

WORK SESSION AGENDA

1. Call to Order 5:30 p.m.
2. Carey Meyer, Public Works Director to discuss the City's:
 - Storm water infrastructure
 - Future storm water needs
 - Green infrastructure
 - Public Safety Building Update
3. Discussion of Items on the Regular Meeting Agenda
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.

A. Approval of Minutes of January 21, 2015 meeting

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B. Decisions and Findings for CUP 2015-01 for 7 cottages at 2315 East End Road

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6. Presentations

7. Reports

A. Staff Report PL 15-09, City Planner's Report

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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.

9. Plat Consideration

10. Pending Business

A. Staff Report PL 15-10 Towers

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11. New Business

A. Staff Report PL 15-11 Draft ordinance for Site Development Requirements

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B. Staff Report PL 15 12 BCWPD recommendations to City Council

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12. Informational Materials

A. City Manager's Report for the Jan. 26, 2015 City Council Meeting

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B. Board of Adjustment decision regarding 3850 Heath Street, CUP 13-13

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C. KPB Plat Committee Decision on Barnett Sub. Quiet Creek Add. 2014 Final Plat

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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:

Next regular meeting is scheduled for February 18, 2015. A work session will be held at 5:30 pm. Meetings will adjourn promptly at 9:30 p.m. An extension is allowed by a vote of the Commission.

Session 15-02, a Regular Meeting of the Homer Advisory Planning Commission was called to order by Chair Stead at 6:30 p.m. on January 21, 2015 at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

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

ABSENT: ERICKSON

STAFF: CITY PLANNER ABBOUD
DEPUTY CITY CLERK JACOBSEN
PLANNING TECHNICIAN BROWN

Approval of Agenda

Chair Stead called for a motion to approve the agenda.

HIGHLAND/BRADLEY 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).

None

Reconsideration

None

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 January 7, 2015

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

VENUTI/HIGHLAND SO MOVED.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

Presentations

None

Reports

- A. Staff Report PL 15-05, City Planner's Report

City Planner Abboud reviewed the 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 15-06, Conditional Use Permit 2015-01 for 7 cabins on a lot at 2315 East End Road

Commissioner Venuti declared he has a conflict of interest.

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

Commissioner Venuti explained that he has a business relationship with the client and it falls within the limits outlined in city code.

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

Motion carried.

Commissioner Venuti left the table.

City Planner Abboud reviewed the staff report.

Kurt St. Jean, applicant, commented about Homer's housing needs and the good results he has had with the cabins he built on Kachemak Drive. He thinks the small one bedroom cabins give renters more of a feeling of independence and leaving some of the trees on the property will provide buffers for the tenants. The cabins will be professionally managed, boat storage will not be allowed, there will be a dumpster on site, and he will build storage facilities so there won't be stuff strewn around the yards.

Chair Stead opened the public hearing.

Leah Jenkins, city resident and adjacent property owner, referenced the aerial photo to show her lot and identify a gully that runs along the property. She expressed her concern about plans for the septic and water, and that she is unclear where the utility right-of-way is. She sent a letter to the Commission that was provided in their meeting packet.

Ken Ozment, city resident and neighboring property owner, referenced the aerial photo to show his lot and where the power line is located. He stated he is adamantly opposed to the project because he believes it will negatively impact the neighborhood and property values. He believes there are better areas for this type of a housing project. His concerns include increased noise, excessive vehicles, pets, and it could attract more bears to the area. He sent a letter to the Commission that was provided in their meeting packet.

Ron Broste, city resident and property owner in the noticed district, opposes the development. He cited concerns with increased traffic in an spot where the speed limit increases from 35 to 45 MPH. The grade of the driveway is fairly steep and the line of sight is questionable there. He also expressed concern about increased noise.

Ray Kranich, city resident and property owner in the noticed district, commented in opposition of the project based on the density of the project. He doesn't believe the lot is big enough to meet the minimum requirements.

Barbara Williams, city resident and property owner in the noticed area, said she has lived on her property since 1965. She commented in opposition of the project because of the increased traffic, the steepness of the driveway, and increased congestion when the cabins are full.

There were no further comments. Chair Stead closed the public hearing and opened the floor to rebuttal by staff and applicant.

City Planner Abboud explained that Mr. St. Jean will have to get permits from Public Works and approval by DEC for the sewer line utility easement and have a legal connection before any of the structures can be permitted. He concurred with concerns about the speed limit and noted people have attempted to get it lowered in that particular area. The density for the development is legal for this subdivision, and it is next to the infrastructure which the Comprehensive Plan would say is where you would want the development.

Mr. St. Jean commented that work is currently being done to improve the grade of the driveway. He understands this is something new and hard for people to envision, but he doesn't believe it will devalue the property. It will be a clean and well put together project.

In response to questions from Commissioners, Mr. St. Jean said he may consider an onsite manager if he found the right person. He wouldn't consider lowering the number of cabins because what he has proposed fits on the property. The sewer line is stubbed to the lot as shown and the property has been surveyed. Fencing is an option if there is an apparent problem. He explained that the units will be built on pilings, similar to what he did on Kachemak Drive. This area isn't wetlands but excavating for foundations would be detrimental to the land.

BOS/STROOZAS MOVED TO ADOPT STAFF REPORT PL 15-06 AND APPROVE CUP 15-01 AT 2315 EAST END ROAD FOR MORE THAN ONE BUILDING CONTAINING A PERMITTED PRINCIPAL USE ON A LOT, WITH FINDINGS 1 THROUGH 10 AND CONDITIONS 1, 2, AND 3.

Commissioner Bos commented that this project will have to go through the requirements to make it a safe project. Maybe after this is complete the speed can be addressed again. The applicant has been a good steward in other projects he has built.

Commissioner Bradley agrees and sees the need for affordable housing. This project offers a great opportunity and it is a good location for it.

Commissioner Stroozas added that the density of the project complies with code and as long as the conditions are met there is no reason to deny it.

HIGHLAND MOVED TO LOWER THE NUMBER OF CABINS TO SIX.

Motion died for lack of a second.

HIGHLAND MOVED TO REQUEST PRIVACY FENCING ON THE SIDES THAT HAVE RESIDENCES ON IT NOW.

Motion died for lack of a second.

VOTE (Main motion): YES: HIGHLAND, STEAD, STROOZAS, BRADLEY, BOS

Motion carried.

Commissioner Venuti returned to the table.

B. Staff Report PL 15-07, Proposed Ordinance to amend the Bridge Creek Watershed Protection District impervious coverage allowance

City Planner Abboud reviewed the staff report.

