberations and decisions be held in public on the record. He reviewed the staff report.

Lance Prouse, representative for Alaska Village Missions, explained their proposal to add three tri-plex units to the lower campus. They won't be seen from the road, there is plenty of access, and there won't be any problem accommodating the parking. The cap for the campus has been set at 100 people so meeting that condition is not a problem. Tobin Strickland

provided a letter that was given to the City Planner this evening to comply with the third condition. This is a long term plan, about two years per unit, perhaps with time in between to recoup finances. A lot of the married students end up staying in Homer and participating in local jobs and add to the community. The facility has its own treated public water system. They have a licensed person, as required by the state, to monitor the treatment of the water and send in water samples for testing. The sewer and wastewater system has been redesigned with DEC and Tobin Strickland. It was specifically designed to handle 100 people on campus.

Chair Minsch opened the public hearing.

Mike Arno, excavating contractor for the project, thanked the Commission for moving forward with this. He is volunteering his time for the project and later in the season when he is buried with work would make it more difficult. He commented regarding pre-planning for these projects with an organization like this there are a lot of donations and volunteers involved and it is difficult to pre-plan when you don't know when funds are going to be available and when things come together you have to act quickly, and our building seasons aren't like the rest of the world. Regarding the water he explained there is a DEC monitored public water system. Because they have gone so many years with the water tests passing requirements, they only have to turn in samples once a month. The septic system is DEC approved to operate. There are bio-cycle units designed to handle more than 100 people and they can expand the leach field to accommodate more in the future. Mr. Arno is unsure if all the paper work has been sent back from DEC yet but the paper work has been turned in and the design has been approved. It has been installed so it is a matter of DEC time getting the paper work back.

In response to questioning Mr. Arno commented that there is plenty of clearance for fire department access to the units. There is some slope but it levels out at the parking lot. The angle of the roads to other buildings is well within the required grades. He pointed out the location of the septic on the aerial photo.

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

BOS/HIGHLAND MOVED TO ADOPT STAFF REPORT 11-49, CUP 11-07 1295 MISSION ROAD, ALASKA BIBLE INSTITUTE, FOR "MORE THAN ONE BUILDING CONTAINING A PERMITTED PRINCIPLE USE ON A LOT" PER HOMER CITY CODE WITH STAFF RECOMMENDATIONS AND CONDITIONS.

Commissioner Bos commented that this is a good project for Homer, it is in line with the Comprehensive Plan, the staff and the applicant has done their due diligence, and he trusts DEC.

Chair Minsch noted that she didn't make any decision tonight based on the need for the applicant to move this along. She feels staff did a good job and she is confident with the Bio-Cycle and DEC approval. She asked if they will have DEC approval before they start. City Planner Abboud said he has an approval to operate.

VOTE: YES: VENUTI, BOS, DRUHOT, MINSCH, HIGHLAND

Motion carried.

PLAT CONSIDERATION

**PLAT
CONSIDERATION**

No plats were scheduled for consideration.

**PENDING
BUSINESS**

PENDING BUSINESS

Central
Charters
Boardwalk
CUP

- A. Staff Report PL 11-48, CUP 11-06, 4721 Homer Spit Road, Central Charters Boardwalk Expansion for HCC 21.28.030 (a) Restaurants and drinking establishments HCC 21.28.030(i) More than one permitted principal use on a lot, HCC 21.28.030(j) Planned unit development, and HCC 21.28.040(d) More than 8,000 sf of building area

Chair Minsch advised the following motion is on the floor:

BOS/HIGHLAND MOVED TO ADOPT STAFF REPORT PL 11-48 CUP 11-06, 4721 HOMER SPIT ROAD, CENTRAL CHARTERS BOARDWALK EXPANSION.

BOS/HIGHLAND MOVED TO TABLE THE EXISTING MOTION.

It was noted that this is to get more information from the applicant.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

No objection.

Chair Minsch announced they would open deliberations regarding the Central Charters Boardwalk CUP and noted that some deliberations have already been held. They would like the opportunity to have some information from the applicant before they continue deliberating. The general feeling is that the project is not in harmony with the scale, bulk, coverage, and density of the Marine Commercial District. The flat roof design and lack of architectural features doesn't integrate with features currently found on the existing structure to promote harmony with the scale, bulk, and coverage of the lot. They want architectural features designed to integrate varied roof pitches or better match the existing structures on the lot.

She explained that another issue is the setback and after initial deliberations the project will have to come into compliance. It would be helpful for the applicant to show that they can meet the standards for the setback.

Chair Minsch asked if staff could provide some additional information. The applicant referenced their signage wasn't in compliance with current code and there was no information in the packet to discuss it.

It was noted that in the applicant said the color palate will include muted grays and blues. The picture showed brown.

BOS/DRUHOT MOVED TO SCHEDULE A SECOND PUBLIC HEARING TO ACCEPT NEW EVIDENCE FROM THE APPLICANT REGARDING OUR DELIBERATION.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

Conservation District

B. Staff Report PL 11-60, Draft Ordinance 11-xx, Conservation District

East End Mixed Use

C. Staff Report PL 11-59, Draft Ordinance 11-xx, East End Mixed Use

D. Staff Report PL 11-57, Internally Illuminated Signs

Internally Illuminated Signs

HIGHLAND/BOS MOVED TO POSTPONE THE REMAINING AGENDA.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

NEW BUSINESS

NEW BUSINESS

No new business items were scheduled.

INFO ITEMS

INFORMATIONAL MATERIALS

- A. City Manager's Report May 9, 2011
- B. Memo Dated May 9, 2011 from Deputy City Clerk Jacobsen to HAPC Regarding Renewal of a Motion
- C. Letter dated May 11, 2011 from Dotti Harness-Foster Planning Technician, to Property or Business Owners Regarding Sandwich Board Signage

AUDIENCE COMMENT

COMMENTS OF THE AUDIENCE

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

There were no audience comments.

STAFF COMMENT

COMMENTS OF STAFF

City Planner Abboud commented that this was a challenging packet. There was a lot of stuff and it was tough, even for him. He received two calls, and expected more, but said that if they feel like they want to change something write it down and let him know. We operate in a lot of areas that are opinions and while he gives it his best shot, if Commissioners disagree then talk to him about it, be prepared to present an alternative, and be ready with a motion to satisfy the change. He appreciates their work and is glad they got as far as they did tonight.

COMMENTS OF THE COMMISSION

There were no Commission comments.

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ADJOURN

ADJOURN

There being no further business to come before the Commission, the meeting adjourned at 9:55 p.m. The next regular meeting is scheduled for June 1, 2011 at 7:00 p.m. in the City Hall Cowles Council Chambers.

MELISSA JACOBSEN, CMC, DEPUTY CITY CLERK

Approved: _____