

November 16, 2011  
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. Holly Wells, City Attorney-Planning Commissioner Training
4. 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).
5. Commission Comments
6. 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.

1. Approval of Minutes of November 2, 2011 *Page 1*
2. Time Extension Requests
3. Approval of City of Homer Projects under HCC 1.76.030 g.
4. KPB Coastal Management Program Reports
5. Draft Decision and Findings for A Request for a Variance of the building setback requirements at 860 Soundview Avenue, Lot 2, Block 3, Foothills Subdivision, Sunset View Estates Addition No. 2, Phase One *Page 5*

**6. Presentations**

**7. Reports**

- a. Staff Report PL 11-119, City Planner's Report *Page 9*

**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 11-117, CUP 11-13, A Request to amend Conditional Use Permit (CUP) 10-06, for "Public Utility Facilities and Structures" for a communication site at 1033 Skyline Drive, Lot 5 Skyline View Subdivision Lying South of Skyline Drive. If approved, this would amend CUP 10-06 to allow construction of a 96 ft tower. *Page 11*
- B. Staff Report PL 11-118, Variance 11-02, A Request to Amend Variance 10-01 to allow the construction of a 96 ft tower in the 20' building setback at 1033 Skyline Drive, Lot 5 Skyline View Subdivision Lying South of Skyline Drive. *Page 31*

**9. Plat Consideration**

**10. Pending Business**

- A. Staff Report PL 11-115, HAPC Policies and Procedures Manual Amendments *Page 49*

**11. New Business**

- A. Staff Report PL 11-118, 2012 HAPC Meeting Schedule *Page 63*

**12. Informational Materials**

**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 9:30 p.m. An extension is allowed by a vote of the Commission. The next regular meeting will be held on December 7, 2011 at 6:30p.m. There will be a work session at 5:30.

Session 11-15, a Regular Meeting of the Homer Advisory Planning Commission was called to order by Chair Minsch at 6:30 p.m. on November 2, 2011 at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

PRESENT: COMMISSIONERS BOS, DOLMA, ERICKSON, HIGHLAND, MINSCH, SONNEBORN, VENUTI

STAFF: CITY PLANNER ABOUD  
DEPUTY CITY CLERK JACOBSEN

### APPROVAL OF 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 comments.

### 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 the October 19, 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.

### PRESENTATIONS

### REPORTS

- A. Staff Report PL11-114, City Planner's Report

City Planner Abboud reviewed his staff report.

### 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 11-112, A Request for a Variance of the building setback requirements at 860 Soundview Avenue, Lot 2, Block 3, Foothills Subdivision, Sunset View Estates Addition No. 2, Phase One

City Planner Abboud reviewed the staff report.

Rod Engle, applicant, commented that when they laid out the property and built the house they were conscious of borders and setback. They measured from a monument in the cul-de-sac and apparently they didn't have right distance. Dan Gardner came out when they were doing the dirt work and thought it looked close. They stretched a tape and it was within inches of the setback but when the as built done after completion it was about 4 feet in the setback at the south west corner of the garage. Originally the garage was detached but as they were building the house they connected them to make a breezeway under one roof. He noted that because it is in a cul-de-sac, the radius involved more of the area than anticipated.

In response to questions from the Commission, Mr. Engle said he did not have the lot staked out before the project started, he had marked it himself, and that he had all the inspections done during the building process.

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

**VENUTI/BOS MOVED TO ADOPT STAFF REPORT PL 11-112 A REQUEST FOR A VARIANCE OF THE BUILDING SETBACK REQUIREMENTS AT 860 SOUNDVIEW AVENUE, LOT 2, BLOCK 3, FOOTHILLS SUBDIVISION, SUNSET VIEW ESTATES ADDITION NO. 2, PHASE ONE WITH STAFF RECOMMENDATIONS TO DENY THE VARIANCE WITH FINDINGS 1-5.**

The Commission acknowledged the challenges that the encroachment causes for the builder and recognized that the shapes of lots in the subdivision aren't ideal; however none of the conditions meet the three requirements in code that would allow them to permit the variance.

**VOTE: YES: BOS, MINSCH, HIGHLAND, SONNEBORN, VENUTI, ERICKSON, DOLMA**

Motion carried.

#### **PLAT CONSIDERATION**

No plats were scheduled for consideration.

#### **PENDING BUSINESS**

#### **NEW BUSINESS**

- A. Staff Report PL 11-113, An Ordinance of the City Council of Homer, Alaska, enacting Homer City Code Chapter 21.27 East End Mixed Use District

City Planner Abboud reviewed the staff report.

**BOS/VENUTI MOVED TO DISCUSS AND MAKE RECOMMENDATIONS AT THE NEXT WORKSESSION.**

There was discussion whether to take this action or to have it come back to them in a public hearing.

VOTE: NO: HIGHLAND, SONNEBORN, MINSCH, VENUTI, ERICKSON, DOLMA, BOS

Motion failed.

MINSCH/BOS MOVED TO HAVE STAFF SEND THIS TO THE ATTORNEY TO REVIEW AND SCHEDULE A PUBLIC HEARING.

There was brief discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

### **INFORMATIONAL MATERIALS**

A. City Manager's Budget Report

### **COMMENTS OF THE AUDIENCE**

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

Kathryn Hannenberger urged the Commission not to drag their feet and please move forward quickly with the mixed use district. They have been waiting a long time and this change will help her family with their current situation.

### **COMMENTS OF STAFF**

City Planner Abboud said he would get the East End Mixed Use District ordinance to the City Attorney for review and back for public hearing when he gets it back.

### **COMMENTS OF THE COMMISSION**

Commissioner Dolma and Sonneborn had no comments.

Commissioner Venuti commented that he liked the testimony they got at the meetings tonight. He asked if there was a way to get the laydowns sooner before meeting time as he would like more time to review and absorb the information being presented.

Commissioner Bos commended staff for the good information they received this week and Planning Technician Engebretsen for the quality presentation and great job answering questions tonight.

Commissioner Erickson commented that the East End Mixed Use District is a good ordinance and she is glad to see it go through.

Commissioner Highland suggested taking a few minutes before starting the worksessions to review laydown items. She also expressed her desire for harmony and balance between the economy and environment.

HOMER ADVISORY PLANNING COMMISSION  
REGULAR MEETING MINUTES  
NOVEMBER 2, 2011

Chair Minsch encouraged everyone to keep up the good work. It was a tough job with the variance since it seemed that they all wanted to vote a different way. She hopes that Mr. Gardner is aware that is involvement in measuring on a property for any reason can lead to these kinds of things.

City Planner Abboud noted that Mr. Gardner wasn't here tonight and hearsay isn't admissible in court.

**ADJOURN**

There being no further business to come before the Commission, the meeting adjourned at 7:17 p.m. The next regular meeting is scheduled for November 16, 2011 at 6:30 p.m. in the City Hall Cowles Council Chambers.

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MELISSA JACOBSEN, CMC, DEPUTY CITY CLERK

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



# City of Homer

## Planning & Zoning

491 East Pioneer Avenue  
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### HOMER ADVISORY PLANNING COMMISSION

November 16, 2011

RE: 860 Soundview Avenue, Lot 2 Block 3 Foothills Subdivision Sunset View Estates Addition No. 2

Application for a Variance, 2011-01

### DECISION

#### Introduction

Roderick and Doris Engle applied to the Homer Advisory Planning Commission (the "Commission") under Homer City Code 21.72 for approval of a Variance at 860 Soundview Ave. The property is zoned Rural Residential pursuant to Homer City Code 21. The applicant built a single family home with a garage attached to the home by a large breezeway on the property. The southwest corner of the garaged encroaches over four feet into the building setback along Cabana Court. The application sought approval for a variance from the twenty foot building setback along Cabana Court.

The application was scheduled for a public hearing as required by Homer City Code 21.94 before the Commission on November 2, 2011. Notice of the public hearing was published in the local newspaper and sent to 19 property owners of 38 parcels.

At the November 2, 2011, 2009 meeting of the Commission, the Commission voted to deny the request with seven Commissioners present, seven Commissioners voted in favor of denying the variance.

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

Marilyn Dugdale, home owner on Cabana Court, submitted an email to the Commission objecting to the variance. She felt it was the responsibility of the

contractor to ensure the buildings were correctly sited. In addition, she was concerned that granting the variance could have a negative effect on surrounding properties in the future.

Mr. Engle spoke to the Commission that he had marked the corners of the lot himself and apparently did not have the distances correct. The as-built survey showed the garage was over four feet into the building setback area.

### FINDINGS OF FACT

**Pursuant to HCC 21.72.010, a variance may be granted to provide relief when a literal enforcement of Homer City Code Title 21, Planning and Zoning, would deprive a property owner of the reasonable use of his real property.**

#### 21.72.020 Conditions precedent to granting variance.

A. All of the following conditions shall exist before a variance may be granted:

1. A literal interpretation of the provisions of the Homer Zoning Code would deprive the applicant of rights commonly enjoyed by other properties in the same district.

**Finding 1:** The literal interpretation of the provisions Homer Zoning Code does not deprive the applicant of rights commonly enjoyed by other properties in the rural residential district. There is ample developable area on the lot for a single family home and garage.

2. Special conditions and circumstances exist that are peculiar to the land or structures involved and are not applicable to other lands and structures in the same district.

**Finding 2:** There is a steep embankment within the 20 foot building setback along Cabana Court. As a result, the applicant built the home with the driveway on Soundview Ave. The lot can be reasonably developed without encouragement into the setback.

3. The special conditions and circumstances have not been caused by the actions of the applicant.

**Finding 3:** The applicant built the garage too close to the property line. If the garage were smaller, i.e. a standard two car garage, or attached to the house, there would be no encroachment.

B. Financial hardship or inconvenience shall not be the sole reason for granting a variance.

**Finding 4:** The applicant states the granting of the variance would allow reasonable access and egress to the garage and driveway. Driveways are permissible within the

building setback and no variance is needed. No compelling evidence has been presented that demonstrates the need for the garage to be placed within the building setback.

**Finding 5:** The variance is sought solely for financial hardship or inconvenience. It will be difficult to finance this home with a bank loan because it does not meet the city zoning requirements. Remedying encroaching corner will be a significant inconvenience.

### **CONCLUSION**

Based on the foregoing findings of fact and law, the request for a Variance from the twenty foot building setback along Cabana Court at 860 Soundview Avenue is hereby denied.

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

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

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

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

### ***NOTICE OF APPEAL RIGHTS***

Pursuant to Homer City Code, Chapter 21.93.060, any person with standing 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 , 2011. 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

Roderick and Doris Engle  
195 Mountain View Drive  
Homer, Alaska 99603



# City of Homer Planning & Zoning

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## STAFF REPORT PL 11-119

**TO:** Homer Advisory Planning Commission  
**FROM:** Rick Abboud, City Planner  
**MEETING:** November 16, 2011  
**SUBJECT:** Planning Director's Report

### November 28<sup>th</sup> City Council

I believe that the "More than one" ordinance we worked on will be introduced at this time.

The last scheduled City Council Meeting this year is December 12<sup>th</sup>. I expect that the agenda will be dominated by the budget, as this will be the last chance to address it unless a special meeting is scheduled and not many are inclined to go to more meetings in December.

### Activities:

It looks as though the FEMA meeting schedule will be bumped back a bit. I received an email from a coordinator that stated they were looking at some "calculations/assumptions on the study that were overly conservative... and they are in the process of revision.

The City Hall addition is moving along. It looks as though we may be able to move back in around the holiday season, which would be good as we are a bit slower during this time.

### Training:

Franco, James and I attended that American Planning Association training in Fairbanks. I was pleasantly surprised that we all found the sessions valuable. I even was able to provide additional context to Holly's presentation on legal issues, specifically on our judicial deliberations. This was a wonderful opportunity to gain valuable knowledge and interact with our Alaskan peers. Session I attended included those dealing with airport planning, making your code user friendly, ethics, conflict resolution, law, meeting facilitation, and cluster subdivisions.





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**STAFF REPORT PL 11-117**

TO: Homer Advisory Planning Commission (HAPC)  
 THROUGH: Rick Abboud, City Planner  
 FROM: Dotti Harness-Foster, Planning Technician  
 MEETING: November 19, 2011  
 SUBJECT: Staff Report PL 11-117, Conditional Use Permit (CUP) 11-13 would amend CUP 10-06 at 1033 Skyline Drive.