Chair Stead re-opened the public hearing.

Kevin Dee, non-resident in the Bridge Creek Watershed Protection District, said he enjoyed the worksession discussion regarding the BCWPD, and agrees that property owners with smaller lots need some relief. He has concerns about the integrity of the watershed as there are many components to maintaining it. He agrees with voting down the ordinance and working on new ideas.

Sue Mauger, Science Director at Cook Inletkeeper and non-resident in the Bridge Creek Watershed Protection District, appreciates the the Commission being thoughtful about making changes to the original ordinances and encouraged them to continue to use caution in considering this area. She explained that if the smaller lots were scattered across the area there would be less concern, but because they are concentrated it changes the dynamic.

Joel Cooper, non-resident in the Bridge Creek Watershed Protection District, appreciates the recommendation to not pass this draft ordinance and encouraged the Commission to continue to look at other options for these property owners.

Bill Smith, non-resident, commented that when developing the current BCWPD as it is in code they looked at a lot of methods using Alaska numbers and chose the high end of the range that was given for impacts. They made allowance for impervious coverage in rights-of-way and roads in the district. True science would take in the roads and driveways that serve the lot and in terms of science you may find the lots are over 10% impervious coverage. He hopes the Commission goes forward with making recommendations to Council because it's important that the community does something for the people we are asking to help protect our water.

Rich Fetterhoff, city resident and owner of a smaller lot in the Kelly Ranch Estates, appreciates the initiative to accommodate property owners. The restrictions imposed on the property owners there are hardships. The total acreage in the subdivision is about 4 acres out of 2,000 or .002%. It's hard to believe that is really going to be detrimental to the watershed. He asked that they continue to consider this.

Lance Prouse, owner of a lot in the watershed district, said he lives on Eagle View because it isn't feasible to build on his lot, which is about 1.5 acres. He appreciates the Commission looking at this and agrees with Mr. Fetterhoff that it's time for some relief up there. He understands the concern and mitigation for runoff and pollutants, having worked on putting the gas line in the area. It is very expensive to do mitigation on the lots up there, it takes hours upon hours of time, and the typical homeowner isn't going to be able to find the financing to hire someone to spend those hours. The land owners don't want to pollute the water, other stop gap measures are in place, and property owner need to be able to use or sell their lots.

There were no further comments and the hearing was closed.

VENUTI/BOS MOVED TO APPROVE THE BRIDGE CREEK WATERSHED PROTECTION DISTRICT DRAFT ORDINANCE.

HIGHLAND MOVED TO AMEND THAT IF THIS IS APPROVED SHE REQUESTS STATE HYDROLOGIST GIVE US A PRESENTATION AND THAT WE ASK THE STATE TO DO SOME ON GROUND WORK WITH THE BRIDGE CREEK WATER SHED.

Motion failed for lack of a second.

STROOZAS/HIGHLAND MOVED TO AMEND THE DRAFT ORDINANCE TO CHANGE FROM 40 GALLONS OF RETAINAGE ON A LOT TO A MINIMUM OF 1000 GALLONS PER LOT.

There was brief discussion to confirm staff agreed with 1000 gallons not 4000 gallons.

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

Motion failed.

Commissioner Venuti commented there has been minimal testimony of making this change. Most of it has been against making a change to the district as it stands. He suggests taking in to consideration information shared by Mr. Smith at the worksession, and approach this differently and try to make some non-zoning incentives to land owners up there.

Commission Highland agreed and said the previous work done on this ordinance was immense and they chose to go conservative because it is our only water source. She likes the idea of incentives and wants to further explore them. She is also interested in seeing what possibilities there are to get funding to purchase some of the property.

Commissioner Bradley also agrees with previous comments and supports the idea of incentives.

Commissioner Stroozas reiterated a comment of the public that we are looking at 4 acres in the entire acreage of 93 lots. It is .0019%. He acknowledged the work that was done in creating the district and this is not going to bring them to a ten percentile figure, the point where engineers and scientists have expressed is where you need to start being concerned. We need to do something to help the lot owners who can't build and can't sell. They are stuck.

Commissioner Bos recognized there has been a lot of testimony relating to water quality and its history. There hasn't been much testimony for it. If we end up moving it along to the city to try to get help for the land owners he would like to say that it shouldn't just be the city taking on the adjustment, it should be everyone getting water from the watershed.

Chair Stead appreciates the previous work that was done. He believes the current studies provided have given them some additional things to look at, but doesn't think it's conclusive or that they have any way to help specify reasonable mitigation methods. He doesn't support this particular ordinance, but they should revamp it.

VOTE (Main motion): YES: STROOZAS
NO: BRADLEY, STEAD, VENUTI, HIGHLAND, BOS

Motion failed.

There was brief discussion that the cost causer/cost payer approach of increasing water rates to have funds to offer some sort of relief could be a challenge. It was also noted that the four acres would create a lot of concentration in close proximity to the creek and some sort of unified or subdivision mitigation could address concerns we heard, it just isn't clear what that might look like.

It was further noted the information from Cook Inletkeeper says we should be able to go up to 10% if there are some sort of buffers provided and protect the riparian zones. Hopefully something can be done along those lines so these people can have some relief.

They talked about the state hydrologist for DNR and that our local NRCS people have a lot of information. There could be a way to work with NRCS to sift through what questions should be asked

to be more specific on the direction this should be going. They also touched on different avenues for funding to acquire properties.

Plat Consideration

Pending Business

- A. Staff Report PL 15-08, Towers

City Planner Abboud reviewed the staff report.

Discussion ensued regarding tower height, fall zones, and conditional use. They used the table included in the packet and plugged in the following heights as a starting point for consideration of conditional use:

UR, OSR, CONS, CBD and TC – greater than 60’ requires CUP
RR and RO – greater than 85’ requires CUP
MI, MC, GC2, EEMU- greater than 120’ requires CUP
GC1 - greater than 120’ or FAA requirement
BCWP (outside city) – greater than 150’ requires CUP

No suggestions were made yet on the maximum height.

New Business

Informational Materials

- A. Resolution 15-001 Interim City Manager
- B. City Manager’s report for January 12, 2015 Council Meeting

Comments of the Audience

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

None

Comments of Staff

City Planner Abboud commented that he will work on this and they will look at the Comprehensive Plan in relation to the Strategic Doing process the Council is working on.

Comments of the Commission

Commissioner Highland commented about the CUP tonight. It is difficult for her when people come in and have issues with a proposal. That area is moving out of rural residential, and when she first started and looked at rural residential, she didn’t realized how much is allowed there. It was a good meeting, they got a lot done.

