

REGULAR MEETING AGENDA

1. Call to Order

2. Approval of Agenda

3. Public Comment

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

4. Reconsiderations

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.

- A. Approval of minutes of March 7, 2018 p. 1
- B. Decisions and findings CUP 2018-01, 94 Sterling Highway p. 9
- C. Decisions and findings CUP 2018-02, 302 E Pioneer Ave p. 15
- D. Barnett's South Slope Subdivision Quest Creek Park Time Extension Request KPB File 2014-16 p. 19

6. Presentations

7. Reports

- A. Staff Report 18-15, City Planner's Report p. 21

8. Public Hearings

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

9. Plat Consideration

10. Pending Business

11. New Business

- A. Staff Report 18-16, Draft Comprehensive Plan comments and analysis p. 57

12. Informational Materials

- A. City Manager's Report for the March 12, 2018 City Council Meeting p. 73

13. Comments of the Audience

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

14. Comments of Staff

15. Comments of the Commission

16. Adjournment

The next regular meeting is scheduled for Wednesday April 4, 2018. Meetings will adjourn promptly at 9:30 p.m. An extension is allowed by a vote of the Commission.

Session 18-05, a Regular Meeting of the Homer Advisory Planning Commission was called to order by Chair Don Stead at 6:30 p.m. on March 7, 2018 at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

PRESENT: COMMISSIONERS STEAD, BENTZ, BERNARD, HIGHLAND, BANKS, BOS, AND VENUTI

STAFF: CITY PLANNER ABBOD
DEPUTY CITY CLERK SMITH

Approval of the Agenda

Chair Stead requested a motion to approve the agenda.

BENTZ/BOS -SO MOVED.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

Public Comment

Reconsideration

Adoption of Consent Agenda

A. Approval of minutes of February 21, 2018

Chair Stead requested a motion to approve the consent agenda.

HIGHLAND/BOS –SO MOVED.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

PRESENTATIONS

REPORTS

A. Staff Report 18-13, City Planner's report

City Planner Abboud reviewed his staff report and noted that two Ordinances were introduced at the City Council Meeting on February 26th. One regarding Marijuana Retail Facilities in the Marine Commercial District and one to disband the Cannabis Advisory Commission. Both of these Ordinances have a Public Hearing and Second Reading at the March 12th, 2018 City Council Meeting. He also mentioned that a Resolution to re-instate the Transportation Advisory Commission failed.

City Planner Abboud stated that 10 people attended the Comprehensive Plan Open House and that the public seemed very responsive.

City Planner Abboud explained that they will be short staffed for the next three weeks due to Travis Brown being on vacation.

City Council Meeting attendance is as follows:

March 12: Mandy Bernard

March 27th: Franco Venuti

April 9th: Tom Bos

Chair Stead called a recess at 6:36pm to review the laydowns provided for the Public Hearing. The meeting was called back to order at 6:45pm.

Commissioner Highland inquired about Mr. Griswold's comments in the staff report on page 12 and 13 about GC1. She asked if the Commission needed to respond to Mr. Griswold or if the Planning Department has responded.

City Planner Abboud stated that he responded to Mr. Griswold, he just provided the comments in the packet for informational purposes.

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 18-14, Conditional Use Permit 2018-02 for a reduced front building setback at 302 E Pioneer Ave.

City Planner Abboud summarized his report and recommended an additional finding #11. That the proposed activity will enhance the aesthetic environment of the community, providing gracious human scale entry ways and public ways, orienting the entry way toward the street.

City Planner Abboud addressed Mr. Griswold's comments on the Conditional Use Permit and stated that this process is outlined in Homer City Code and is the best way to process this setback request, at this time. City Planner Abboud addressed Mr. Griswold's safety concerns about snow removal and drainage. He stated that safety is a very valid concern, but Mr. Griswold did not provide any specific examples about how this proposal could hamper snow removal and drainage. City Planner Abboud mentioned initially being concerned with the line of sight for pedestrians and cars pulling onto the highway but after evaluating the property, he found no apparent safety issues. However, he encouraged the Commission to bring forward any issues they may foresee.

