

Session 14-13, a Regular Meeting of the Homer Advisory Planning Commission was called to order by Chair Venuti at 6:30 p.m. on July 16, 2014 at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

PRESENT: COMMISSIONERS BOS, ERICKSON, HIGHLAND, STEAD, STROOZAS, VENUTI

STAFF: CITY PLANNER ABBOD
DEPUTY CITY CLERK JACOBSEN
PUBLIC WORKS DIRECTOR MEYER

Approval of Agenda

Chair Venuti called for a motion to approve the agenda.

HIGHLAND/STEAD SO MOVED.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

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).

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.

A. Approval of Minutes of June 18, 2014 meeting

Chair Venuti called for a motion to approve the consent agenda.

HIGHLAND/STEAD SO MOVED.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

Presentations

Reports

A. Staff Report PL 14-60, City Planner's Report

City Planner Abboud reviewed his staff report. Question was raised relating to the proposed public safety building site. City Planner Abboud explained that a site has not been selected yet.

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.

Commissioner Erickson stated she has a conflict of interest for all the items before the Commission tonight.

BOS/HIGHLAND MOVED THAT COMMISSIONER ERICKSON HAS A CONFLICT OF INTEREST.

Commissioner Erickson disclosed that she has a business relationship with the applicants involved in the CUP applications and the plat, and also with property owners involved in the public right of way vacation request.

VOTE: YES: BOS, STEAD, HIGHLAND, VENUTI, STROOZAS

Motion carried.

Commissioner Erickson left the meeting.

A. Staff Report PL 14-61, CUP 2014-10 Request to operate daycare facility at 1164 East End Road

City Planner Abboud reviewed the staff report.

Susanna Webster, applicant, commented that since the last application before the commission she purchased a property for her daycare facility. It is more spacious than the previous location to better accommodate parking and play area for the children in her care.

Chair Venuti opened the public hearing.

Diane Borgman, city resident, commented in support of the CUP. She knows Ms. Webster and would entrust her with her grandchildren. She also thinks it's important to recognize the need for decent, caring, and safe child care.

Malcolm Gaylord commented that he has two children at Smallpond Childcare and supports the CUP. He appreciates the teaching style that Ms. Webster uses in her program and that the children are learning good lessons.

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Michelle Borland commented that she has a child at Smallpond Childcare and also a niece and nephew. She supports the CUP. She noted in the City Planner's report he said child care is kind of a vital part of a community. She believes it is an integral part of the community and people who are professionals simply cannot live here without it.

Frank Griswold, city resident, said he has no objection to the daycare center. He expressed his view that City Planner Abboud misinterpreted HCC 21.71.030(j) which requires all conditional uses comply with all applicable provisions of the community design manual. Any provision of the CDM that can be applied, must be applied to a conditional use. The effect of adopting Mr. Abboud's analysis would be to disregard HCC 21.71.030(j).

Kenton Bloom, city resident and neighboring property owner, commented in support of the CUP as a neighbor and as the parent of Smallpond alumni. He added that in his experience working with the planning department on CUP's and addressing the design manual, he thinks the interpretation relating to this CUP is consistent with the experience he has had.

Rebecca Clarke, non-resident, commented in support of the CUP for Smallpond. She participated in the last hearing and is glad it didn't go through because this is a much better situation for the facility. She added she was alarmed last time at some of the comments that "if I had a daycare next to me I think I would move". It was surprising to hear that from the Planning Commission and encouraged them to make decisions based on improving the community, and not their personal opinions.

There were no further comment, the hearing was closed, and the floor was open for staff and applicant rebuttal.

City Planner Abboud commented that the only applicability part of the design manual relating to the residential office district relates to outdoor lighting. As far as a conditional use goes, the Commission can make any special condition they think is necessary.

Ms. Webster had no rebuttal comments.