Commissioner Bradley said they had some good discussion tonight.

Commissioner Bos thought it was a good meeting. He commented that nobody wants anything new around their place. He knows a little bit about what was there before, and he thinks this can only be better.

Commissioner Venuti echoed Mr. Bos's comments.

Commissioner Stroozas commented that there is more work yet to come on Bridge Creek, we'll get it precise one of these days and have it done. He will be absent at the next meeting.

Chair Stead said he appreciates everyone's work, it can be tough at times, especially when the audience is full of people.

Adjourn

There being no further business to come before the Commission, the meeting adjourned at 8:51 p.m. The next regular meeting is scheduled for February 4, 2015 at 6:30 p.m. in the City Hall Cowles Council Chambers. A worksession will be held at 5:30 p.m.

MELISSA JACOBSEN, CMC, DEPUTY CITY CLERK

Approved: _____



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HOMER ADVISORY PLANNING COMMISSION

Approved at the meeting of January 21, 2015

RE: Conditional Use Permit (CUP) 2015-01

Address: 2315 East End Road

Legal Description: T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0000587 SCENIC VIEW SUB
LOT 5 TRACT B EXCLUDING DOT ROW

DECISION

Introduction

Mr. Kurt St. Jean (the "Applicant") applied to the Homer Advisory Planning Commission (the "Commission") for a conditional use permit under Homer City Code ("HCC") 21.12.030(m) in the Rural Residential District: "More than one building containing a permitted principal use on a lot."

The applicant proposed seven single family dwellings on a 1.8 acre lot which fronts mile 2 of East End Road. The proposed cabins are served by City water and sewer.

The application was scheduled for a public hearing as required by HCC 21.94 before the Commission on January 21, 2015. Notice of the public hearing was published in the local newspaper and sent to 22 property owners of 21 parcels as shown on the Kenai Peninsula Borough tax assessor rolls.

At the January 21, 2015 meeting of the Commission there were six Commissioners present. Commissioner Venuti declared a conflict of interest due to a business relationship with the applicant. After discussion, the Commission decided there was a conflict of interest per HCC 1.18. Commissioner Venuti stepped away from the table. The five remaining Commissioners voted in favor of approval of this conditional use permit.

Evidence Presented

City Planner, Rick Abboud, reviewed the staff report and noted the 2 written comments received in opposition to the proposal. The applicant, Kurt St. Jean, introduced his project and identified the importance of small, affordable housing in Homer. He said independence and privacy for his tenants, including the buffering effect of spruce trees, as the inspiration behind the site location for this grouping of small cabins. The cabins will be professionally managed, boat storage will not be allowed, there will be a dumpster on site, and he will build storage facilities to avoid excessive outdoor storage. He pointed out that his similar 2013 project of 4 cabins on Kachemak Drive has not caused neighborhood disturbances, visual blights, or outdoor storage of vehicles or material.

There were 5 speakers during the public hearing and all testified in opposition to the proposal. Testimony included the following concerns: it was too dense of development for the Rural Residential district, it would increase traffic at a dangerous intersection, it could generate excessive noise, vehicles, pets, and bear attractants, the utility easements were not clearly depicted, it has limited fire truck access, and it presents a potential for hazardous sewage problems.

The City Planner pointed out the site has access to existing infrastructure which makes it an area in which the Comprehensive Plan encourages growth. The zoning permit process will require an approved City permit for sewer connection and the density of the proposal is plainly allowed in the Rural Residential district per HCC 21.12.040(a)(3). The applicant described a recently completed driveway improvement that resulted in the leveling of the top of the driveway, making it safer for vehicles to pull out onto East End Road. It was also mentioned that a State driveway permit will be required.

Findings of Fact

After careful review of the record and consideration of testimony presented at the hearing, the Commission determines that Condition Use Permit 2015-01, a proposal to build seven cabins on a lot, satisfies the review criteria set out in HCC 21.71.030 and is hereby approved.

The criteria for granting a Conditional Use Permit is set forth in HCC 21.71.030 and 21.71.040.

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

Finding 1: More than one single family dwelling on a lot is authorized by conditional use permit.

Finding 2: This 79,279 square foot lot, served by water and sewer, may have up to 7 dwelling units based on dimensional requirements of code.

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 proposal is compatible with the purpose of the district by meeting density requirements and providing residential development in the City.

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 affected greater than multi-family dwellings or a conditionally permitted assisted living home.

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

Finding 5: The proposed cabins are a similar use to the other single family homes found in the adjacent and surrounding area.

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 for the proposed use and structures. City water and sewer services are available at the lot. The site has direct access to State maintained East End Road and multi-use trail. This property is within one quarter mile of Jack Gist Park.

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: 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.

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 proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area and the city as a whole when all applicable standards are met as required by city code.

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

Finding 9: The proposal will comply with all applicable regulations and conditions when the permitting process is successfully navigated as provided in the CUP and permitting process.

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

Finding 10: The proposal does not appear to contradict any applicable land use goals and objectives of the Comprehensive Plan.

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

Condition 1: Applicant to comply with the Outdoor Lighting section of the Community Design Manual.

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.**
- 2. Fences, walls and screening.**
- 3. Surfacing of vehicular ways and parking areas.**
- 4. Street and road dedications and improvements (or bonds).**
- 5. Control of points of vehicular ingress and egress.**
- 6. Special restrictions on signs.**
- 7. Landscaping.**
- 8. Maintenance of the grounds, buildings, or structures.**
- 9. Control of noise, vibration, odors, lighting or other similar nuisances.**
- 10. Limitation of time for certain activities.**
- 11. A time period within which the proposed use shall be developed and commence operation.**
- 12. A limit on total duration of use or on the term of the permit, or both.**
- 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.**
- 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.**

Conclusion: Based on the foregoing findings of fact and law, Conditional Use Permit 2015-01 is hereby approved, with findings 1-10 and conditions 1-3.

Condition 1: Applicant to comply with the Outdoor Lighting section of the Community Design Manual.

Condition 2: Applicant to provide a site plan depicting all utility easements prior to issuance of a zoning permit.

Condition 3: If dumpsters are provided, they must be screened on 3 sides within 6 months of their placement on site.

Date Chair, Don Stead

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 _____, 2015. A copy was also delivered to the City of Homer Planning Department and Homer City Clerk on the same date.