**Synopsis:** This communication site on Skyline Drive is home to several small communication buildings, dishes, towers and antennas. The applicant would like to build a 96 ft free-standing tower (no guy wires). In 2010 the HAPC approved CUP 10-06 per HCC 21.12.030(g) Public utility facilities and structures. CUP 10-06 *specifically allowed the 9 ft by 20 ft communication structure*. In order to add a 96 ft tower, CUP 10-06 must be amended.

**Approval of a CUP requires five yes votes.** A YES vote would amend CUP 10-06 to allow construction of a 96 ft tower on Lot 5 Skyline View Sub lying south of Diamond Ridge Road. A separate issue and a separate vote on the agenda is the applicant's request to place the tower within the 20 ft building setback.

Applicant: Horizon Satellite, PO Box 2394, Homer, AK 99603  
 Owner: Dave Becker, PO Box 109, Homer, AK 99603  
 Location: 1033 Skyline Drive  
 Legal: Lot 5 Skyline View Sub lying south of Diamond Ridge Road  
 Parcel ID: 17402404  
 Lot Size: 1.85 acres  
 Zoning Designation: Rural Residential  
 Existing Land Use: Communications site  
 Surrounding Land Use: North: Communication site  
 South: Residential  
 East: Residential  
 West: Residential  
 Wetland Status: No wetlands.  
 BCWPD: Not in the Bridge Creek Watershed Protection District.  
 Steep Slopes: Estimated 38%- 42%  
 Utilities: No public water or sewer.  
 Public Notice: Notice was sent to property 14 owners of 13 parcels as shown on the KPB tax assessor rolls.

**History:** Prior to annexation in 2002 this property was used as a communications site. In 2010 the City granted nonconforming status to the existing use and the communication equipment. CUP 10-06 *specifically allowed the 9 ft by 20 ft communication structure*. This was followed by Variance 10-01

which allowed the structure to be in the 20 ft building setback. In order to add a 96 ft tower, both the CUP and the Variance must be amended.

**Timeline:**

- July 13, 2010 The City Planner granted nonconforming use and structures as a communications site.  
July 21, 2010 The HAPC approved CUP 10-06 allowing the site's continued use as a "Public utility facility and structures" per HCC 21.12.030(g).  
May 18, 2011 The HAPC approved Variance 10-01 allowing the 9 ft x 20 ft structures to remain in the building setback.  
Present The applicant is requesting amendments to CUP and Variance to include a tower within the 20 ft building setback.

**Parking:** CUP 10-06 required the applicant to provide parking. The parking requirements have been met. The property owner obtained a "Letter of Non-Objection" allowing employees servicing the equipment to park in the pull-out to the east of 1033 Skyline Drive.

The **findings** below are the original findings from CUP 10-06 except for:

- HCC 21.71.030(a & h) Describes the "public utility facilities and structures" per CUP 10-06.
- HCC 21.71.030(b) Increases the building square footage on the lot.
- HCC 21.71.030(f) Amends to describe a communication tower, and
- HCC 21.71.040(b)(3 & 5) Updates findings to reflect the "Letter of Non-Objection" from ADOT to allow employees servicing the equipment to park in the pull-out to the east of 1033 Skyline Drive.

- a. The applicable code authorizes each proposed use and structure by conditional use permit in that district.

**Finding 1(AMENDED):** Public utility facilities and structures are authorized by CUP 10-06.

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

**Analysis:** The increase in square footage recognizes the 9 ft x 20 ft = 180 sf building that was built in 2010.

**Finding 2(AMENDED):** The 1.85 acres parcel has a total of five (5) structures. The combined square footage of all the structures is less than 1700 (~~1500~~) square feet and fronts Skyline Drive. The structures and uses are consistent with low density development.

- 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 3:** The value of adjoining property will not be negatively impacted more than from other uses in this district. Other uses permitted or conditionally permitted include multifamily dwellings which would create more traffic than the proposed use, kennels, which would create more noise, and storage of heavy equipment per HCC 21.12.030.

- d. The proposal is compatible with existing uses of surrounding land.

**Finding 4:** The proposal is compatible with the existing surrounding land uses. The land to the north is also a telecommunications site. The land to the south, east and west are low density residential.

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

**Finding 5:** Public services and facilities are adequate to serve the proposed use. Public water and sewer are not needed. The property is accessed via Skyline Drive, which is a paved, state maintained public road.

- 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.

**Analysis:** The 96 ft self-supporting tower will be located on the upper portion of the lot. The tower's base is a tapered cube with the ground dimensions of 6 ft x 6 ft or 36 square feet.

**Finding 6 (AMENDED):** The placement and operation of the tower will not generate significant traffic, nor create density or coverage that will harm the neighborhood. Traffic to and from the site is for maintenance purposes only. The tower will not cause undue harmful effect on 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 7:** The communication site is not detrimental to the health, safety or welfare of the surrounding area or the city as a whole. The towers are part of a telecommunications system that serves the wider area and is an important and necessary service.

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

**Finding 8 (AMENDED):** Public utility facilities and structures are authorized by CUP 10-06.

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

**Analysis:** "Target high tech industries or professional/web-based activities in these new commercial zones by public provision of access to wireless communication." Homer Comprehensive Plan, pg 4-17.

**Finding 10:** The facility is located in a rural, low density area. The property to the north is also a telecommunications site, and the continuation of the subject property as a communications site is a compatible use type and density, with a residential zone. 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.

**Finding 11:** All lighting must be down lit per the Community Design Manual.

HCC 21.71.040(b). In approving a conditional use, the Commission may impose such conditions on the use as may be deemed necessary to ensure the proposal does and will continue to satisfy the applicable review criteria. Such conditions may include, but are not limited to, one or more of the following:

1. Special yards and spaces: **No conditions deemed necessary.**
2. Fences, walls and screening. **No conditions deemed necessary.**
3. Surfacing of vehicular ways and parking areas. **(AMENDED) The property owner has a "Letter of Non-Objection" allowing employees servicing the equipment to park in the pull-out to the east of 1033 Skyline Drive.**
4. Street and road dedications and improvements (or bonds). **No conditions deemed necessary.**
5. Control of points of vehicular ingress and egress. **(AMENDED) The property owner has a "Letter of Non-Objection" allowing employees servicing the equipment to park in the pull-out to the east of 1033 Skyline Drive.**
6. Special restrictions on signs. **No conditions deemed necessary.**
7. Landscaping. **No conditions deemed necessary.**
8. Maintenance of the grounds, buildings, or structures. **No conditions deemed necessary.**
9. Control of noise, vibration, odors, lighting or other similar nuisances. **No conditions deemed necessary.**
10. Limitation of time for certain activities. **No conditions deemed necessary.**
11. A time period within which the proposed use shall be developed and commence operation. **No special conditions deemed necessary.**
12. A limit on total duration of use or on the term of the permit, or both. **No conditions deemed necessary.**
13. More stringent dimensional requirements, such as lot area or dimensions, setbacks, and building height limitations. Dimensional requirements may be made more lenient by conditional use permit only when such relaxation is authorized by other provisions of the zoning code. Dimensional requirements may not be altered by conditional use permit when and to the extent other provisions of the zoning code expressly prohibit such alterations by conditional use permit. **No conditions deemed necessary.**
14. Other conditions necessary to protect the interests of the community and surrounding area, or to protect the health, safety, or welfare of persons residing or working in the vicinity of the subject lot. **No conditions deemed necessary.**

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

Planning Commission amend Conditional Use Permit 10-06 to allow the construction of a 96 ft communication tower located at 1033 Skyline Drive, Lot 5 Skyline View Sub lying south of Diamond Ridge Road.

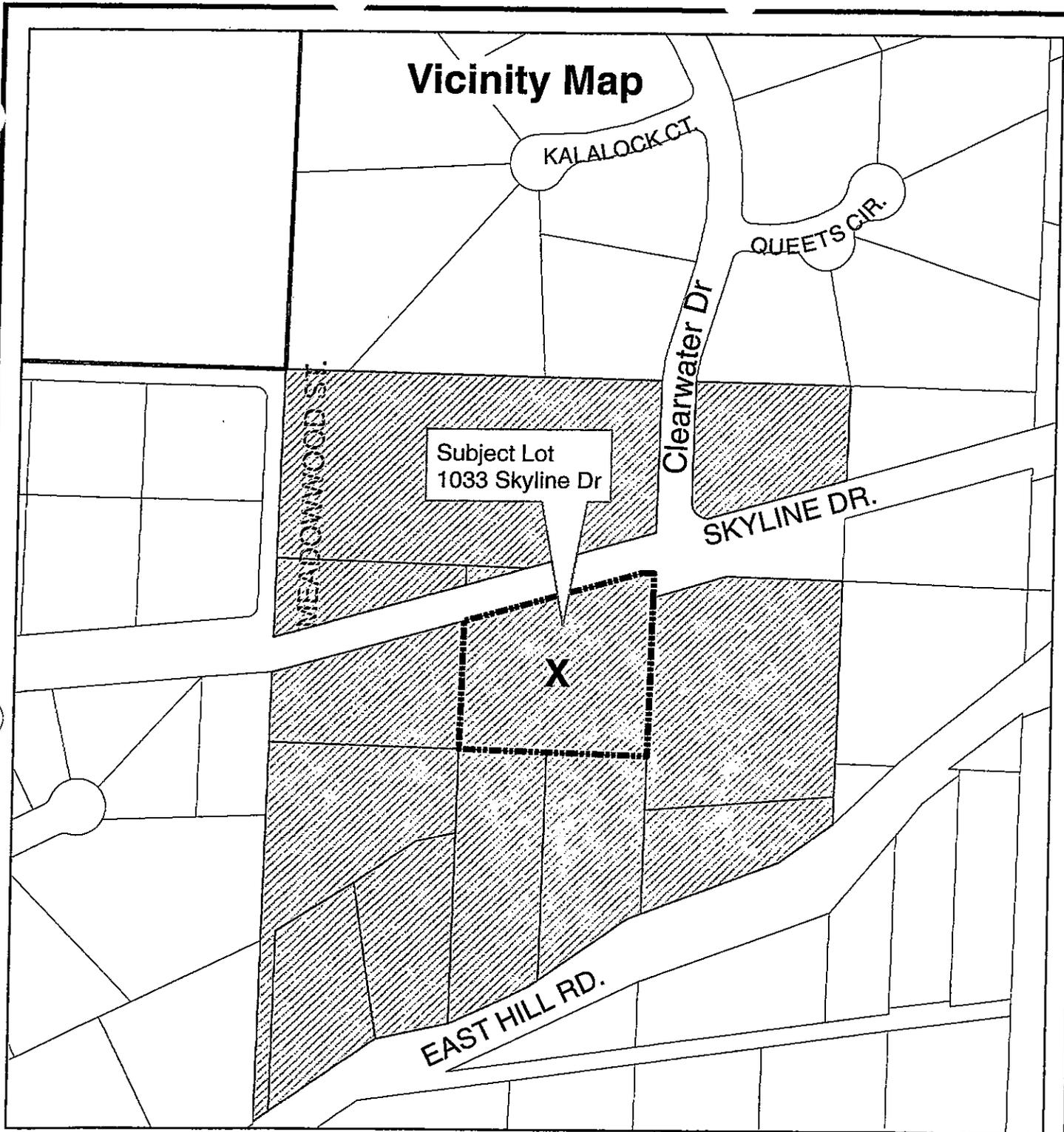
#### **Attachments**

1. Vicinity map
2. Survey dated 6/29/10
3. ADOT "Letter of Non-Objection" dated Sept. 6, 2011
4. CUP 10-04 Decision and Findings from July 21, 2010 HAPC meeting
5. Application





# Vicinity Map



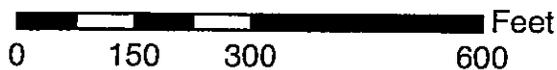
City of Homer

Planning and Zoning Department

October 31, 2011

## Public Notice 1033 Skyline Drive

Shaded lots are w/in 300 feet  
and property owners 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.



# STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

DESIGN & ENGINEERING SERVICES DIVISION  
CENTRAL REGION - RIGHT OF WAY BRANCH

SEAN PARNELL, GOVERNOR

4111 AVIATION AVENUE  
P.O. BOX 196900  
ANCHORAGE, AK 99519-6900  
(907) 269-0700 (FAX 248-9456)  
(TTY 269-0473) 1-800-770-5263

September 6, 2011

Peninsula Communications, Inc.  
Dave Becker, President/General Manager  
PO Box 1090  
Homer, AK 99603

RE: Letter of Non-Objection 336.005  
Skyline Drive Pull Out

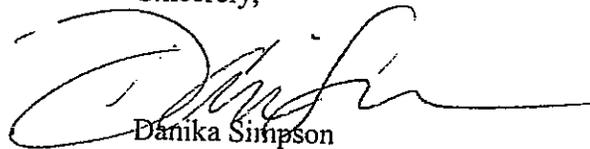
Dear Mr. Becker:

The Department of Transportation and Public Facilities, Right of Way Section has reviewed your request for a letter of non-objection regarding public parking in the pull out to the east of 1033 Skyline Drive by Department of Transportation which is currently located in the Skyline Drive right of way. After careful review of this request, the Department has no-objection to interim parking as long as no business is conducted within the states right-of-way per the enclosed 17 AAC 05.545.

Please be aware that the Department reserves the right to rescind this non-objection in the event right of way is needed for transportation purposes.

If you have any questions, please call me at 1-800-770-5263, extension 0687.

Sincerely,



Danika Simpson  
Right of Way Agent

Encl: AAC Statutes

CC: Carl High, Peninsula Maintenance & Operations Superintendent

*"Providing for the safe movement of people and goods and the delivery of State Services."*





## City of Homer Planning & Zoning

491 East Pioneer Avenue Telephone (907) 235-3106  
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Web Site: www.ci.homer.ak.us

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### HOMER ADVISORY PLANNING COMMISSION Meeting of July 21, 2010

Decision and Findings: Conditional Use Permit (CUP) 10-04, 1033 Skyline Drive

#### DECISION

##### Introduction

Dave Becker ("Applicant") applied to the Homer Advisory Planning Commission, (the "Commission") under Homer City Code (HCC) 21.12.030(g) for approval of a CUP for a Public Utility Facilities and Structures located in the Rural Residential District at 1033 Skyline Drive per HCC 21.12.030(g). The structure for consideration was a 9' x 20' building with two 50' metal towers attached.

The application was scheduled for a public hearing as required by Homer City Code 21.94 before the Commission on July 21, 2010. Notice of the public hearing was published in the local newspaper and sent to 14 property owners of 15 parcels.

Testimony from the applicant, one member of the public and the City Manager was received at the public hearing. After deliberations, at the August 18, 2010 meeting of the commission, the commission voted to approve the request with 6 Commissioners present, and 6 Commissioners voted in favor of the conditional use permit, allowing lawful placement of a 9' x 20' public utility structure on the property. As he was new to the planning commission, Commissioner Venuti was excused from deliberations.

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

The Applicant sought approval to utilize a 9' x 20' structure at 1033 Skyline Drive, Skyline View Subdivision Lot 5 in the Rural Residential District for the support of communication equipment. The structure currently located on the property was constructed without gaining a zoning permit from the City of Homer and is located in the 20' setback from the Skyline Drive Right-of-Way. Pre-existing structures, also located on the lot, were accepted as legal non-conforming structures. The as-built

built prior to City annexation, into the Skyline Drive state right-of-way. The approval of this CUP does not indicate acceptance of any encroachments into the right-of-way. An approved variance is required to locate a structure within the setback.

### **FINDINGS OF FACT**

**Parking:** City code does not have parking requirements for a communication site. The applicant has one parking space on site. Due to the very low traffic volume for this site, the city planner has determined under 21.55.090(b) that one parking space is required.

**Finding 1: One parking space shall be provided on the lot.**

The review criteria for a Conditional Use Permit are outlined in 21.71.030.

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

**Finding 2: Public utility facilities and structures are authorized with a Conditional Use Permit by HCC 21.12.030 (g).**

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

**Finding 3: The 1.85 acres parcel has a total of five (5) structures. The combined square footage of all the structures is less than 1500 square feet and fronts Skyline Drive. The structures and uses are consistent with low density development.**

- 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 value of adjoining property will not be negatively impacted more than from other uses in this district. Other uses permitted or conditionally permitted include multifamily dwellings which would create more traffic than the proposed use, kennels, which would create more noise, and storage of heavy equipment per HCC 21.12.030.**

- d. The proposal is compatible with existing uses of surrounding land.

**Finding 5: The proposal is compatible with the existing surrounding land uses. The land to the north is also a telecommunications site. The land to the south, east and west are low density residential.**

- 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. Public water and sewer are not needed. The property is accessed via Skyline Drive, which is a paved, state maintained public road.**

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 newly constructed single story structure is 9 feet by 20 feet with two attached metal towers approximately 50 ft in height. The placement and operation of the tower will not generate significant traffic, nor create density or coverage that will harm the neighborhood. Traffic to and from the site is for maintenance purposes only. The tower will not cause undue harmful effect on 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 8: The communication site is not detrimental to the health, safety or welfare of the surrounding area or the city as a whole. The towers are part of a telecommunications system that serves the wider area and is an important and necessary service.**

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

**Finding 9: HCC Title 21, Rural Residential District requires a conditional use permit under 21.12.030(g) for "Public utility facilities and structures."**

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

**Finding 10: The facility is located in a rural, low density area. The property to the north is also a telecommunications site, and the continuation of the subject property as a communications site is a compatible use type and density, in a residential zone. 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.

**Finding 11: All lighting must be down lit per the Community Design Manual.**

HCC 21.71.040(b). In approving a conditional use, the Commission may impose such conditions on the use as may be deemed necessary to ensure the proposal does and will continue to satisfy the applicable review criteria. Such conditions may include, but are not limited to, one or more of the following:

1. Special yards and spaces: **No conditions deemed necessary.**
2. Fences, walls and screening. **No conditions deemed necessary.**
3. Surfacing of vehicular ways and parking areas. **One parking space must be provided on property, including DOT approved driveway permit.**

4. Street and road dedications and improvements (or bonds). **No conditions deemed necessary.**
5. Control of points of vehicular ingress and egress. **A driveway permit is necessary.**
6. Special restrictions on signs. **No conditions deemed necessary.**
7. Landscaping. **No conditions deemed necessary.**
8. Maintenance of the grounds, buildings, or structures. **No conditions deemed necessary.**
9. Control of noise, vibration, odors, lighting or other similar nuisances. **No conditions deemed necessary.**
10. Limitation of time for certain activities. **No conditions deemed necessary.**
11. A time period within which the proposed use shall be developed and commence operation. **No special conditions deemed necessary.**
12. A limit on total duration of use or on the term of the permit, or both. **No conditions deemed necessary.**
13. More stringent dimensional requirements, such as lot area or dimensions, setbacks, and building height limitations. Dimensional requirements may be made more lenient by conditional use permit only when such relaxation is authorized by other provisions of the zoning code. Dimensional requirements may not be altered by conditional use permit when and to the extent other provisions of the zoning code expressly prohibit such alterations by conditional use permit. **No conditions deemed necessary.**
14. Other conditions necessary to protect the interests of the community and surrounding area, or to protect the health, safety, or welfare of persons residing or working in the vicinity of the subject lot. **No conditions deemed necessary.**

**Condition 1: One parking space must be provided on property.**

**Condition 2: Obtain AKDOT Driveway Permit.**

**CONCLUSION**

The Commission approved CUP 10-04 for a 9' x 20' public utility structure with conditions of providing an on-site parking space and AKDOT driveway permit.

Date: 9/14/10

Sharon Minsch  
Chair, Sharon Minsch

Date: 9/08/10

Rick Abboud  
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 Sept. 15, 2010. A copy was also delivered to the City of Homer Planning Department and Homer City Clerk on the same date.

Date: 9/15/10

Shelly Rosencrans  
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

Dave Becker  
P.O. Box 109  
Homer, AK 99603





# City of Homer Planning & Zoning

491 East Pioneer Avenue Telephone (907) 235-3106  
 Homer, Alaska 99603-7645 Fax (907) 235-3118  
 E-mail Planning@ci.homer.ak.us  
 Web Site www.ci.homer.ak.us

**Applicant** Cassandra

Name: Horizon Satellite, LLC Telephone No.: (907) 226-3130 #4

Address: 3850 Heath St. Suite A Email: start@horizonsatellite.com

**Property Owner** (if different than the applicant):

Name: Dave Becker Telephone No.: 235-7526

Address: Box 109, Homer, AK 99603 Email: kwavefm@xyz.net

**PROPERTY INFORMATION:**

Address: 1033 Skyline Lot Size: 1.85 acres KPB Tax ID # 17402404

Legal Description of Property: Skyline View Sub Lot 5 Lying S of Diamond Ridge Rd

*For staff use:*

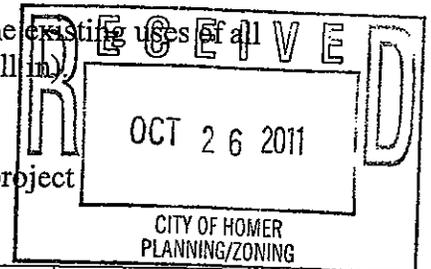
Date: \_\_\_\_\_ Fee submittal: Amount \_\_\_\_\_

Received by: \_\_\_\_\_ Date application accepted as complete \_\_\_\_\_

Planning Commission Public Hearing Date: \_\_\_\_\_

## Conditional Use Permit Application Requirements:

1. A Site Plan
2. Right of Way Access Plan
3. Parking Plan
4. A map showing neighboring lots and a narrative description of the existing uses of all neighboring lots. (Planning can provide a blank map for you to fill in.)
5. Completed Application Form
6. Payment of application fee (nonrefundable)
7. Any other information required by code or staff, to review your project



### Circle Your Zoning District

	RR	UR	RO	CBD	TCD	GBD	GC1	GC2	MC	MI	OSR	BCWPD
Level 1 Site Plan	X	X	X			X			X		X	X
Level 1 ROW Access Plan	X	X							X		X	
Level 1 Site Development Requirements	X	X										
Level 1 Lighting			X	X	X	X	X	X	X	X		
Level 2 Site Plan			X	X	X	X	X	X		X		
Level 2 ROW Access Plan			X	X	X		X	X		X		
Level 2 Site Development Requirements			X	X	X	X	X	X	X	X		
Level 3 ROW Access Plan						X						
DAP/SWP questionnaire				X	X	X	X	X	X	X		

**Circle applicable permits. Planning staff will be glad to assist with these questions.**

- Y  N Are you building or remodeling a commercial structure, or multifamily building with more than 3 apartments? If yes, Fire Marshal Certification is required. Status: \_\_\_\_\_
- Y  N Will your development trigger a Development Activity Plan?  
Application Status: \_\_\_\_\_
- Y  N Will your development trigger a Storm water Plan?  
Application Status: \_\_\_\_\_
- Y  N Does your site contain wetlands? If yes, Army Corps of Engineers Wetlands Permit is required. Application Status: \_\_\_\_\_
- Y  N Is your development in a floodplain? If yes, a Flood Development Permit is required.
- Y  N Does your project trigger a Community Design Manual review?  
If yes, complete the design review application form. The Community Design Manual is online at: <http://www.ci.homer.ak.us/documentsandforms>
- Y  N Do you need a traffic impact analysis?
- Y  N Are there any nonconforming uses or structures on the property?
- Y  N Have they been formally accepted by the Homer Advisory Planning Commission?
- Y  N Do you have a state or city driveway permit? Status: \_\_\_\_\_
- Y  N Do you have active City water and sewer permits? Status: \_\_\_\_\_

1. Currently, how is the property used? Are there buildings on the property? How many square feet? Uses within the building(s)? *Housing for Network hardware appliances*

2. What is the proposed use of the property? How do you intend to develop the property? (Attach additional sheet if needed. Provide as much information as possible).