Question was raised regarding the shed that appears to encroach into the 5 foot setback and about a fence that is indicated on the asbuilt near the cemetery. Ms. Webster explained that they had planned to tear the shed down, but decided to wait to determine what kind of historical value there may be to the shed. After they investigate it further, they will decide whether to invest in trying to move it or take it down in a way to salvage materials that may have value. She noted that it is away from the area where the children will play. The fence in question was around a small garden area and has already been dismantled.

BOS/STEAD MOVED TO ADOPT STAFF REPORT PL 14-61, CUP 14-10 FOR A DAYCARE FACILITY IN THE RESIDENTIAL OFFICE DISTRICT AT 1164 EAST END ROAD WITH FINDINGS 1-10 AND CONDITIONS 1-6.

There was brief discussion that this property is much better than the property they considered last time.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

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Motion carried.

B. Staff Report PL 14-62, Vacation of public right of way portion of Willow Drive

City Planner Abboud reviewed the staff report. He acknowledged the written comments of opposition to the vacation, one presented as a lay down from Irene Clark and one in the packet from Bonnie Boisvert.

Nickolas Botkin, petitioner and resident on Willow Drive, explained the layout of the land that is addressed in the vacation request. Because of the grade of the slope on Willow Drive it will be too expensive to bring the road up to safety standards for the city. The slope causes safety issues for drivers and pedestrians in the winter; also drivers having low visibility and poor traction at the stop sign. He has lived there for three years and has seen countless people slide off the road in almost have accidents at the intersection or slide off into the ditches. There have been instances where vehicles have slid within inches of his well head or his shop because the whole area is extremely steep. They met with Public Works Director Meyer and discussed a cul-de-sac, which seems to be a good option in addressing the issues of the road. Mr. Botkin addressed the letter provided as a laydown and said he doesn't recall ever seeing a school bus go down the road. If the bus couldn't make it up Mission Road, he doesn't see how they could turn onto Willow without incident. He explained the road was difficult to drive on over earlier in the summer with the heavy equipment going up and down Willow from East Hill for the gas line. The person who wrote the other letter lives on the corner of Willow and East Hill the bad part of Willow isn't near their property so he is unsure of their issue as their driveway turns onto East Hill.

Malcolm and Allison Gaylord, petitioners and residents on Willow Drive, concurred with the issues raised by Mr. Botkin. Mr. Gaylord shared his concern about increased traffic on the road and also safety concerns for kids waiting for the bus at the corner of Mission and Willow. They shared their experience in dealing with cars that slide off the road in the winter.

Chair Venuti opened the public hearing.

Diane Borgman, resident on Spruce Circle, said she isn't necessarily opposed to the vacation if it includes paving the road. In the spring during break up, she needed to access Willow to get from her home to get to Mission Road. If it doesn't include paving, she is opposed. When break up happens she can't get out onto East Hill past all the mud bogs. She hasn't experienced the cars sliding. She is interested in knowing what the plan is.

Jacque Botkin commented that when she and her husband visit Mr. Botkin's house they witness people siding backwards and have pulled people out of the ditch. People have asked to be pushed up the hill, but they haven't done that and suggested they turn around and go the other way. She also noted issues with visibility on Mission Road, especially during the winter.

Carey Meyer, Public Works Director, commented that he has been approached by several property owners to come up with a solution for the intersection in question. In the discussions he spoke to the road maintenance crews whose comments are very similar to the comments tonight. The approach up Willow to Mission Road is steep, and for it to meet city standards it would be costly to upgrade. It is

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safer to make it a cul-de-sac and vacate the remaining portion of road. He is supportive of vacating from the city's perspective.

There were no further comments and the hearing was closed.

The floor was open to rebuttal by applicants.

Public Works Director Meyer noted the concern that was raised regarding maintaining electrical service to the neighborhood, he isn't certain of the location of the electrical line, but a utility corridor would be maintained if the vacation is approved. He talked about concerns of interconnectivity within the subdivision. In his opinion the cost to connect the roads here would be high and if we were to create a cul-de-sac, it would still meet code requirements for the subdivisions length of cul-de-sac and the number of lots served. He acknowledged the issue of the road deteriorating in the spring time as many roads in that area do. The idea of conditionalizing this vacation and saddling the four property owners with improving the road doesn't seem to be fair. This neighborhood, as well as any other, can access HART program funds to create a special assessment district to participate in the cost of improving their road.