Date Dotti Harness-Foster, Planning Technician

Kurt St. Jean
722 Waddell St.
Homer, AK 99603

Marvin Yoder, Interim City Manager
491 E Pioneer Avenue
Homer, AK 99603

Thomas Klinkner
Birch, Horton, Bittner & Cherot
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STAFF REPORT PL 15-09

TO: Homer Advisory Planning Commission
FROM: Rick Abboud
MEETING: February 4, 2015
SUBJECT: City Planner's Report

City Council meeting of January 26th: Adopted Ordinance 14-56, updating the need for a Zoning Permit when moving of a structure, increasing in height of a structure and the increasing in the footprint area. Zoning Permits can now be issued with conditions to correct existing violations.

Council also had a work session discussing Strategic Doing. The first focus group will be looking at moving forward with the Non-Motorized Transportation and Trails Plan. This is a good starting point as staff is familiar with the document and the issues. This task gives us the opportunity to learn how to work within the strategic doing process. Council expects a report back from staff by their March 9th meeting.

Board of Adjustment: Affirmed the HAPC decision regarding 3850 Health, CUP 13-13.

Natural Gas Special Assessment District: Certified mailings to property owners will be mailed in mid-February. The Clerk's office has hired additional staff to accomplish this task. The City Council is scheduled to hold public hearings and finalize the assessment roll in March 2015.

Beach Policy Review: next meeting is February 5th at 5:30 pm to discuss legal access on the beach and land ownership. You can see the meeting schedule and meeting topics on the Planning and Parks and Recreation websites.

Training: Travis will be attending training for Flood Plain Management offered in Anchorage in early March. The APA National Convention is being held in Seattle April 18-21. I am planning to attend with Travis. I do not have the funds to send commissioners, but if you happen to be in Seattle during that time or can fund travel and lodging, I may be able to fund conference fees.

Bridge Creek Watershed Protection District: I am still interested in pursuing a code amendment to allow staff to approve mitigation plans. Is this something the Commission would like to see happen? If so, staff will draft an ordinance and we can discuss it at a future meeting. If the Commission is not interested, staff will work on something else.



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Staff Report PL 15-10

TO: Homer Advisory Planning Commission
FROM: Rick Abboud, City Planner
DATE: February 4, 2015
SUBJECT: Towers

Recap

At the January 21, 2015 HAPC meeting we filled out a starting point for CUP consideration. I have included an updated spreadsheet. We still have a long list of items for consideration, but should have a good deal of time to spend with them as business is short this meeting. Please bring your Matsu Ordinance for reference.

Introduction

I have decided to break down the subjects found in my example ordinance from Mat Su for discussion.

Homer certainly values our scenic environment and also seeks to encourage the advancement of technology. I have included what I found in the Comprehensive Plan in relation to the subject. I have also broken down the Mat Su code for your review and discussion. I believe the best way to approach this is to become familiar and discuss the proposal section by section and assign standards where necessary. I have included the Mat Su Ordinance again, the zoning table and an article from APA on the subject. Please highlight your areas of concern or things that may need further explanation so that we might address them at the work session and be ready for motions at the regular meeting.

At this meeting we can concentrate on 'New Towers' through page 5.

Homer Comprehensive Plan

Chapter 4, Land Use

GOAL 2: Maintain the quality of Homer's natural environment and scenic beauty.

Homer's natural setting provides many benefits but also creates significant constraints. The characteristics of the physical setting need to be respected in guiding the location, amount, and density of development.

This plan takes two general approaches to guide development in relation to environmental conditions. One is to "overlay" information regarding environmental constraints and opportunities onto the Land Use Recommendations Map. This means, for example, that some portions of an area identified for development would be limited by the site-specific presence of steep slopes, wetland areas, drainage channels, etc. The second broad strategy is to recommend that appropriate standards be adopted so that where development does occur it is designed to respect environmental functions and characteristics. Examples in this category include site development polices for drainage, vegetation, and grading.

A need exists for the community to take seriously the issue of shoreline stabilization and the implications of allowing ongoing shoreline development. A process should be launched to examine the issue and put proposed solutions before the citizens.

Chapter 5, Economic Vitality

GOAL 4: Encourage technology related businesses such as information science, software development, and the entertainment industry.

Homer's beautiful scenery and quality of life can help attract technology related business ventures. Expanding this economic activity could create new skilled jobs, with few negative impacts.

Implementation Strategies

1. Solicit and encourage businesses to relocate to Homer.
2. Improve Homer's information technology infrastructure in order to provide opportunities for small business entrepreneurs to operate globally (low cost high bandwidth internet services).
3. Create a tech/media promoter person to work with the community to promote tourism, using endowment and grant funds to work independently. The city could partner with another organization.

OUTLINE FOR CODE LANGUAGE (organized from Mat Su Ordinance)

Purpose and intent

- Establish regulation for tall structures
- Orderly build-out while promoting health, safety, and welfare
 - o Facilitating the organized deployment of tall structures
 - o Minimizing overall number by encouraging collocation
 - o Encourage citizen involvement early so that concerns can be mitigated
 - o Require consideration with Homer Comprehensive Plan and other regulations
 - o Minimize potential hazards
 - o Minimize negative effects on the visual and scenic resources

Applicability

- Here we may set a minimum height for regulation, Matsu used 85 feet. This most likely will be variable in the various districts and will require legal review for formatting into the code.

Exemptions

- Church spires, religious icons, and flag poles displaying official government of religious flags (We have HCC 21.05.030(b) When measuring height of a building, the following are excluded from the measurement: steeples, spires, belfries, cupolas and domes if not used for human occupancy, chimneys, ventilators, weather vanes, skylights, water tanks, bulkheads, monuments, flagpoles, wind energy systems, television and radio antennas, other similar features, and necessary mechanical appurtenances usually carried above roof level).
- Temporary tall structures: under 12 months, construction related.
- Temporary telecommunications facilities: emergency communication, disaster and such.
- Temporary telecommunications facilities: special event.
- Essential service utilities: electrical: not sure we have this referenced in code anywhere.

- Lighting: Harbor lights, ROW lighting. Would be good to set height limit: harbor lights are 150ft. I can't imagine would want to support this height elsewhere.
- Ham radio unless commercial use
- Addition, removal or reorientation of transmission equipment (perhaps some legal guide for boundaries associated with definition of equipment, whether it is on the tower or ground and of such a size on the ground.
- Routine maintenance and repair of tall structure and components.

Types of permit available

1. Administrative/by right – this is a permit issued by the planning office. Generally it would be for new towers. I would expect that we would have some standards associated with the various districts that are tied to a maximum height and perhaps some setback standard. Example: towers up to 125ft. in the Marine Commercial District.
2. CUP – For those towers that exceed an allowance for maximum height and perhaps addressing some standard for setbacks. Example: towers exceeding 125ft. and where fall-zone fall may include private properties.
3. Network Improvement – This is largely set by requirements to adhere to federal rules and would be issued by the Planning Office.