*96 ft. stand alone tower without Appenditures*

**CONDITIONAL USE INFORMATION:** (Please use additional sheet(s), if necessary)

- a. What code citation authorizes each proposed use and structure by conditional use permit?  
HCC 21.12.030(g) Public utility facilities and structures.
- b. Describe how the proposed uses(s) and structures(s) are compatible with the purpose of the zoning district. \_\_\_\_\_
- c. How will your proposed project affect adjoining property values? \_\_\_\_\_

- d. How is your proposal compatible with existing uses of the surrounding land? other towers & radio gear transmissions exist
- e. Are/will public services adequate to serve the proposed uses and structures?  
yes
- f. How will the development affect the harmony in scale, bulk, coverage and density upon the desirable neighborhood character, and will the generation of traffic and the capacity of surrounding streets and roads be negatively affected?  
NO
- g. Will your proposal be detrimental to the health, safety or welfare of the surrounding area or the city as a whole?  
NO
- h. How does your project relate to the goals of the Comprehensive Plan?  
<http://www.cityofhomer-ak.gov/planning/comprehensive-plan-2008-adopted-2010>
- i. The Planning Commission may require you to make some special improvements. Are you planning on doing any of the following, or do you have suggestions on special improvements you would be willing to make? (circle each answer)
1. Y  N
  2. Y  N
  3. Y  N
  4. Y  N
  5. Y  N
  6. Y  N
  7. Y  N
  8. Y  N
  9. Y  N
  10. Y  N
  11. Y  N
  12. Y  N
  13. Y  N
  14. Y  N
  15. Y  N

**PARKING**

1. How many parking spaces are required for your development? None  
If more than 24 spaces are required see HCC 21.50.030(f)(1)(b). \_\_\_\_\_
2. How many spaces are shown on your parking plan? None
3. Are you requesting any reductions? No

Include a site plan, drawn to a scale of not less than 1" = 20' which shows allow existing and proposed structures, clearing, fill, vegetation and drainage.

I hereby certify that the above statements and other information submitted are true and accurate to the best of my knowledge, and that I, as applicant, have the following legal interest in the property:

**CIRCLE ONE:**      Owner of record      Lessee      Contract purchaser

Applicant signature: Cassandra L. Amiciv      Date: \_\_\_\_\_

Property Owner's signature: David F. Beck      Date: 7/28/11



# 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)

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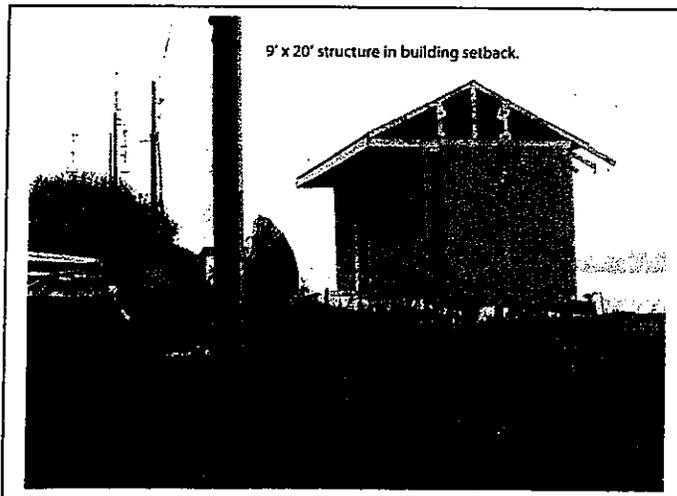
## STAFF REPORT PL 11-118

**TO:** Homer Advisory Planning Commission  
**THROUGH:** Rick Abboud, City Planner  
**FROM:** Dotti Harness-Foster, Planning Technician  
**MEETING:** November 19, 2011

**SUBJECT:** Variance 11-02 amending Variance 10-01 at 1033 Skyline Drive

**Synopsis:** This communication site on Skyline Drive is home to several small communication buildings, dishes, towers and antennas. The applicant would like to build a 96 ft free-standing tower (no guy wires) on the upper portion of the lot, which is the flattest portion of the property. The base of the tower is approximately 36 square feet and would be located 10 feet from the property line.

**Existing Variance:** On July 21, 2011 the HAPC approved Variance 10-01 that *specifically allowed the 9 ft by 20 ft communication structure* located 15.1 ft into the 20 ft setback, or 4.9 ft from the Skyline Drive right-of-way. Since Variance 10-01 *specifically described* the size of a structure and location of the structure, the variance needs to be amended to allow the placement of a 96 ft communication tower within the setback.



*This 9 ft x 20 ft building is 4.9' from the property line that fronts Skyline Drive.*

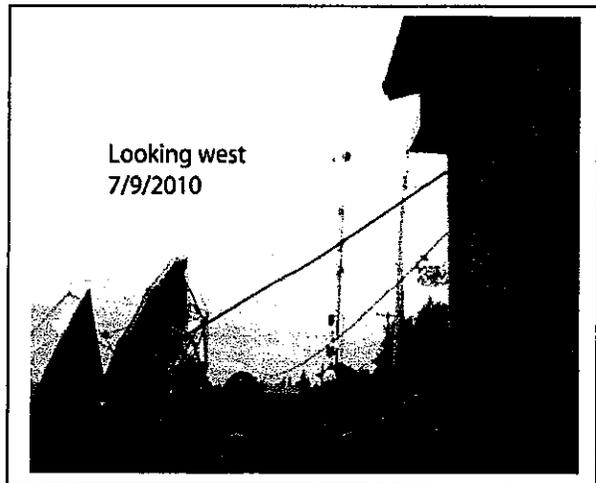
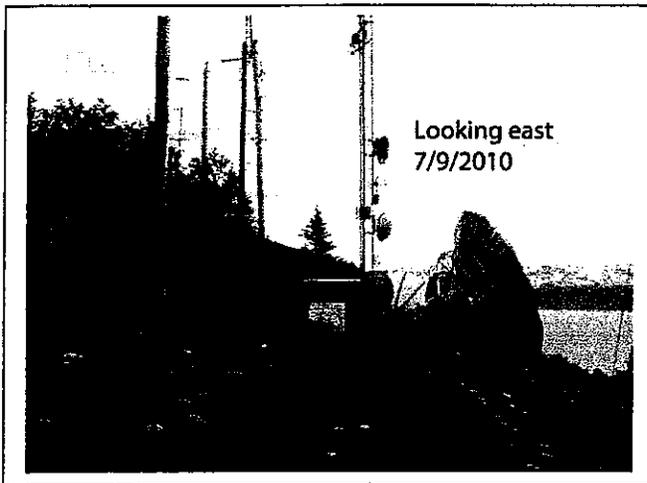
*The proposed tower would be located 25 feet west of this structure, and 10 feet from the property line, or in lower right hand corner of this 2010 photo.*

**Previous planning decisions:** Prior to the City's annexation in 2002 this communication site was governed by the Kenai Peninsula Borough (KPB). The KPB did not have building setback requirements. In addition, the site is steep, 38% to 42% which forced the communication equipment to the North edge of the property. In 2010, the HAPC granted non conforming status to the buildings and structures within the 20 ft building setback. This was followed by a CUP 10-06 which allowed for the expansion of the communication site per HCC 21.12.030(g) Public utility facilities and structures.

Applicant: Horizon Satellite, PO Box 2394, Homer, AK 99603  
Applicant/Owner: Dave Becker, PO Box 109, Homer, AK 99603  
Location: 1033 Skyline Drive  
Legal: Lot 5 Skyline View Sub lying south of Diamond Ridge Road  
Parcel ID: 17402404  
Lot Size: 1.85 acres  
Zoning Designation: Rural Residential  
Existing Land Use: Communications site  
Surrounding Land Use: North: Communication site  
South: Residential  
East: Residential  
West: Residential

Wetland Status: No wetlands.  
Steep Slopes: Estimated 38%- 42%  
BCWPD: Not in the Bridge Creek Watershed Protection District.  
Utilities: No public water or sewer.  
Public Notice: Notice was sent to property 14 owners of 13 parcels as shown on the KPB tax assessor rolls.

**Topography:** Based on the City's Geographic Information System this site has a slope in the range of 38% to 42%. The portion that abuts Skyline Drive is the flattest portion of the property yet it is located in the 20 ft building setback. The remaining property has slopes in the 40-42% range which confines development to the steepest portion of the property. Some would consider it unreasonable or even unsafe to require development on the steepest portion of the property when a more suitable, safer building area is available.



**Emergency communications:** The tower will provide wireless internet service. Functions of the service include providing access to news, weather and emergency information from various websites such as the Kenai Peninsula Borough Office of Emergency Management, Alaska Earthquake and Tsunami Warning Center.

**Comprehensive Plan:** “The City should strive to provide public services and facilities that meet current needs while planning for the future. The City wishes to develop strategies to work with community partners that provide beneficial community services outside of the scope of City government.” Homer Comprehensive Plan, page 6-1.

“Target high tech industries or professional/web-based activities in these new commercial zones by public provision of access to wireless communication.” Homer Comprehensive Plan, pg 4-17.

Parcels this steep are often consider “unfeasible” for typical residential development, 2008 City as in the 2010 Homer Comprehensive Plan, page 4-3. Disturbance of native vegetation for the creation of site development on steep slope presents on site and off site hazards.

HCC 21.72.020(a). All of the following conditions shall exist before a variance may be granted:

1. **A literal interpretation of the provisions of the Homer Zoning Code would deprive the applicant of rights commonly enjoyed by other properties in the same district.**

**Analysis:** The literal interpretation and application of the setback requirement would force the new structure onto slopes greater than 40%.

**Finding 1 (Amended from VAR 10-01):** The lot provides no other place for the tower to better serve its purpose. Other communication sites nearby have CUP’s. Those sites are flatter and do not need a variance due to topography.

2. **Special conditions and circumstances exist which are peculiar to the land or structures involved and which are not applicable to other lands and structures in the same district.**

**Analysis:** Given the purpose of a communication tower, it is imperative to set its base at the highest possible elevation as to maximize its efficiency; allow ready access for maintenance; and protect its integrity in the event of a natural disaster. A drop in elevation would; 1) reduce the efficiency of the device, or 2) require the erection of significantly higher tower in order to make up the lost height, or 3) increase the need for ground fill.

**Finding 2 (from VAR 10-01):** The structure supports and advances technological capabilities within the City of Homer by enhancing wireless communication thus forwarding goals of the comprehensive plan.

**Finding 3 (from VAR 10-01):** Locations for communication equipment providing optimal coverage for the entire City of Homer are very limited.

**Finding 4 (from VAR 10-01):** The purpose of the tower is telecommunications, in part, for emergency services.

**Finding 5 (from VAR 10-01):** The Commission recognizes the important and time sensitive nature of emergency communication requirements related to Fire, EMT, and other vital public safety concerns.

**Finding 6 (from VAR 10-01):** The parcel has steep slopes of approximately 38% to 42%. Parcels this steep are often consider "unfeasible" for typical residential development, 2008 City of Homer Comprehensive Plan, page 4-3. Disturbance of native vegetation for the creation of site development on steep slope presents on site and off site hazards.

**Finding 7 (from VAR 10-01):** The benefit to all the Citizens of Homer combined with the potential hazard of creating an unstable bluff justifies an exception to the setback requirement.

**3. The special conditions and circumstances have not been caused by the actions of the applicant.**

**Finding 8 (from VAR 10-01):** The necessity of the site specific requirements for the structure, nature of its purpose and the topographical challenges of the site were not caused by the actions of the applicants.

**B. Financial hardship or inconvenience shall not be the sole reason for granting a variance.**

**Analysis:** Safely working on steep slopes and unstable ground is a challenge. Forcing a 96 ft standing communication tower downslope requires a taller tower or ground fill making the site unstable. *Workforce Safety and Insurance* publishes safety standards when operating heavy equipment on steep slopes.

- Avoid using or even parking heavy equipment on steep slopes due to tip-overs.
- Provide a level base and work area.
- The further heavy equipment has to extend from its base the more unstable the equipment becomes.

**Finding 9:** Placing structures on steep unstable ground is hazardous.

**Finding 10 (from VAR 10-01):** Hardship and inconvenience is not the sole reason for this variance request, other special circumstances exist.

**C. Other nonconforming land use or structures within the district shall not be considered grounds for granting a variance.**

**Finding 11 (from VAR 10-01):** The applicant is seeking a variance due to the steep slopes on the lot. Though the other structures were built prior to City annexation and zoning, the Applicant is not seeking a variance due of other nonconforming land use or structures within the district.