Mr. Botkin added that there have been discussions with Public Works about the issue with road deterioration and agree that it will cost a lot less to fix half of Willow Drive. In the long run it will save everyone money.

In response to questions about access, Mr. Botkin talked about their access and heavy equipment on the road when they were doing gas line improvements.

In response to questions regarding paving the cul-de-sac, Mr. Meyer reviewed the special assessment district process and costs involved.

Kenai Peninsula Borough Code, regarding rights of way used by a public utility, says rights of way shall not be vacated unless it can be demonstrated equal or superior access is or will be available. Commissioner Stead asked if access will be accommodated if the connection to Mission is terminated. Public Works Director Meyer's opinion was that the best access is from Mission Road to East Hill. It is unlikely that they will ever get a road that meets city standards and provides safe access.

STEAD/HIGHLAND MOVED THAT THE PLANNING COMMISSION SUPPORTS THE PROPOSAL TO VACATE A RIGHT OF WAY AND PUBLIC UTILITY EASEMENT AND DEDICATION OF A PUBLIC USE EASEMENT AND PUBLIC UTILITY EASEMENT OF THE THE NORTHERN 200' OF WILLOW DRIVE.

There was discussion in opposition because the movement of emergency vehicles down that right of way, if we vacate the northern portion, is questionable in the spring time. If there was assurance that the road would be upgraded, it would be more reasonable to support it.

Comments in support included that there are roads that get difficult in the spring. It's part of the deal where you live and you figure out what to do when the road is impassable. We don't have the money to fix all these and there are a lot of places where the emergency vehicles can't get to in the spring. This is no different than others, and it serves less people than a lot of other ones. Contacting Public

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Works as soon as possible when bad spots start showing up will sometimes get results in making a road passable.

VOTE: YES: STROOZAS, BOS, HIGHLAND
NO: STEAD, VENUTI

Motion failed for lack of a majority.

Chair Venuti called for a short recess at 8:03 p.m. and the meeting reconvened at 8:08 p.m.

C. Staff Report PL 14-63, Board of Adjustment Remand of CUP 2013-13 3850 Heath Street to the Homer Advisory Planning Commission

City Planner Abboud reviewed the staff report outlining the responsibility of the remand. The Board of Adjustment remand order requires the Commission:

- Require and consider additional evidence in determining whether the property complies with the Homer Zoning Code as required under HCC 21.90.030.
- Make findings regarding the property's compliance with Homer Zoning Code
- Revisit findings no. 5 and 8 after considering additional evidence regarding compliance.

Chair Venuti opened the public hearing.

Frank Griswold, city resident and appellant in the appeal of CUP 13-13, commented that one zoning permit cannot authorize four cabins on the same lot; anything more than one principle use on a lot in the CBD requires a CUP. There are six structures on the lot and no valid zoning permits. He raised the issue of the telecommunication tower and that it's addressed in the definitions in HCC 21.03.040. He recommended they postpone and get an unbiased legal opinion. The city can't issue CUP's where there are existing unabated violations, and the BOA determined a CUP cannot be issued as long as zoning violations exist on the subject property. He referenced City Planner Abboud's comment in the analysis on page 3 of the staff report finding the interpretation to be problematic and requested a review from City Attorney Klinkner. Mr. Griswold raised the following points:

- Attorney Tom Klinkner is one of the City Attorneys. Homer is represented by the entire law firm of Birch, Horton, Bittner, and Cherot.
- Attorney Holly Wells represented the BOA because Attorney Klinkner had already advised/represented Mr. Abboud and the administration. It would have been a conflict for Mr. Klinkner to concurrently represent the board and commission.
- Mr. Abboud and the planning department are part of the administration, not part of the Planning Commission. Mr. Abboud has no more right to sign a commission decision than Mr. Griswold does.
- The planning department makes recommendations to the Planning Commission, who then makes the decision on whether or not to approve a CUP. The Commission is under no obligation to follow the recommendations of staff.
- While the planning department has been provided legal counsel and the BOA has been provided legal counsel, but the Planning Commission, who is arguably the most important, has not been provided council.