Pre-application requirements for new tall structures (CUP) (may want to meld with box store standards per HCC 21.57.110)

- Community meeting
 - o City hall
 - o At least 15 days after notification
 - o 5-7pm

 - o Notification
 - Legal of lot
 - Description of development including height, design, lighting, and access
 - Date time and location of meeting
 - Contact info: name telephone and address
 - Form created by city describing comment deadline and options for submitting comments
 - o Notification requirements
 - Within 1200ft.
 - o Written report including
 - Date of meeting
 - Summary of notification methods. Mailings, notices, and etc...
 - Sign in sheet for meeting including contact information and that of any interested parties
 - Number of people attending meeting
 - Copies of written comments
 - Certified mailing of all who were notified

- Written summary including
 - Substance of concerns, issues and problems
 - How the applicant intends to address concerns
 - Concerns that the applicant has not addressed and why

General permit process for tall structures

- Incomplete application. Rejection in writing within 15 days stating specific deficient items
 - o notification per code except that:
 - 1200ft notice area
 - Will include anyone who were notified or submitted comments of pre-application meeting
 - o Determination. Written findings of fact and determination including conditions (legal review in accordance with CUP standards)
 - o Conditions of approval may include (legal review for incorporation with CUP)(may want to incorporate some of these items into requirements of ordinance)
 - height limitations
 - increased height or structural capacity to accommodate future collocation
 - mitigation of drainage concerns
 - tower type (monopole, lattice, guyed)
 - color
 - landscaping
 - parking
 - screening
 - signage
 - lighting
 - setback
 - o process timeline
 - hearing within 60 days of completed application
 - decision within 30 days of hearing
 - 60 days for administrative review

General application requirements for new tall structures

- Completed application (per HCC 21.70.020)
- Scale drawings by engineer or architect
- Fee
- Citizen participation report
- Site plan (level 1, HCC 21.50.020)
- FAA no hazard determination
- Information about breakpoint technology, if employed

Standards for approval of new tall structures

- Permit must meet these standards in addition to any other required in title
- Findings must demonstrate (language is particularly tough)

- To the extent technically feasible, the location of the structure minimizes the negative effect on visual and scenic resources of all surrounding properties
- Visibility of structure from recognized public parks and impact on view of the bay? Is minimalized as technologically feasible
- Does not interfere with airport
- Will not be harmful to public health, safety, convenience, and welfare

Operation standards new for tall structures

- All towers
 - Setback of equipment compound
 - Setback of tower
 - Fall zone
 - Exception for easement and ROW for fall zone
 - Parking, one or one per provider or one per tower
 - Wind Energy Regulations per HCC21.58.030

Network improvement permits

- Allow legally existing towers to be replaced or modified in a manner that increases the overall height of the existing tower in accordance with this section.
- Does not require notification of the surrounding property owners
- Base of replacement tower not to be located further than 50 feet from base of original tower (and must meet setback requirements) Original tower shall be removed within 90 days of completion of replacement tower
- More than one network improvement may be obtained although cumulative height may not increase more than the greater of 10% or 20 feet
- Application of Network improvement permit shall include requirements found in HCC 21.70.020 and:
 - Application signed by property owner and applicant
 - Description of proposed modifications including height, type, and lighting of new or modified structure and the existing structure
 - Level one site plan (HCC 21.50.020)
 - Design drawings for the proposed modified or new structure, drawn to scale, and certified by a registered engineer or architect
- In granting the permit the following findings shall be made in addition to HCC 21.70.030 and:
 - The development conforms to setback requirements
 - The existing tower was accepted as legal at time of application for network improvement permit
 - The proposed modification does not violate permit conditions of any valid permits that have been issued to the existing facility, provided that the condition being violated does not limit the height of the structure
- A network improvement permit shall be approved within 60 days from time of application if meeting the requirements of this section.
- Telecommunication towers permitted shall conform with operation standards set in this title (code number here)
- Replacements or modifications of a telecommunication tower in accordance with this section are not subject to application or pre-application requirements for that of a new tower under this chapter.

Reconstruction and replacement

- This section shall only apply to legally permitted structures or those that have obtained pre-existing legal nonconforming status
- Property owner responsible (legal)
- May be replaced or reconstructed to improve structural integrity or in the case of accidental damage or collapse
 - o Reconstruction or replacement shall not
 - Increase lighting
 - Change type of lighting
 - Change type of tower
 - Change location of tall structure
 - Increase height of tall structure
 - o In case of accidental damage or collapse, reconstruction or replacement must commence within one year or it is considered abandon (legal check)
 - o Reconstruction or replacement shall conform with previous permits or legal nonconforming determination

Abandonment

- Abandoned after 12 months of nonoperation
 - o Shall be removed within 90 days of abandonment
 - o Addition 90 days when demonstrating good cause

Transfer of permit

- Permit runs with land

Nonconforming uses

- Per HCC

Violations, enforcements, and penalties

- Per HCC

Appeal procedure

- Per HCC

Attachments

1. Proposed height by district table

Proposed Height By District Table

District	Height at which a CUP is needed (feet)	Max Height
CBD	60	
TC	60	
GBD	60	
GC1 (Beluga Lake)	120	
RO	85	
UR	60	
RR	85	
CONS	60	
GC2	120	
EEMU	120	
MI	120	
MC	120	
OSR	60	
BCWPD	120	



City of Homer

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Planning

491 East Pioneer Avenue
Homer, Alaska 99603

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(p) 907-235-3106

(f) 907-235-3118

Staff Report PL 15-11

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
FROM: Julie Engebretsen, Deputy City Planner
DATE: February 4, 2015
SUBJECT: Draft ordinance amending 21.50 Site Development Requirements

Introduction

The Commission has expressed interest in pursuing code changes that will improve storm water quality. One method to do so is to limit storm water runoff over bare soil. Currently, most of Homer's residential districts don't require reseeding after dirt work has started for 16 months. That's a really long time! One way to limit the amount of time the ground can stay bare, is to change the revegetation requirements.

Analysis

21.50.020(c) (3) states:

"All exposed, cleared, filled and disturbed soils shall be revegetated within 16 months following the initiation of earthwork. Natural revegetation is acceptable if the site naturally revegetates within that 16-month period. If natural revegetation is not successful within that 16-month period, the property owner and developer shall revegetate by other means no later than the end of that 16-month period."