**D. A variance shall be the minimum variance necessary to permit the reasonable use of the land or structure.**

**Finding 12 (Amended):** This is the minimum variance necessary to permit reasonable placement of the proposed tower.

**E. A variance shall not be granted which will permit a land use in a district in which that use is otherwise prohibited.**

**Finding 13 (from Var 11-01):** A communication site is allowed with a Conditional Use Permit in the Rural Residential District per HCC 21.12.030(g).

**RECOMMENDATION:** Staff recommends that the commission grant the variance.

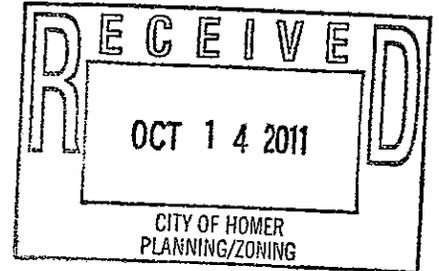
Att: October 13, 2011 letter from Horizon Satellite stamp dated Oct. 14, 2011  
Enlarged site plan stamp dated October 14, 2011  
Variance application dated Oct. 26, 2011  
Variance 10-01 Decision and Finding from the June 15, 2011 HAPC meeting



October 13, 2011

From: Horizon Satellite, LLC  
PO Box 2394  
Homer, AK 99603

To: Rick Abboud City Planner  
City of Homer  
Planning & Zoning Office  
491 E Pioneer Ave  
Homer, AK 99603



Dear Mr. Abboud,

Hello, my name is Cassandra Peterson and I manage Horizon Satellite, LLC.

The purpose of this letter is to request an amendment to Variance 10-01 at 1033 Skyline Drive.

Horizon Satellite, LLC is an internet service provider in the Homer area and currently rents space from Mr. Dave Becker. We have rented space from Mr. Becker at the 1033 Skyline building and will need to move our tower location.

Our existing tower is currently located on Skyline Drive adjacent to the 1033 Skyline Drive location.

We would like to amend the "Variance 10-01" at 1033 Skyline Drive to include the following:

(1) 96ft Self- supporting tower directly 25ft west of the existing 9x20 building

The front base of the tower will be 56ft from the center line of Skyline Drive

(2) It will have a tapered cube base with the bottom dimension will be 8ftx8ft top dimension being 6ftx6ft

(3) It will support radio equipment consisting of microwave sector antennas, microwave parabolic dish antennas

(4) The tower is exempt from FAA lighting requirements

(5) Tower will have 25ft Ice Shield catwalk between itself and the 9x20 building

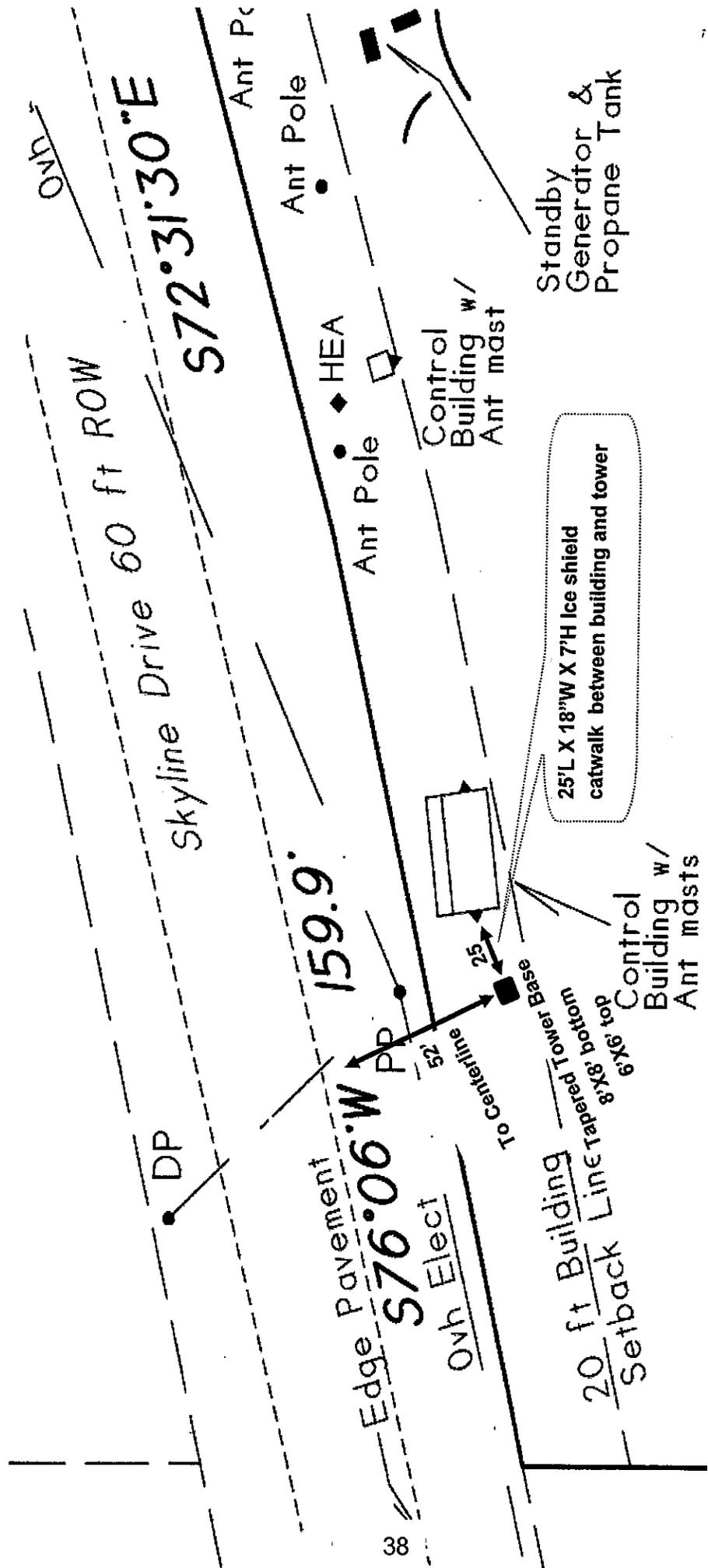
Thank you for your consideration of our request. Please let me know if I can be of further help.

Best Regards,

A handwritten signature in cursive script that reads "Cassandra L. Harrison-Peterson".

Cassandra L. Harrison-Peterson

Enclosure (1)



**RECEIVED**  
 OCT 14 2011  
 CITY OF HOMER  
 PLANNING DEPARTMENT



**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  
 Web Site www.ci.homer.ak.us

**ZONING VARIANCE APPLICATION**

Today's Date: 10-26-11

**APPLICANT INFORMATION**

Name: Horizon Satellite Phone: 226-3130 Ext 4, PO Box 2394, Homer, Ak, 99603

Property Owner (if different than applicant):

Name: Dave Becker Phone: 235-7526, PO Box 109, Homer, AK 99603

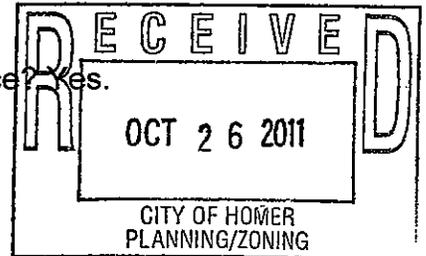
**PROPERTY INFORMATION**

Lot size: 1.85 Acres

Legal Description of Property (include tax parcel number): KPB 17402404  
 SKYLINE VIEW SUB LOT 5 LYING S OF DIAMOND RIDGE RIDGE

City water service? NO. City sewer service? No. Electric service? Yes.

Is there an existing structure on the property? Yes. See survey.  
 If yes, what kind? Communication equipments and structures  
 What is the existing use of the property? Communications site  
 What is the proposed use of the property? Communications site



21.72.020 Conditions precedent to granting variance.

A. All of the following conditions shall exist before a variance may be granted:

1. What regulations do you feel you are deprived of, or prevent you from enjoying your property as others in the same district? Existing building sets in the 20ft. setback

2. What special conditions and circumstances exist which are peculiar to the land or structures involved and which are not applicable to other lands and structures in the same district? Property is sloping at a steep angle which isn't conducive to a stable communications tower.

C:\Documents and Settings\Administrator\Local Settings\Temporary Internet Files\Content.IE5\M92KQAYB\1033 Skyline



3. How or by whom were these special conditions and circumstances caused?

Natural slope of property

**B. Financial hardship or inconvenience shall not be reason for granting a variance.**

1. Without this variance, what would the costs and/or inconvenience be to you?

Taller tower increases cost and safety concerns increase due to quipwise locates

**C. Other nonconforming land use or structures within the district shall not be considered grounds for granting a variance.**

**D. A variance shall be the minimum variance necessary to permit the reasonable use of the land or structure.**

1. What is the minimum variance needed? From the <sup>front</sup> base of the tower to the property line approximately 10 ft.

**E. A variance shall not be granted which will permit a land use in a district in which that use is otherwise prohibited.**

1. If granted the variance, how will you utilize this variance? Is this allowed in your zoning district? Yes it is allowed due to other towers in the immediate area and Conditional Use permit 10-06

I hereby certify that the above statements and other information submitted are true and accurate to the best of my knowledge, and that I, as applicant, have the following legal interest in the property: owner of record; lessee; contract purchaser; duly authorized to act for a person who has the following legal interest; and that the owner of record is knowledgeable of this application if I am not the owner. I also understand that this item will be scheduled for the Planning Commission agenda only if all application materials are submitted by 10-26-11.

Applicant's Signature: Cassandra R. Quinn-Peter Date: 10-26-11

Property Owner's Signature: David F Beecher Date: 10-26-11

Fee: \$250.00 ( ) Paid Received by: \_\_\_\_\_

Planning Commission Meeting Date: November 16, 2011

Planning Commission Public Hearing Date: November 16, 2011





## City of Homer Planning & Zoning

491 East Pioneer Avenue Telephone (907) 235-3106  
Homer, Alaska 99603-7645 Fax (907) 235-3118  
E-mail: Planning@ci.homer.ak.us  
Web Site: www.ci.homer.ak.us

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### HOMER ADVISORY PLANNING COMMISSION Meeting of June 15, 2011

RE: Variance 10-01, 1033 Skyline Drive, on remand from BOA

#### DECISION

##### I. Introduction

On July 21, 2010, a hearing was held before the Homer Advisory Planning Commission ("Commission") regarding a CUP (10-04) and Variance (10-01) request from David Becker ("Applicant") on property located in the Rural Residential District at 1033 Skyline Drive. The Homer Planning Office ("Department") recommended approval of both but, after holding hearing and receiving public testimony, the Commission voted to approve CUP 10-04 for use as a Public Utility Facilities and Structures and denied the Applicant's variance request at the regularly scheduled meeting August 18, 2010. This action was challenged by the Applicant and brought before the Homer Board of Adjustment ("Board") and received on remand by the Homer Advisory Planning Commission at the regularly scheduled meeting on June 15, 2011.

The application was scheduled for a public hearing as required by Homer City Code 21.94 before the Commission on June 15, 2011. Notice of the June 15, 2011 public hearing was published in the local newspaper and sent to 14 property owners of 15 parcels.

Testimony from the applicant's representative, Dan Westerberg and the applicant was received at the public hearing. No other public testimony was offered at the hearing. After deliberations, the commission voted to approve the variance with five Commissioners voting in favor and one Commissioners absent, allowing lawful placement of the 9' x 20' structure 15.1' into the 20' setback, or 4.9' from the Skyline Drive right-of-way.

##### II. Background

On September 2, 2010, Becker recorded a public utility easement on the property. This easement granted

Homer Electric Association, Inc.; General Communications, Inc.; Peninsula Communications, Inc.; Turquoise Broadcast Company, LLC; Becker Communications, LLC; Becker Rentals; any other entity providing electricity, water, sewage, and natural gas as a public utility; and any successors in interest to such entities right and access to the property to install, maintain, repair, and remove water and sewer lines, telephone lines, electrical lines, antennas, repeater/relay/translator stations and the like, as well as structures, storage facilities, and stations to support such systems.

On September 2, 2010, Becker informed the City that he recorded this public utility easement and was withdrawing his variance application as moot.