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- The Planning Commission should request it be provided independent, impartial legal representation from an attorney not affiliated with Birch, Horton, Bittner, and Cherot.

Mr. Griswold raised that an issue to be addressed is whether Mr. Abboud or the Commission has the authority to now raise issues regarding the decision of the BOA. He believes not. Mr. Abboud had the opportunity to raise issue of conflicting code in his opening brief and at the appeal hearing, but he didn't. The Commission can't take that up now. Reinterpreting the zoning code to give it a different meaning leads to a steep slope of arbitrary decision making and violates HCC 21.70.030(c) by granting waivers, and deviations to provisions of zoning code. Mr. Griswold added that Attorney Klinkner has misrepresented Mr. Griswold's opinion in the attorney's latest memorandum, but it's the BOA determination that matters. A CUP can be approved for properties with correctable zoning violations subject to the abatement of those violations, but no CUP can be issued to legalize any building that was initially constructed without a prerequisite zoning permit. A CUP can't be issued after the fact zoning permits unless the code is amended as such. Under HCC 21.01.030, none of the purposes of zoning include keeping properties on the tax rolls or otherwise producing revenue. He urged them to postpone their decision on the remand and hire Attorney Michael Gaudi to advise and represent the Commission.

There were no further comments and the hearing was closed. Chair Venuti opened the floor for rebuttal.

City Planner Abboud explained his job as administrator in terms of interpreting code relating to whereas clauses and the context in the community. His theory is when a mistake can be corrected in a way that fits within the law; he will work with an applicant to find resolution.

There was discussion referencing City Attorney Klinkner's information in the staff report which sums up the issue in that the City Planner made an interpretation and the Commission did things accordingly because they are calling for the correction of the zoning violations as a condition of the approval. They also clarified the process relating to the BOA remand and an appellants option to take it further if they choose.

The Commission and the City Planner acknowledged the issue raised in Mr. Griswold's laydown information relating to the tower on the Horizon Satellite building, a building involved in the CUP 13-13. No action was taken regarding the tower.

HIGHLAND/BOS MOVED TO APPROVE CUP 13-13 AT 3850 HEATH STREET UPON REMAND WITH ADDITIONAL FINDINGS R1 THROUGH R9 AND ADDITIONAL CONDITIONS R1 THROUGH R4.

City Planner Abboud reiterated that the issues before the Commission tonight that came from the remand are outlined in the three bullet points on page 50 of the packet.

Discussion ensued on the condition R3 "Submission of engineered plans for water and sewer service for all structures must be accepted for compliance with AKDEC". City Planner Abboud clarified that there is water and sewer to the buildings and this condition is about making their design to service multiple structures compliant with DEC regulations for multiple connections, since there are six structures on the lot.

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There was discussion in an effort to clarify the history of permitting activity on the lot over the years based on information included in the packet materials. City Planner Abboud pointed out that CUP 13-13 is for the duplex, but the zoning permit is for all the buildings. They reviewed the site plan and touched on what the Fire Marshall review might entail, and addressed ideas of how to address ensuring the current buildings on the site are properly permitted.

HIGHLAND/STROOZAS MOVED TO ADD CONDITION R5 THAT ALL BUILDINGS ON THE SITE ARE SUBJECT TO ISSUANCE OF A ZONING PERMIT BEFORE COMMENCING FURTHER ACTIVITY ON THE LOT.

There was brief discussion in support of the motion.

VOTE: YES: VENUTI, BOS, STEAD, HIGHLAND, STROOZAS

Motion carried.

There was no further discussion on the main motion as amended.

VOTE: YES: STEAD, STROOZAS, VENUTI, HIGHLAND, BOS

Motion carried.

City Planner Abboud said he will include an evaluation of the tower in the permitting process.