In most of the commercial districts, revegetation (which might include formal landscaping) must be accomplished within 9 months of substantial completion of the construction project, or the first growing season, whichever is sooner. This seems like a reasonable timeframe for all construction; commercial or residential. Someone who had a late foundation start, say in September, would need to reseed no later than May.

Staff Recommendation: Discuss reducing the 16 month time limit to 9 months.



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Staff Report PL 15-12

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
FROM: Julie Engebretsen, Deputy City Planner
DATE: February 4, 2015
SUBJECT: Non-ordinance recommendations for the Bridge Creek Watershed

Introduction

The Commission has expressed interest in sending some recommendations to the City Council on the Bridge Creek Watershed. These recommendations should include motions by the Commission, and staff will put them in a memo to the Council. Also, the Commission could choose to have a member speak to the City Council when the memo is on their agenda. There is a place on the agenda where the Commissions have an opportunity to make a verbal report. This is likely where the memo will be placed, and it is your opportunity as a Commission to communicate directly with Council (and the public).

Analysis

Below is a list of ideas the Commission has discussed or heard about. Please bring any additional suggestions to the meeting and be ready with a motion!

- ~Waiver of City platting fees when vacating lot lines
- ~Increase City efforts to purchase key properties
- ~Examine ditch cleaning policies and work with DOT on Skyline Drive maintenance

Staff Recommendation: Make motions on which recommendations you would like to forward to Council. If desired, select a Commissioner to report to the Council. (Possibly the February 23rd CC meeting).



City of Homer

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MANAGER'S REPORT

January 26, 2015

To: The Mayor and Council

From: Marvin L Yoder

Date: January 21, 2015

Natural Gas as-built

I spoke with Julie Engebretsen and Dan Gardner about the as-built drawings. Both believed that these drawings were proprietary Enstar property. Staff has attempted to provide adequate information to the council for each amendment to the assessment roll. If there is concern about specific parcels we will research those issues for you.

Travel

I serve on the ABC Board for the State. There are 5 meetings per year. The next meeting is in Juneau and I will be there February 10 - 12. I have contacted the Homer City Lobbyist to set up some meetings with our legislators while I am there. I will be available by phone. Jo Johnson will be acting manager in my absence.

STIP

The State of Alaska has provided the latest Transportation priorities. Those of interest to Homer are as follows:

- | | | |
|---|------------|--------------|
| • Pioneer Ave Rehabilitation | FY 2015 | \$ 336,590 |
| • MP 157 - 169 (Anchor Point to Baycrest) | FY 2015 | \$55,265,000 |
| | After 2015 | \$72,700,000 |
| • MP 114 - 135 Pavement Preservation | After 2015 | \$20,000,000 |

Land Purchase

Several years ago Walt had discussions with a land owner regarding the parcel of land next to the sewer treatment plant. The parcel sold but is now for sale again. I received an email that there was an offer on the property but that the city could have the first chance to purchase.

This parcel would give public works a buffer around the public works complex and offer opportunity for future expansion. Is there a consensus to begin discussions with the owner? If a tentative agreement was reached, it would be brought to the council on a future agenda.

Library Grant

The library received notification that they have been awarded a continuing education grant. The city will be reimbursed up to \$1000.00 for expenses incurred by a library staff member attending the AKLA Conference in Juneau.

FYI

The City received information about the Rasmuson Foundation funding an annual award program for Alaskan artists. The 2015 Individual Artist Award Program application period is now open.

**CITY OF HOMER
BOARD OF ADJUSTMENT**

**City of Homer, Alaska
491 East Pioneer Avenue
Homer, Alaska 99603**

**APPEAL OF HOMER ADVISORY PLANNING COMMISSION'S
DECISION ON REMAND GRANTING CONDITIONAL USE PERMIT 13-13
WITH ADDITIONAL CONDITIONS**

DECISION ON APPEAL OF REMAND

On March 24, 2014, Frank Griswold appealed the City of Homer's Advisory Planning Commission ("Commission") decision granting Conditional Use Permit 13-13 ("CUP 13-13") to Seabright Survey+ Design ("Applicant"). The Conditional Use Permit permitted the Applicant to erect more than one building containing a permitted principle use on Lot 1-A-1 Carl Sholin Subdivision No. 5 3850 (the "Property").¹ The Board of Adjustment ("Board") affirmed the Commission's decision in part, and remanded the decision in part. The Board affirmed Commission Findings Nos. 1 through 4 and Findings Nos. 6, 7, 9, and 10. The Board rejected Commission Findings Nos. 5 and 8, holding those findings were based on insufficient evidence. The Board ordered the Commission to require and consider additional evidence in determining whether the Property complies with the Homer Zoning Code as required under HCC 21.90.030; to make findings regarding the Property's compliance with the Homer Zoning Code; and to revisit Commission Findings Nos. 5 and 8 after considering additional evidence regarding compliance. The Board upheld the Commission's findings in all other respects.

On July 16, 2014, the Commission conducted a remand hearing and, after considering additional evidence including materials submitted by both the City Planning Department and Griswold, the Commission issued its decision once again approving CUP 13-13, subject to several conditions. This decision was issued August 8, 2014. On or about September 16, 2014, Griswold appealed the Commission's decision on remand.

The Board affirms the Commission's decision on remand. Six members of the Board participated in the public hearing held on December 1, 2014, regarding the appeal of the Commission's remand decision ("Remand Hearing"), which was chaired by Mayor Mary E. Wythe. The five voting members of the Board (Bryan Zak, Catriona Reynolds, David Lewis, Francie Roberts, and Gus Van Dyke) unanimously concur in this decision. Chair Wythe excused the absence of Board member Beauregard Burgess from the Remand Hearing, which was timely requested. The Board

¹ The Property is located at 3850 Heath Street and is in the Central Business District.

unanimously agreed to permit telephonic participation by Board member Zak during the Remand Hearing. Due to his absence at the Remand Hearing, Board member Burgess abstained from participating in any deliberations.

I. STANDARD OF REVIEW

The Board exercises its independent judgment on legal issues raised on appeal. HCC 21.93.540(d). The Board considers findings of fact adopted expressly or by necessary implication by the Commission true, so long as those findings are supported by substantial evidence. HCC 21.93.540(e). If the Commission failed to make a necessary finding of fact and substantial evidence exists in the record to enable the Board to make the finding of fact, the Board may do so in the exercise of its independent judgment, or, in the alternative, the Board may remand the matter for further proceedings. *Id.* Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.*

The Board limited its review in this appeal to the matters remanded to the Commission; the Board did not readdress the issues the Board upheld in its initial decision regarding CUP 13-13.