Derek Reynolds, co-applicant, commented that he moved into the Homer area in 2004 and started Cycle Logical in 2006. They are very excited to move into town and have had a lot of encouragement from the public, especially about the building they are moving into. The building has been vacant for a long time and has been a "bit of an eye sore". He explained that the rose bushes that once surrounded the building went out as far as the new entry is proposed to go. They expect that the traffic pattern should not change greatly and that the line of sight would not greatly be affected. He expects that the roof itself will help contain snow and the gutter system they will have in place, will help improve the drainage in this area. Mr. Reynolds mentioned a study that was conducted in San Francisco which found that orienting buildings to the street had a large impact on making the city more pedestrian friendly.

Catriona Reynolds, co-applicant, commented that they reached out to their surrounding neighbors and everyone was very encouraging and excited to see the building's finished product. She explained that before they bought the building, there was trash and rose bushes that extended past their proposed addition to the building, so she feels that any arguments for snow removal or line of sight are invalid. She explained that this building feels like "the missing piece" in this section of town and they hope to greatly impact the city as a whole by encouraging people to ride their bikes instead of using motor vehicles, which in turn will make their vehicular traffic much less. Everyone has been so positive about their remodel so far and they hope that they can progress, because a busy bike season is coming up in a matter of weeks.

Chair Stead opened the Public Hearing.

Marc Romano, city resident, spoke in support of CUP 2018-02. He stated if he had been asked about 302. E. Pioneer Avenue a year ago, his recommendation would have been to remove the building because it was not doing anything to improve the central business district of our community. Today, the building has been improved greatly by the applicant. This business will bring both residents and non-residents/tourists to this area and it will benefit all the adjacent businesses. Personally he feels that a business that fronts to the street is more approachable, and would work really well with this business that is promoting non-motorized use of the central business district. As a city resident, he has a vision for Homer that he thinks most of the community

shares. He wants it to be vibrant, approachable, and aesthetic, particularly in the central business district and he believes these improvements to this building will add to that aesthetic.

Jason Herreman, city resident, spoke in support of CUP 2018-02 and thanked the Homer Advisory Planning Commission for their time. Upon coming to the city in 2012, 302 E. Pioneer Avenue was quite the derelict building. He is glad to see the improvements that the applicant has already made and looks forward to the completion of the project. From what he has heard from the City Planner and the applicants, he does not believe that the addition will cause any problems in this area and the improvements that have already been made have improved the overall appearance and usage of the area. He believes that it would be compatible with what most people would like to see in this area as far as walkability and friendliness.

Wes Schocht, city resident, spoke in support of CUP 2018-02. He really appreciated the applicants buying and renovating this old historic building and believes that a bicycle shop is a commodity that the city needs. He explained that biking is his preferred way of transportation, so he wanted to come out to show support and he hopes they are able to move along with the project.

There were no additional public comments. Chair Stead closed the Public Hearing and opened up the floor for questions.

Commissioner Venuti inquired if this project needed fire marshal approval, since it will be a commercial establishment.

Mr. Reynolds responded that the Interim Fire Chief has received their application and they are just waiting to hear back from him.

Commissioner Banks inquired if there was already a precedent set about using a Conditional Use Permit to reduce a setback.

City Planner Abboud responded that they have used Conditional Use Permits to reduce setbacks for years. There are a couple specific cases that he would have to look up and bring back at a later time.

Commissioner Banks asked if there are other setback reductions or encroachments along Pioneer.

City Planner Abboud responded that there are.

Comissioner Banks asked if they needed a Conditional Use Permit to have the boardwalk extend all the way to the sidewalk.

City Planner Abboud explained that they would only need a Conditional Use Permit for a structure being built in that area and that they don't need one for a boardwalk or pathway.

Chair Stead requested a motion.

BENTZ/VENUTI-MOVED TO APPROVE THE STAFF REPORT PL 18-14 AND CONDITIONAL USE PERMIT 2018-02 WITH FINDINGS 1-10, CONDITION 1, AND AN ADDITIONAL FINDING #11 THAT THE PROPOSED ACTIVITY WILL ENHANCE THE AESTHETIC ENVIRONMENT OF THE COMMUNITY, PROVIDING GRACIOUS HUMAN SCALE ENTRY WAYS AND PUBLIC WAYS ORIENTING THE ENTRY WAY TOWARD THE STREET.

There was a brief discussion in support of the renovations the applicants have done to the property thus far.

VOTE. NON-OBJECTION.UNANIMOUS CONSENT

Motion carried.