The Commission agreed by consensus to extend the meeting adjournment to 10:00 p.m.

Plat Consideration

A. Staff Report PL 14-64, Vineyard Estates 2014 Addition Preliminary Plat

City Planner Abboud reviewed the staff report.

Question was raised regarding water service to the lots. City Planner Abboud noted that water and sewer is addressed by city code and not through a plat note. It appears there is a water valve to one property, but he isn't sure about the second.

HIGHLAND/BOS MOVED TO APPROVE STAFF REPORT PL 14-64, VINEYARD ESTATES 2014 ADDITION REPLAT PRELIMINARY PLAT WITH STAFF COMMENTS AND RECOMMENDATIONS.

There was no further discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

Pending Business

A. Staff Report PL 14-65, Safe Streets

City Planner Abboud reviewed the staff report.

There was discussion about the cost of speed bumps and challenges of speed bumps on gravel roads; they also touched on raised intersections. They addressed improvements that the Old Town group has been working on, and challenges at Hornaday Park.

Question was raised whether the Mattox neighborhood had taken any steps toward road improvements in their area. City Planner Abboud said they haven't.

HIGHLAND/BOS MOVED THAT ON STAFF REPORT 14-65 THE COMMISSION SUPPORTS ALL THE CONCEPTS PRESENTED.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

B. Staff Report PL 14-67, Creation of the East End Residential/Commercial Mixed Use District

The Commission discussed the district during their worksession before the meeting.

City Planner Abboud reviewed the staff report and the proposed East End Residential/Commercial Mixed Use District uses. They discussed that there are a lot of similarities between this district and Residential Office and raised the question of whether it would be better to make modifications to RO rather than creating a new district.

STEAD/HIGHLAND MOVED THAT WE ABANDON THE EAST END RESIDENTIAL/COMMERCIAL MIXED USE DISTRICT ORDINANCE AND EXPAND THE RESIDENTIAL OFFICE DISTRICT TO INCLUDE THESE PROPERTIES OF INTEREST AND SEE IT AT THE NEXT MEETING.

There was discussion that they can amend residential office at a later date if they choose to.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

New Business

A. Staff Report PL 14-68, CIP List Recommendations

The Commission addressed the CIP list at the worksession. City Planner Abboud asked them to be prepared at the next meeting to make their recommendations.

Informational Materials

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- A. City Manager's Report from the June 23 City Council Meeting
- B. Kenai Peninsula Borough Plat Committee Notice of Decisions
 - Ditton 2014 Replat Tract A Preliminary Plat
 - Harrington Heights 2014 Replat Preliminary Plat
 - Barnett Subdivision Quiet Creek Addition 2014 Preliminary Plat
- C. Kenai Peninsula Borough Planning Commission Notice of Decision
 - Vacate the pedestrian and utility easement along the southwest property line of lot 23 granted by Homer Spit No. Five (Plat HM 93-12) all located within Section 36 Township 6 South, Range 13 West, Seward Meridian

There was no discussion regarding informational items.

Comments of the Audience

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

Comments of Staff

City Planner Abboud commented they had some difficult subjects and challenges to code tonight. While no code is ever perfect, we can always try to improve it. When permitting anything on a lot he will include a review of all the structures on the lot. With the remand he will incorporate the phenomena that is an attached tower and give it due consideration.

Comments of the Commission

Commissioner Highland asked if they would talk about towers at their next agenda. City Planner Abboud said that might be part of their joint worksession with Council, to see what resources they want to expend on towers. She likes the ordinance that Kenai has.

Commissioner Bos said it was a good meeting and he is really happy Ms. Webster found a great site for her daycare.

Commissioner Stead had no comment.

Commissioner Stroozas agreed with Mr. Bos' comments.

Adjourn

There being no further business to come before the Commission, the meeting adjourned at 10:00 p.m. The next regular meeting is scheduled for August 6, 2014 at 6:30 p.m. in the City Hall Cowles Council Chambers.

MELISSA JACOBSEN, CMC, DEPUTY CITY CLERK

Approved: _____