II. EVIDENCE PRESENTED

In reaching its decision, the Board considered the record on remand, which included the record on appeal as well as supplemental evidence presented on remand and supplemented on October 16, 2014 and October 24, 2014; the opening briefs filed by Griswold and the City of Homer Planning Department ("Planning Department"); and testimony and objections raised by Griswold during the Remand Hearing.

On November 3, 2014, Griswold sent the City Clerk an email moving to strike the opening brief filed by the Planning Department. At the Remand Hearing, Griswold argued that the Planning Department's brief should be stricken primarily because the Planning Department was engaged in the unauthorized practice of law and the Commission is required to have its own counsel, separate from the Board's counsel. These arguments were the same challenges raised by Griswold during the first appeal of CUP 13-13. Griswold did not submit any new evidence regarding this matter. The Board did not revisit its earlier decision approving the Planning Department's full participation in the Remand Hearing and appeal, including, but not limited to, its right to submit briefs to the Board.

III. ANALYSIS REGARDING PROCEDURAL MATTERS

In this appeal from the Commission's decision on remand ("Remand Decision") Griswold focused his arguments on challenges to procedural matters. Griswold argued the Board Chair, the City Attorney's office, and the Planning Department were excluded from participating in the Remand Decision due to conflicts of interest and partiality; the notice of Remand Hearing was deficient; the telephonic participation of Board member Zak in the Remand Hearing was inappropriate; the Planning Department lacked standing to participate in the Remand Hearing; and there were *ex parte*

communications.² The Board rejected these procedural arguments during the Remand Hearing. The Board's findings regarding these procedural challenges are memorialized below.

A. Conflicts of Interest and Partiality

Griswold reasserted his objections to participation by Birch Horton Bittner & Cherot ("BHBC"), the Mayor, and the Planning Department in the Remand Decision based upon conflicts of interest and partiality. Griswold made the following arguments and presented the following new evidence to support his reassertion of his conflicts of interest and partiality challenges:

1. Griswold argued that Mayor Wythe accepted an award as a member of the Commission, demonstrating her conflict of interest and partiality in this appeal. Griswold read a portion of an article into the record that noted that the Mayor invited volunteers to a recognition reception at the Elks Club and honored the Commission members, which were listed by the reporter as including the Mayor as a "consulting member" and the City Manager as a "consulting member." The Board determined that the reporter did not accurately represent the Mayor's role. Mayor Wythe's role as a "consulting member" on the Commission was weighed by the Board in the original appeal.
2. Griswold claimed Board member Van Dyke made comments that showed a bias in favor of business and thus the Applicant. In support, Griswold read into the record Van Dyke's comments. Van Dyke responded that he did not believe he had a bias that would preclude his participation in this appeal. The Board found that Van Dyke did not have bias and rejected Griswold's challenge.
3. Griswold claimed Board member Zak displayed partiality based upon Zak's alleged opposition to applying City zoning laws to other property as reported in the local newspaper. The Board determined that member Zak's alleged "pro business, anti-zoning bias" made at a campaign event on September 24, 2013, did not demonstrate partiality by member Zak. Member Zak also asserted he was not partial in this proceeding.

These conflicts of interest and partiality matters were not before the Commission on remand and, as a result, are outside the scope of the Remand Decision. Moreover, in its June 6, 2014 decision, the Board held Griswold's conflicts of interest and partiality objections regarding BHBC, the Mayor, and the Planning Department were without merit. The Board issued its final decision on these issues in the June 6, 2014 decision and will not revisit that decision here. See R. 143; 144.

² When asked for disclosures, no Board member voiced that he or she had any disclosures or conflict. As a result none of the Board members were excused from participation in the hearing.

Griswold raised concerns regarding partiality by Board member Venuti in his opening brief in this appeal, but not at the Remand Hearing. The Board finds that Griswold only made cursory statements regarding member Venuti's purported partiality, and failed to present adequate evidence to support a claim of partiality.

In sum, because Griswold's conflict of interest and partiality claims have been previously decided by the Board and because Griswold fails to present any new evidence supporting any of the previously determined conflicts of interest and partiality claims, the Board determines that these conflicts of interest and partiality claims are unfounded.

B. Notice of Hearing Procedures

Griswold argued that he did not receive a notice informing him of the procedure that would occur at the Remand Hearing and that the lack of procedural notice hindered his ability to present his argument. The Board determined that the parties were given ample time to present their arguments and that additional information regarding the procedure on remand was unnecessary. Additionally when asked during the Remand Hearing whether he desired thirty minutes to present his arguments to the Board, Griswold declined the additional time and responded that ten minutes was sufficient. The parties were afforded notice of the date, time, and location of the hearing and Griswold's presence at the hearing demonstrated the sufficiency of the notice provided to the parties. In short the notice provided to the parties was sufficient and did not hinder the parties or their time to present their arguments on appeal.

C. Telephonic Participation by Board of Adjustment Member

Griswold argued that Board member Zak's telephonic participation would prejudice Griswold due in part to his need to present new evidence during the hearing and Board member's Zak's inability to view that evidence. The Board determined that based on its inability to consider new evidence at the Remand Hearing along with the limited scope of the Remand Hearing, Board member Zak's telephonic participation was permitted. However, the Board determined that Board member Zak would not be permitted to participate in executive session telephonically.

Further the Homer City Code expressly permits teleconference participation by the Board. See HCC 2.08.100. Consequently, the Board's unanimous decision to permit Board Member Zak to participate telephonically was permitted under the Homer City Code.

Griswold's objection to telephonic participation by Board Member Zak is without merit.

D. Standing of Planning Department to Participate

Griswold attempted to exclude the Planning Department from participating in the appeal by claiming the Planning Department lacks standing and that it has engaged in the unauthorized practice of law. Griswold raised, and the Board decided, both of these

issues in the first appeal regarding CUP 13-13 before the Board; these matters were resolved by the Board in its previous decision and are outside the scope of the Remand Hearing and Decision. See R.147.

While the Board holds that Griswold's challenges to the Planning Department's standing and authority to submit a brief are outside the scope of this appeal, the Board recognizes an amendment to Homer City Code, Ord. 14-45 approved September 23, 2014, that specifically identifies the City Planner and City Planner's designee as having standing for appeals before the Board. As a result, the Planning Department has standing and authority to represent the Planning Department in these proceedings.

E. Ex Parte Communications

The Board denied having any ex parte communications. Griswold did not offer any objections regarding this matter.