On September 14, 2010, the Commission issued its decision based upon the evidence presented at the hearing. After the utility easement had been recorded and the Commission issued its decision, Becker appealed that decision to the Board. A hearing was held on this appeal on January 4, 2011. On February 2, 2011, the Board issued a decision, finding that:

- (1) The Commission's September 14, 2010, decision denying Mr. Becker's variance application was not supported by sufficient substantial evidence;
- (2) copies of the written transcript of the hearing are incomplete;
- (3) no evidence opposing the Department's recommending approval of the variance is included in the record;
- (4) the record does not reflect whether the Commission considered the executed and recorded Utility Easement or its relevance to the application; and
- (5) the Commission's decision fails to distinguish whether Mr. Becker's application for a variance is as a public or private utility facility.

The Board remanded the matter back to the Commission in accordance with Homer City Code 21.93.510(a) and HCC 21.93.540(e). The Board remanded the case both to address the lack of sufficient substantial evidence regarding the reasons for denying the variance and consider new evidence regarding the utility easement recorded by Becker on the site at issue. The Board's findings and the Commission's actions and reasoning to address these findings are discussed below.

#### The Incomplete Record

The Board was unable to review a full record of the proceeding before the Commission because parts of the audio recording were lost due to technical difficulties. Therefore a new hearing was held in order to ensure a more complete record.

#### Commission's Denial of Becker's Variance Request

The Commission reconsidered the variance decision based upon evidence presented in the additional hearing.

### Consideration of the Public Utility Easement

The new hearing allowed for the introduction of the new evidence, recorded Utility Easement. In order to determine if an enterprise of facility qualifies as a “public utility” for the purpose of an easement, the Commission determined that such enterprise should be considered a “public utility” by the State of Alaska. A stay from May 18<sup>th</sup> to June 16<sup>th</sup> was provided for Becker to gather evidence regarding the status of his companies as “public utilities” under State law.

### **III. Analysis**

In Becker’s Memorandum on Remand, he argues that the erection of towers and an equipment shelter in the set back on the property in question should be permitted because:

- 1) The equipment shelter is not a “building” and thus is not governed by the setback requirements in the Homer City Code
- 2) The public utility easement is enforceable
- 3) There is substantial evidence supporting Becker’s variance application

### **The Structure Erected by Becker is Subject to the Setback Requirements under the Homer City Code**

The equipment shelter erected by Becker constitutes a “building” under the Homer City Code and thus is subject to the setback requirements under the Code. Contrary to the dialogue provided by Becker interpreting the City Code, a person or entity may not erect towers or equipment shelters, even where such structures qualify as a public utility or structure, in the Rural Residential district without first obtaining a conditional use permit and cannot erect such structures in a setback without obtaining a variance.

Homer City Code 21.12.040 provides the setback requirements for “buildings” in the RR district. The equipment shelter is clearly a “building” under the HCC. Under HCC 21.03.040, a “building” is any structure used or intended to be used or intended for supporting or sheltering any use or occupancy.” “Use” means “the purpose for which land or a structure is occupied, arranged, designed or intended, or for which either land or a structure is or may be occupied or maintained.” Finally, “structure” is defined as “anything constructed or erected that requires location on the ground or that is attached to something having location on the ground.” See HCC 21.03.040.

Nowhere in the definitions are public utility facilities excluded from the definition of “buildings” nor does it make sense to except such facilities from the definition of buildings. Indeed, excluding public utility facilities from the definition of buildings simply because a separate definition of a public utility facility is provided in the Code would potentially exempt all uses specifically defined in the Code from the dimensional requirements under the Code. For example, HCC 21.12.030, permits not only public utility facilities and structures as a conditional use in the RR district, but also group care homes. While “group care home” is separately defined under the Code, such homes are traditionally housed in buildings. Under Becker’s rationale, any building used to house a group home would be exempt from the

dimensional requirements of the Code and could be erected in a setback without a variance. Such a rule would have detrimental effects on Homer's zoning efforts.

Becker's argument that the definition of building is too broad and would encompass poles and other minimal structures is also without merit. The purpose of setbacks is to prohibit erection of structures in the setback, whether the structure is a fence, pole, or a shelter. Public utility companies do in fact obtain public utility easements to erect poles within setbacks and landowners often seek variances for the erection of fence. Again, Becker must obtain a variance to erect a "building" in the setback, regardless of whether that building constitutes a public utility facility permitted in the district with a conditional use permit.

### **The Public Utility Easement Does Not Permit Erection of the Structures in the Setback**

In Becker's Memorandum on Remand, Becker recognizes that neither of the parties leasing the tower space are registered public utilities with the Regulatory Commission of Alaska ("RCA"). Similarly, there is no argument made that the landowner or the entity erecting the buildings in the setback are public utilities registered with the RCA. As argued by the Department in its Staff Report submitted in May, 2011 and for all of the reasons stated in that report, a public utility easement cannot be relied upon by Becker to permit construction in the setbacks unless the entity granted the easement qualifies as a public utility under State law. Becker's concession that the entities granted the easement are not registered as public utilities with the RCA requires the Commission to ignore the public utility easement recorded by Becker and focus instead on evidence regarding Becker's variance application.

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**

The Applicant sought approval to have a 9' x 20' structure located 15.1 feet into the required 20' setback per HCC 21.12.040 (b) (1) at 1033 Skyline Drive in the Rural Residential District. The structure is currently located on the property and was constructed without acquiring a zoning permit from the City of Homer. The structure is located within the 20' setback from the Skyline Drive Right-of-Way. Pre-existing structures, also located on the lot, were accepted as legal non-conforming structures. The as-built survey dated June 29, 2010, shows a 2.6 feet encroachment of an existing building, built prior to City annexation, into the Skyline Drive state right-of-way. The approval or denial of this Variance does not indicate acceptance of any encroachments into the right-of-way.

### **FINDINGS OF FACT**

**Findings in consideration of new evidence presented that the need for a variance is moot.**

**Finding 1:** The equipment shelter erected by Becker constitutes a “building” under the Homer City Code and thus is subject to the setback requirements under the Code.

**Finding 2:** No evidence has been provided that the applicant or any clients of the said facility are considered a “public utility” by the State of Alaska.

**Finding 3:** The public utility easement recorded by Becker on September 2, 2010 is not a basis for erecting structures in violation of Homer City Code.

Pursuant to HCC 21.72.010, a variance may be granted to provide relief when a literal enforcement of Homer Zoning Code would deprive a property owner of the reasonable use of his real property.

Variance Code Requirements: HCC 21.72.020 Conditions precedent to granting variance:

a. All of the following conditions shall exist before a variance may be granted:

1. **A literal interpretation of the provisions of the Homer Zoning Code would deprive the applicant of rights commonly enjoyed by other properties in the same district.**

**Finding 1:** The applicant’s lot provides no other place for the tower to better serve its purpose, with an approved CUP others in the same district do not need a variance due to topography.

2. **Special conditions and circumstances exist which are peculiar to the land or structures involved and which are not applicable to other lands and structures in the same district.**

**Finding 2:** The structure supports and advances technological capabilities within the City of Homer by enhancing wireless communication thus forwarding goals of the comprehensive plan.

**Finding 3:** Locations for communication equipment providing optimal coverage for the entire City of Homer are very limited.

**Finding 3:** The purpose of the tower is telecommunications, in part, for emergency services.

**Finding 4:** The Commission recognizes the important and time sensitive nature of emergency communication requirements related to Fire, EMT, and other vital public safety concerns.

**Finding 4:** The parcel has steep slopes of approximately 38% to 42%. Parcels this steep are often consider “unfeasible” for typical residential development, 2008 City of Homer Comprehensive Plan, page 4-3. Disturbance of native

vegetation for the creation of site development on steep slope presents on site and off site hazards.

**Finding 5:** The structure provides a beneficial service to the city which has specific site requirement for maximum effectiveness in support of emergency services.

**Finding 6:** The benefit to all the Citizens of Homer combined with the potential hazard of creating an unstable bluff justifies an exception to the setback requirement.

**3. The special conditions and circumstances have not been caused by the actions of the applicant.**

**Finding 3:** The necessity of the site specific requirements for the structure, nature of its purpose and the topographical challenges of the site were not caused by the actions of the applicants.

**B. Financial hardship or inconvenience shall not be the sole reason for granting a variance.**

**Finding 4:** Hardship and inconvenience is not the sole reason for this variance request, other special circumstances exist.

**C. Other nonconforming land use or structures within the district shall not be considered grounds for granting a variance.**

**Finding 5:** The applicant is seeking a variance due to the steep slopes on the lot. Though the other structures were built prior to City annexation and zoning, the Applicant is not seeking a variance due of other nonconforming land use or structures within the district.

**D. A variance shall be the minimum variance necessary to permit the reasonable use of the land or structure.**

**Finding 6:** The current location of the structure is the minimum variance necessary to permit its reasonable use.

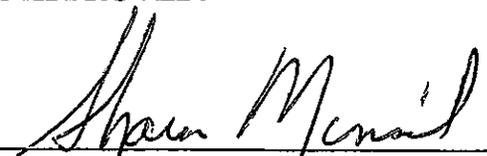
**E. A variance shall not be granted which will permit a land use in a district in which that use is otherwise prohibited.**

**Finding 7:** A communication site is allowed with a Conditional Use Permit in the Rural Residential District per HCC 21.12.030(g).

**DECISION**

**THE APPLICANT HAS MET ALL THE REQUIREMENTS FOR GRANTING A VARIANCE AND THE APPLICATION IS APPROVED.**

Date: 10/20/11

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

Date: 10-20-11

  
\_\_\_\_\_  
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 Nov. 2, 2011. A copy was also delivered to the City of Homer Planning Department and Homer City Clerk on the same date.

Date: 11/02/11

  
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## STAFF REPORT PL 11-115

**TO:** Homer Advisory Planning Commission  
**THROUGH:** Rick Abboud, City Planner  
**FROM:** Julie Engebretsen, Planning Technician  
**MEETING:** November 16, 2011  
**SUBJECT:** HAPC Policies and Procedures

**Requested Action:** Review the amendments to the policies and procedures documents, and make any other changes.

### GENERAL INFORMATION

The Policies and Procedures document is adopted by the City Council by Resolution. They are guidelines for how the HAPC conducts business. This document is reviewed every year or so, to keep it current with city code changes.

Please review the document and make any amendments. Amendments are introduced at one meeting, and adopted at the next meeting. If there are no new amendments, the Commission may recommend approval to the City Council.

### STAFF COMMENTS/RECOMMENDATIONS:

- A. If the Commission makes any new amendments, postpone adoption until the next meeting.
- B. If there are no new amendments, recommend adoption to the City Council.

### ATTACHMENTS

- 1. Draft Policies and Procedures
- 2. Draft Resolution



# Policies and Procedures Homer Advisory Planning Commission



## 2011 Resolution 11-xx

### QUALIFICATION STATEMENT

Nothing in this chapter should be considered in lieu of any applicable laws and procedures found in the Alaska State Statutes, the Kenai Peninsula Borough Code of Ordinances, where applicable, or the Homer City Code.

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## **INTRODUCTION**

The purpose of this policy manual is to clarify the role of the Homer Advisory Planning Commission (“Commission”) in administration of the Homer Zoning Ordinance, Title 21, and Subdivisions, Title 22. Further, this manual describes policies for the Commission that are supplementary or explanatory to the requirements of Homer City Code.

This manual is divided into sections, which explain the policies for administering and implementing the land use permitting ordinances and the zoning ordinance.

The policy and procedure manual will be endorsed by resolution of the City Council and may be amended at any meeting of the Commission by a majority plus one of the members, provided that notice of the proposed amendment is given to each member in writing. Proposed amendments to the procedure manual shall be introduced at one meeting and action shall be taken at a subsequent Commission meeting.

## **PUBLIC TESTIMONY AND COMMENT**

The Commission invites citizen participation regarding matters brought before it for consideration.

For any public participation before the Commission, the citizen should walk to the microphone located at the rostrum directly in front of the Commission podium, sign in, and after receiving recognition from the Chair, state his/her name and address and purpose for appearing. Comments are limited to three minutes. In special circumstances, this time limit may be extended by two minutes by the Chair with concurrence of the body. Items that generate a large amount of citizen interest may be taken out of their regular position on the agenda at the discretion of the Commission as an accommodation to the public. Moving these items on a published agenda will be done at the beginning of the meeting, during the adoption of the agenda.

### **Comment time limits**

Comments and testimony are limited to three minutes. In special circumstances, this time limit may be adjusted by two minutes up or down by the Chair with concurrence of the body.