IV. ANALYSIS REGARDING SUBSTANTIVE MATTERS

This appeal implicates two related substantive issues, whether the Commission required and considered additional evidence in determining if the Property complies with Homer Zoning Code and whether the Commission's findings regarding compliance with Homer Zoning Code are supported by substantial evidence. While Griswold addressed these issues in his brief, he only offered cursory statements during the Remand Hearing on these matters.

A. The Commission considered additional evidence and relied upon substantial evidence to approve CUP 13-13.

On remand the Commission obtained written briefs, as well as held a public hearing on July 16, 2014, where it listened to testimony from Griswold and received written comments from Griswold and the Commission's attorney, Thomas Klinkner. After considering the evidence presented, the Commission determined substantial evidence supported the finding that the criteria for granting a conditional use permit under HCC 21.71.030 and 21.71.040 were met.

The Commission found:

1. a duplex dwelling is a permitted principle use in the applicable zoning district and the proposed use complies with the maximum building area and lot coverage requirements;
2. the proposed use is residential, which fits the zoning district's residential and nonresidential mixture without any conflicts;
3. the proposed landscaping and other amenities may increase the value of adjacent properties and there are no visual, traffic, or other adverse effects on the adjacent properties;

4. the proposed use fits with the surrounding commercial and residential mixed use;
5. adequate services are ensured under the conditions imposed on CUP 13-13;
6. the proposed use is in harmony with the surrounding neighborhood;
7. minimal off-site effects ensure no detriment to health, safety, or welfare;
8. a zoning permit requires compliance with all regulations;
9. the proposed use provides housing in the zoning district, promoting three goals within the Comprehensive Plan: increasing housing, encouraging high quality site development, and promoting housing options; and
10. the permitting process will ensure site development complies with the Community Design Manual.

The Commission, relying on evidence presented during the public hearing, in the briefs, and in the record, made several factual findings to support its decision. Specifically, the Commission's decision noted that the following procedures ensured compliance with the Homer Zoning Code: the permit process; a site plan review; compliance with local, state and federal regulations; requiring a new zoning permit process for one structure on the Property; fire marshal approval; and a review by the State Department of Environmental Conservation ("DEC").

Further the Commission imposed five conditions on CUP 13-13 to ensure the Property will comply with all applicable regulations and conditions throughout the permitting process.³ The additional conditions also affirm that the Commission considered and incorporated additional evidence into its decision on remand.

The additional conditions imposed by the Commission on CUP 13-13 include obtaining a zoning permit for the 6th structure on the Property, compliance with and proof of compliance with State Fire Marshall regulations before issuing a zoning permit, acceptance by DEC of engineered plans for water and sewer services, verification of installation of approved water and sewer plans before occupancy, and issuance of a zoning permit for all buildings before commencing further activities on the lot.

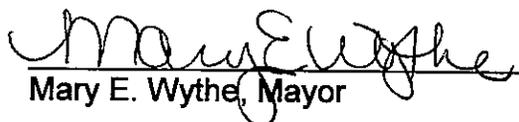
The Board upholds the Commission's decision conditioning approval of CUP 13-13 to ensure compliance with the Homer Zoning Code, which is founded on consideration of new and substantial evidence.

³ Homer City Code 21.70.040(b) permits the Commission to condition approval of CUP 13-13 on correcting existing zoning violation.

ORDER

Based on the record on appeal, the parties' briefs, and oral argument of the parties during the December 1, 2014 Remand Hearing, the Board unanimously affirms the Commission's decision on remand.

Adopted by the Board of Adjustment on January 26th, 2015.


Mary E. Wythe, Mayor

NOTICE OF APPEAL RIGHTS

This is a final decision of the Board of Adjustment. An appeal may be taken directly to the Superior Court for the State of Alaska by any party to this appeal. An appeal to the Superior Court shall be filed within thirty (30) days of the date of distribution of a final decision to the parties. A notice of appeal must be filed with the Superior Court and conform to the applicable requirements of the Rules of Appellate Procedure promulgated by the Alaska Supreme Court.

CERTIFICATE OF DISTRIBUTION

The undersigned hereby certifies that on the 27th day of January, 2015, a true and correct copy of the foregoing was served on the following in the manner indicated:

Frank Griswold
Seabright Survey & Design *

Jose Ramos *

City Planner
City Manager

By:


G. Johnson, City Clerk

<input checked="" type="checkbox"/>	U.S. Mail
<input type="checkbox"/>	Facsimile
<input checked="" type="checkbox"/>	Electronic Delivery
<input type="checkbox"/>	Hand Delivery



KENAI PENINSULA BOROUGH

PLANNING DEPARTMENT

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MIKE NAVARRE
BOROUGH MAYOR

September 29, 2014

NOTICE OF DECISION KENAI PENINSULA BOROUGH PLAT COMMITTEE

MEETING OF SEPTEMBER 22, 2014

RE: Barnett Subdivision Quiet Creek Addition 2014 Final Plat

The Plat Committee reviewed and granted conditional approval of the subject final plat during their regularly scheduled meeting of September 22, 2014 based on the findings that the preliminary plat meets the requirements of the Kenai Peninsula Borough Code 20.25; 20.30; and 20.40.

An amendment motion passed by unanimous consent to grant exception to KPB 20.40, Wastewater Disposal Requirements based on the following findings of fact.

Findings

1. No wastewater will be generated on this lot [Tract A2].
2. The City has completed the design of the tank utilizing an EPA grant and local match funding.
3. The City has submitted construction plans to ADEC and expects to receive "Approval to Construct" in the next few weeks.
4. The subdivision is within the City of Homer.
5. Development within the subdivision must comply with the requirements of the zoning district.
6. Homer Advisory Planning Commission conditionally approved the proposed plat on May 7, 2014.
7. KPB 20.40.080 provides for subdivisions with no wastewater disposal.
8. A copy of the tank site plan was submitted with the exception request.
9. Tract A2 contains 1.497 acres.
10. Tract A2 exceeds the current minimum lot size.
11. A non-development note per KPB 20.40.080 would not allow wastewater to be generated.

This notice and unapproved minutes of the subject portion of the meeting were sent September 29, 2014 to:

City of: City of Homer
491 East Pioneer Avenue
Homer, AK 99603

Advisory Planning Commission/Community Council: Homer Advisory Planning Commission
491 East Pioneer Avenue
Homer, AK 99603

Survey Firm: Ability Surveys
152 Dehel Ave
Homer, AK 99603



Subdivider/Petitioner: Quiet Creek Community Association, Inc.
PO Box 1623
Homer, AK 99603

Alaska USA Federal Credit Union
4000 Credit Union Dr.
Anchorage, AK 99503-6636

KPB File Number: 2014-075