### **Public Comment**

Any citizen desiring to speak on any matter other than public hearing items or preliminary plats on the agenda may do so under “Public Comments.” After the public comment period is introduced, the Chair may recognize any member of the public who wishes to address the Commission. No official action will be taken by the Commission under this item.

### **Public Hearings and Plats**

The public may comment on public hearing items and preliminary plats when those agenda items are addressed by the commission. These are generally items eight and nine on the regular agenda.

### **Comments on topics not on the agenda**

Any citizen desiring to speak on a matter not on the agenda may do so under “Comments of the Audience,” item number thirteen on the regular agenda.

## **DELIBERATION of QUASI-JUDICIAL DECISIONS**

When making a quasi judicial decision, the Commission may choose to deliberate at an open meeting, or may choose to meet at a time, date and location set by the Commission. Such a meeting for deliberations only is not subject to the Open Meetings Act and is not required to be open to the public.

### **APPEALS (Quasi Judicial)**

#### **PURPOSE**

The purpose of review of appeals before the Commission is to ascertain that errors of fact or interpretation have not been made pertaining to zoning matters. Generally, appeals to the Commission will be appeals of a determination, decision, or permitting matter decided upon by the City Planner.

The City Council, sitting as the Board of Adjustment, hears appeals of decisions made by the Commission. For example, conditional use permits, variance, etc, can be appealed to the Board of Adjustment, or a matter that was appealed to the Commission can be further appealed to the Board of Adjustment.

#### **Public Hearing**

Appeals before the Commission require a public hearing. Notice of the public hearing will be in accordance with HCC 21.93 and HCC 21.94.

#### **Review Standards**

In reviewing an appeal request, the Commission will consider:

1. Documentation of evidence;
2. The Record of Appeal; and
3. Controlling sections of Chapter 21 Homer City Code;
4. Any new evidence or testimony presented during the public hearing.

Once the public hearing is closed, the Commission cannot hear additional comments on the topic.

#### **Determination**

All decisions will be in writing. The officially adopted minutes shall be made part of the decision. A specific statement of findings and reasons supporting the decision shall be made. Copies of the decision will be promptly mailed to the persons participating in the appeal.

An appeal from an action or determination of the Commission is to be filed with the city clerk within thirty days of the distribution of the decision document.

## **REVIEW OF BRIDGE CREEK WATERSHED PROTECTION DISTRICT**

#### **PURPOSE**

The Commission may approve development within the Bridge Creek Watershed Protection District (BCWPD) subject to the standards provided in the zoning ordinance and in compliance with the Comprehensive Plan, for those uses or structures specified within the Bridge Creek Watershed Protection

District ordinance. The purpose is to prevent the degradation of the water quality and protect the Bridge Creek Watershed to ensure its continuing suitability as a water supply source for the City's public water utility. These provisions benefit the public health, safety, and welfare of the residents of the City of Homer and other customers of the city's water system by restricting land use activities that would impair the water quality, or increase the cost for treatment.

### **Conditional Use**

A conditional use permit may be issued in accordance with Chapter 21.61 and subject to the requirements of the Bridge Creek Watershed Protection District Chapter 21.40.060 Conditional uses and structures, and/or Chapter 21.40.080 Erosion sediment control, Chapter 21.40.090 Agricultural activity, Chapter 21.40.100 Timber growing and harvesting operations, Chapter 21.40.110 Stream buffers, and Chapter 21.40.130 Exceptions to buffers.

### **Preliminary Plats**

The Commission will review and comment on all subdivision proposals within the Bridge Creek Watershed Protection District.

## **REVIEW POLICIES FOR CONDITIONAL USE PERMITS (Quasi -Judicial)**

### **PURPOSE**

It is recognized that there are certain uses which are generally considered appropriate in a district, provided that controls and safeguards are applied to ensure their compatibility with permitted principal uses. The conditional use permit procedure is intended to allow Commission consideration of the impact of the proposed conditional use on surrounding property and the application of controls and safeguards. This procedure assures that the conditional use will be compatible with the surrounding area and in keeping with the character and integrity of the neighborhood.

### **Public Hearing**

A public hearing before the Commission is required before a conditional use permit may be granted. Notice of the public hearing will be in accordance with HCC 21.94.

### **Review Standards**

The Commission has 45 days from the close of the public hearing to make a decision on a conditional use permit application. The applicant may agree, in writing, to the extension of the 45 day time period for Commission action.

The Commission may approve, approve with conditions, or disapprove an application. The Commission must prepare written findings and reasons supporting its decision. Approval of a conditional use permit requires five yes votes. If a conditional use permit is denied, the written findings and reasons for that decision will be approved by those who voted against the permit, even if the number against is less than a majority of the Commission.

**Specific conditions may be required.** Such conditions will be part of the terms under which the conditional use permit is granted and violations of such terms shall be deemed a violation of this ordinance. Failure to meet any time limitations imposed by the conditional use permit shall void the permit. An extension may be granted following a public hearing on the matter. Extensions will be granted for good cause only.

The development of the conditional use project or site, following issuance of the permit, will be in accordance with the conditions of the permit, standards of the zoning regulations and/or the approved site plan. Failure to observe any conditions or standards will be deemed a violation.

### **Determination**

The Commission must make findings of fact sufficient to support its decision. Upon determination the Commission will document the decision and the basis for decision. The petitioner will be notified by mail by a copy of the meeting minutes and the decision documentation.

### **Appeals**

The Commission Chair will alert the petitioner and other interested parties in attendance that an appeal of the Commission's decision is possible and that the appeal must be filed within thirty days of the distribution of the decision document.

## **NONCONFORMITY REVIEW POLICIES (Quasi -Judicial)**

### **PURPOSE**

The Commission shall review and determine the nonconformity of certain structures and uses. The purpose of review is to establish the commencement date of use, establish the effective date of applicable regulations, and formally accept the nonconformity ~~and/or establish a reasonable schedule for termination of a nonconformity which significantly impairs the public health, safety and general welfare.~~

City code states which nonconformities are reviewed by the City Planner and which are reviewed by the Commission. Generally, the Commission will be reviewing nonconforming uses within the city, excluding the areas annexed on March 20, 2002.

### **Public Hearing**

The Commission shall conduct a public hearing per HCC 21.94.

### **Review Standards**

It shall be the responsibility of the owner to show proof of continuing nonconformity of any property, use or structure.

Prior to determining the nonconformity of a use or structure, the Commission will determine:

1. The commencement date of use;
2. The effective date of applicable regulations.

There may exist uses, or structures which were legal before the effective date of the controlling regulation, but which are now prohibited under the terms of the existing ordinance. See HCC 21.61.040.

To avoid undue hardships, actual construction lawfully begun prior to the effective date of the zoning ordinance will be allowed to continue provided the work will be carried on diligently. Actual construction is defined as the placement of materials in a permanent position and fastened to produce a product.

### **Nonconforming Uses of Land/Structures**

When a lawful structure exists prior to September 28, 1982, or March 20 2002 for annexed areas, but does not meet the district or ordinance requirements, it shall be considered nonconforming. Nonconforming structures may be continued and/or expanded only on the legal lot if the nonconformity of the structure does not increase.

Legally existing structures are those that:

1. Exist prior to effective date of Ordinance 4-300-2 (Interim Zoning Ordinance) dated June 13, 1966.
2. Exist prior to effective date of Ordinance No. 33 (Kenai Peninsula Borough) dated May 2, 1967 and are in compliance with Ordinance 4-300-2.
3. Exist prior to effective date of Ordinance 78-13 (Kenai Peninsula Borough) dated May 16, 1978 and are in compliance with Kenai Peninsula Borough Ordinance No. 33 and Homer Ordinance 4-300-2.
4. Exist prior to effective date of Ordinance 82-15 (Homer Zoning Ordinance) dated September 28, 1982 and are in compliance with previous zoning ordinance requirements.

Once a structure made nonconforming by this title is abandoned or brought into conformity with this title, the structure shall thereafter conform to the regulations of the zone in which it is located, and the nonconformity shall not be allowed to continue.

~~The A lawful nonconforming use may continue so long as it remains lawful. No nonconforming use may be enlarged to occupy a greater area of land than was occupied as of the date it became nonconforming, or August 12, 2008, whichever is later. It may expand in accordance with 21.61.040.~~ Once a use made nonconforming by this title is abandoned, changed, discontinued, or ceases to be the primary use of a lot, the use of that lot shall thereafter conform to the regulations of the zone which the lot is located, and the nonconformity shall not thereafter be resumed or allowed to continue.

~~A reasonable schedule for the termination of a nonconforming land use/structure which specifically impairs the public health, safety and general welfare will be established by amendment to the zoning ordinance. (See Zoning Amendment procedure.)~~

### **Determination**

Upon presentation of such proof that establishes the continuing nonconformity of any use or structure, the Commission shall formally accept the nonconformity, as a valid use or structure until such time as the use ceases. Upon determination by the Planning Commission staff will document the decision and basis for decision. The petitioner will be notified by mail by a copy of the relevant meeting minutes and the decision documentation.

### **Appeals**

The Commission Chair will alert the petitioner and other interested parties that an appeal of the Commission's decision is possible. The appeal must be filed within thirty days of the distribution of the decision document. The City Clerk will process all appeals.

## PRELIMINARY PLAT REVIEW POLICIES

### PURPOSE

The purpose of this policy statement is to clarify the position of the Commission with regard to their recommendations of acceptance or denial of preliminary plats. This review provides the opportunity for the City to make comments and recommendations to the Kenai Peninsula Borough Planning Commission. The Kenai Peninsula Borough holds platting powers for the entire borough, both inside and outside the city limits. The Homer Advisory Planning Commission acts as an advisory body to the Borough Planning Commission on plat matters inside city limits and within the Bridge Creek Watershed Protection District.

The preliminary plat process allows an exchange of information between the subdivider, the Planning and Zoning Office, and the Commission. Proper utilization of the preliminary process should result in a recommendation of approval for the majority of the plats.

### Procedures

**General.** Kenai Peninsula Borough Code 20.12.050 governs subdivisions in first class cities. A surveyor will submit one full size copy and a 11" x 17" reduced copy of the preliminary plat to the Planning Director when subdividing land in the City of Homer or the Bridge Creek Watershed Protection District. The Commission shall review the plat and take action within forty-nine days of the date of receipt unless the applicant agrees to an extension. Recommendations of the Commission based upon lawful ordinances shall be incorporated in the final plat.

The Commission will consider plats and make recommendations. The staff report and minutes are then forwarded to the borough planning department.

The borough planning commission makes the final determination. Once the preliminary plat has been accepted, the final plat is submitted to the borough for either administrative approval or approval by the borough planning commission.

## ZONING ORDINANCE AMENDMENTS

### PURPOSE

The Commission will review all proposals to amend the zoning ordinance or zoning map and make recommendations to the City Council per HCC 21.95. ~~Neither the Commission nor City Council may consider a zoning map amendment that establishes a new zone within an area of less than one acre, excluding streets and rights-of-way, except for the extension of existing district boundaries.~~ Neither the Commission nor City Council may consider a zoning ordinance request which is substantially the same as any other amendment submitted within the previous nine months and which was rejected.

### Initiation/Application

Amendments to the zoning ordinance will be made in accordance with HCC 21.95. When the amendment request is accepted as complete by the Planning Department, the matter will be scheduled presented within 30 days to the ~~for the next~~ Planning Commission, ~~meeting~~ according to the Commission meeting schedule and due dates.

### **Public Hearing**

A public hearing before the Commission is required. Notice of the public hearing will be in accordance with HCC 21.94. In the case of a zoning ordinance amendment or major district boundary change, no notification of neighboring property will be required, but notices will be posted in at least three public places.

### **Review Standards**

Zoning text and zoning map amendments shall be reviewed according to HCC 21.95.

~~The Commission will generally review the zoning amendment to determine:~~

- ~~1. The public need and justification for the proposed change;~~
- ~~2. The effect on the public health, safety and welfare;~~
- ~~3. The effect of the change on the district and surrounding property; and~~
- ~~4. The relationship to the Comprehensive Plan and purposes of the zoning regulations.~~

~~A balanced decision on a rezone request is one that is not arbitrary, has legitimate public purpose and is consistent with the comprehensive plan.~~

### **Determination**

The Planning Commission shall submit to the City Council its written recommendations per 21.95.060(d) regarding the amendment proposal along with the Planning Department's report on the proposal, all written comments on the proposal, and an excerpt from its minutes showing its consideration of the proposal and all public testimony on the proposal. ~~The Commission will make findings and send its written recommendations to the City Council along with meeting minutes and public records relating to the proposed amendment.~~ Such recommendations of the Commission shall be advisory only and shall not be binding on the City Council.

## **POLICY FOR REVIEW OF ZONING VARIANCES (Quasi-Judicial)**

### **PURPOSE**

The Commission may grant a variance to provide relief when a literal enforcement of the regulations and standards of the zoning ordinance, Chapter 21, would deprive a property owner of the reasonable use of his real property.

The purpose of review is to ascertain that those conditions specified as necessary to granting a variance shall be satisfied; that the variance will be the minimum necessary to permit the reasonable use of land or structure, and that the variance will not be granted which will permit a land use in a district in which that use is otherwise prohibited.

### **Public Hearing**

A public hearing before the Commission is required before a variance may be granted. Notice of the public hearing will be in accordance with HCC 21.94.

### **Review Standards**

In reviewing a variance request and prior to granting a variance, the Commission must consider the standards of review as established in HCC 21.72. All of the conditions must exist before a variance can be granted.

**Determination**

The Commission must prepare written findings and reasons supporting its decision. Approval of a variance requires five yes votes. If a variance is denied, the written findings and reasons for that decision will be approved by those who voted against the permit, even if the number against is less than a majority of the Commission. Upon determination, staff will document the decision and the basis for decision. The petitioner will be notified by mail with a copy of the meeting minutes (those portions that apply to the petition) and the decision documentation.

The Commission Chair will alert the petitioner and other interested parties that an appeal of the Commission's decision is possible. The appeal must be filed within thirty days of the distribution of the decision document. The City Clerk will process all appeals.



**CITY OF HOMER  
HOMER, ALASKA**

**Planning**

**RESOLUTION 11-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF HOMER ALASKA  
AMENDING THE HOMER ADVISORY PLANNING COMMISSION  
POLICY AND PROCEDURES MANUAL**

WHEREAS, the Homer Advisory Planning Commission has reviewed the Policies and Procedures Manual; and

WHEREAS, the Homer Advisory Planning Commission recommended amendment of the Policies and Procedures Manual at their Regular Meeting of \_\_\_\_\_, 2011.

NOW, THEREFORE, BE IT RESOLVED that the City Council amends the Homer Advisory Planning Commission Policies and Procedures Manual as shown in Attachment A.

ADOPTED BY THE HOMER CITY COUNCIL, ALASKA, this \_\_\_\_\_ day  
of \_\_\_\_\_ 2011.

CITY OF HOMER

\_\_\_\_\_  
JAMES HORNADAY, MAYOR

ATTEST

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





## 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)

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### STAFF REPORT PL 11-118

**TO:** Homer Advisory Planning Commission  
**FROM:** Rick Abboud, City Planner  
**MEETING:** November 16, 2011  
**SUBJECT:** Meeting Schedule for 2012

The City Clerk has provided the 2012 meeting schedule for your review and consideration. She requested the Commission review the schedule and make any amendments you would like to see.

In the past, the Commission has elected to not schedule a regular meeting for the second meetings in November and December. If the Commission wishes to do this for 2011, the schedule should be amended to remove the November 21st meeting. The December 19<sup>th</sup> meeting has already been removed by the Clerk's office.

Staff notes that the November 21 meeting falls on the Wednesday the week of Thanksgiving next year. The December 19<sup>th</sup> meeting falls on the Wednesday before Christmas.

#### ATTACHMENTS

1. Draft Resolution 11-XX



# Office of the City Clerk

Jo Johnson, CMC, City Clerk  
Melissa Jacobsen, CMC, Deputy City Clerk II  
Renee Krause, CMC, Deputy City Clerk I



491 E. Pioneer Avenue  
Homer, Alaska 99603  
(907) 235-3130  
(907) 235-8121  
ext: 2224, 2226, or 2227  
Fax: (907) 235-3143  
Email: clerk@ci.homer.ak.us

## MEMORANDUM

TO: COUNCIL'S ADVISORY BODIES

FROM: JO JOHNSON, CITY CLERK

DATE: NOVEMBER 2, 2011

SUBJECT: 2012 MEETING SCHEDULE

Please review the 2012 meeting schedule for your Advisory Body and approve with or without amendments. The draft resolution includes the entire 2012 meeting schedule. The resolution will be presented to Council on December 12, 2011 for adoption.

A memo or excerpt from the meeting minutes noting the action by your advisory body is needed. Please return this to the City Clerk by December 6, 2011.

Thank you!



**CITY OF HOMER  
HOMER, ALASKA**

City Clerk

**RESOLUTION 11-XXX**

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA, ESTABLISHING THE 2012 REGULAR MEETING SCHEDULE FOR THE CITY COUNCIL, ECONOMIC DEVELOPMENT ADVISORY COMMISSION, LIBRARY ADVISORY BOARD, PARKS AND RECREATION ADVISORY COMMISSION, ADVISORY PLANNING COMMISSION, PORT AND HARBOR ADVISORY COMMISSION, LEASE COMMITTEE, PERMANENT FUND COMMITTEE, PUBLIC ARTS COMMITTEE AND TRANSPORTATION ADVISORY COMMITTEE.

WHEREAS, Pursuant to Homer City Code Section 1.14.020, the City Council annually sets the schedule for regular and some special meetings, noting the dates, times and places of the City Council, Advisory Commissions, and the Library Advisory Board meetings; and

WHEREAS, The public is informed of such meetings through the kiosks located at Captain's Coffee, Harbormaster's Office, Redden Marine Services of Homer, and the City Clerk's Office, Clerk's Calendar on KBBI, the City Clerk's Home Page on the Internet, and postings at the Clerk's Office at City Hall, and the Public Library; and

WHEREAS, HCC 1.14.020 - 040 states that meetings may be advertised in a local paper of general circulation at least three days before the date of the meeting and that special meetings should be advertised in the same manner or may be broadcast by local radio at least twice a day for three consecutive days or two consecutive days before the day of the meeting plus the day of the meeting; and

WHEREAS, HCC 1.14.010 notes that the notice of meetings applies to the City Council and all commissions, boards, committees, subcommittees, task forces and any sub-unit of the foregoing public bodies of the City, whether meeting in a formal or informal meeting; that the failure to give the notice provided for under this chapter does not invalidate or otherwise affect any action or decision of a public body of the City; however, this sentence does not change the consequences of failing to give the minimum notice required under State Statute; that notice will ordinarily be given by the City Clerk; and that the presiding officer or the person or persons calling a meeting are responsible for notifying the City Clerk of meetings in sufficient time for the Clerk to publish notice in a newspaper of general circulation in the City; and

WHEREAS, This Resolution does not preclude additional meetings such as emergency meetings, special meetings, worksessions, and the like; and

WHEREAS, Council adopted Resolution 06-144 on October 9, 2006 establishing the Regular Meeting site for all bodies to be the City Hall Cowles Council Chambers.

NOW, THEREFORE, BE IT RESOLVED by the Homer City Council, that the 2012 meeting schedule is established for the City Council, Economic Development Advisory Commission, Library Advisory Board, Parks and Recreation Advisory Commission, Advisory Planning Commission, Port and Harbor Advisory Commission, Lease Committee, Permanent Fund Committee, Public Arts Committee and Transportation Advisory Committee of the City of Homer, Alaska, as follows:

Holidays - City Offices closed:

January 1*, New Year's Day, Sunday so will be observed on Monday, January 2	February 20*, Presidents' Day, the third Monday	March 26*, Seward's Day, last Monday	May 28*, Memorial Day, last Monday	July 4*, Independence Day, Wednesday	September 3*, Labor Day, first Monday
October 18*, Alaska Day, Thursday	November 11**, Veterans Day, Sunday so will be observed on Monday, November 12	November 22* Thanksgiving Day, Thursday	November 23*, Friday, the day after Thanksgiving	December 25*, Christmas, Tuesday	

\*Indicates holidays - City offices closed.

\*\*If on a Sunday, the following Monday is observed as the legal holiday; if on a Saturday, the preceding Friday is observed as the legal holiday pursuant to the City of Homer Personnel Rules and Regulations.

CITY COUNCIL (CC)

January 9, 23	February 13, 27	March 12, 27*	April 9, 23	May 14, 29*	June 11, 25
July 9**, 23	August 13, 27	September 10, 24	October 2 Election	October 8, 22, for Oath of Office, 15	Canvass Board October 5 or 8
November 6 Run- Off Election	November 12**, 26	December 10****	December 17**** if needed		

City Council's Regular Committee of the Whole Meetings at 5:00 p.m. to no later than 5:50 p.m. prior to every Regular Meeting which are held the second and fourth Monday of each month at 6:00 p.m. \*\*\* The City Council traditionally reschedules regular meetings that fall on holidays or High School Graduation days, for the following Tuesday. Council will not conduct a First Regular Meeting in July.

AML Annual Conference Week is tentatively scheduled for November 12 - 16, 2012.

\*Tuesday meeting due to Seward's Day/Memorial Day.

\*\*There will be no First Regular Meeting in July or November.

\*\*\*\* The City Council traditionally cancels the last regular meeting in December and holds the first regular meeting and one to two Special Meetings as needed. Generally the second Special Meeting the third week of December, will not be held.

ECONOMIC DEVELOPMENT ADVISORY COMMISSION (EDC)

January 10	February 14	March 13	April 10	May 8	June 12
July 10	August 14	September 11	October 9	November 13	December 11

Economic Development Advisory Commission Regular Meetings are held on the second Tuesday of each Month at 6:00 p.m.

LIBRARY ADVISORY BOARD (LAB)

January 3	February 7	March 6	April 3	May 1	June 5
July 3	August 7	September 4	October 2	November 6	December 4

Library Advisory Board Regular Meetings are held on the first Tuesday of each month at 5:00 p.m.

PARKS AND RECREATION ADVISORY COMMISSION (P/R)

January 19	February 16	March 15	April 19
May 17	June 21	July 19	August 16
September 20	October 25*	November 15	

Parks and Recreation Advisory Commission Regular Meetings are held on the third Thursday of each month, with the exception of December, at 5:30 p.m. \*Rescheduled due to Alaska Day Holiday.

PLANNING COMMISSION (P/C)

January 4, 18	February 1, 15	March 7, 21	April 4, 18	May 2, 16	June 6, 20
July 18**	August 1, 15	September 5, 19	October 3, 17	November 7, 21	December 5**

Advisory Planning Commission Regular Meetings are held on the first and third Wednesday of each month at 6:30 p.m. \*\*There will be no First Regular Meeting in July or Second Regular Meeting in December.

PORT AND HARBOR ADVISORY COMMISSION (P/H)

January 25	February 22	March 28	April 25	May 23	June 27
July 25	August 22	September 26	October 24	November 21	December 19

Port and Harbor Advisory Commission Regular Meetings are held on the fourth Wednesday of each month at 5:00 p.m. The Regular Meetings in the months of November and December are traditionally scheduled for the third Wednesday of the month.

LEASE COMMITTEE (LC)

January 12	April 12	July 12	October 11
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Lease Committee Regular Meetings are held quarterly on the second Thursday of each month at 3:00 p.m.

PERMANENT FUND COMMITTEE (PFC)

February 9	May 10	August 9	November 8
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Permanent Fund Committee Regular Meetings are held quarterly on the second Thursday of the months of February, May, August, and November at 5:15 p.m.

PUBLIC ARTS COMMITTEE (PAC)

February 9	May 10	August 9	November 8
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Public Arts Committee Regular Meetings are held quarterly on the third Thursday of the months of February, May, August, and November at 5:00 p.m.

TRANSPORTATION ADVISORY COMMITTEE (TAC)

February 21	May 15	August 21	November 20
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Transportation Advisory Committee Regular Meetings are held quarterly on the third Tuesday of the months of February, May, August, and November at 5:30 p.m.

PASSED AND ADOPTED by the Homer City Council this 12<sup>th</sup> day of December, 2011.

CITY OF HOMER

JAMES C. HORNADAY, MAYOR

ATTEST:

JO JOHNSON, CMC, CITY CLERK

Fiscal Impact: Adverting of meetings in regular weekly meeting ad and advertising of any additional meetings.