PLAT CONSIDERATION

PENDING BUSINESS

NEW BUSINESS

INFORMATIONAL MATERIALS

A. City Manager's Reports for the February 26, 2018 City Council Meeting

COMMENTS OF THE AUDIENCE

COMMENTS OF THE STAFF

COMMENTS OF THE COMMISSION

Commissioner Highland inquired if there was anything that the Commission can do about Sue Post's comments about the building across the street from the bookstore.

City Planner Abboud responded that he will look into it.

Commissioner Bos stated that this was a good meeting. The building looks very nice and he is sure that it will continue to improve. He wishes that we could do more improvements like this along Pioneer Avenue to help bring people into the city. He also wanted to mention that the roof over the entry way at the Pier One theatre on the spit has "blown back". He hopes that someone is able to fix it before it causes any significant damage.

Commissioner Bernard commented that she really appreciates seeing revitalization on Pioneer Avenue. It's really nice to see some activity happening in downtown Homer.

Commissioner Bentz was excited to see in the City Managers Report that the city is looking at Pittman Robertson funding for improving trails and wildlife viewing. She believes that it is underutilized and is a great opportunity. She also encourages everyone to attend the Kachemak Bay Science Conference at Islands and Oceans Visitor Center.

Commissioner Venuti asked if they needed to send a letter addressing Mr. Griswold's comments.

City Planner Abboud responded that he believes that this meeting was good enough. There will be minutes and a recording in response to his comments.

Commissioner Banks stated that this was an interesting meeting. He believes that it's a great project and that it will continue to improve the area. He cautioned the commission to always be objective when applying this criteria, rather than subjective, because we can lose sight of what we are supposed to be evaluating. Although the City Planner said it is not our place to decide issues of law, it is our place to see if something fits inside the boundaries of code, and in this case, it looked like it fit within the standards.

Chair Stead commented that it was a good meeting and he appreciates all the work the planner did for this particular meeting. There is a lot of background associated with code and it is always enlightening to go through it. He stated that he will be missing the next planning meeting.

Commissioner Bernard stated that she will also be missing the next planning meeting.

Commissioner Venuti asked City Planner Abboud what the next step for the Comprehensive Plan was.

City Planner Abboud responded that there will be a Public Hearing in April where he will bring the public comments forward to the Commission.

ADJOURN

There being no further business to come before the Commission, the meeting adjourned at 7:36 p.m. The next regular meeting is scheduled for Wednesday, March 21, 2018 at 6:30 p.m. in the City Hall Cowles Council Chambers. There is a worksession scheduled at 5:30 p.m. prior to the meeting.

HAYLEY SMITH, DEPUTY CITY CLERK I

Approved: _____



City of Homer

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Planning

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Homer, Alaska 99603

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HOMER ADVISORY PLANNING COMMISSION

Approved CUP 2018-01 at the Meeting of February 21, 2018

RE: Conditional Use Permit (CUP) 2018-01
Address: 94 Sterling Hwy

Legal Description: T 6S R 13W SEC 20 SEWARD MERIDIAN HM 2002090 NILS O
SVEDLUND SUB NO 12 LOT 15A-2

DECISION

Introduction

Petro 49 Inc, (the "Applicant") was represented by David Webb at the hearing, applied to the Homer Advisory Planning Commission (the "Commission") for a Conditional Use Permit (CUP) to expand an existing gas station, including the addition of an automobile fueling canopy, within the Central Business District, per HCC 21.18.030(d). Kurt Lindsey and Russell Cooper submitted the application for Petro 49 Inc.

A public hearing was held for the application before the Commission on February 21, 2018 as required by Homer City Code 21.94. Notice the public hearing was published in the local newspaper and sent to 7 property owners of 13 parcels as shown on the Kenai Peninsula Borough tax assessor rolls.

At the February 21, 2018 meeting of the Commission, there were seven commissioners present. The Commission voted 7-0 to approve CUP 2018-02 with findings 1-10 and conditions 1 & 2.

Evidence Presented

At the meeting of February 21, 2018, City Planner Abboud, summarized the staff report. David Webb, Terminal Manager answered questions about the proposal. No public testimony was presented to the commission.

Findings of Fact

After careful review of the record and consideration of testimony and evidence presented at the hearing, the Commission determined Condition Use Permit 2018-01, to expand an existing gas

station, including the addition of an automobile fueling canopy, within the Central Business District, per HCC 21.18.030(d) is hereby approved.

The criteria for granting a Conditional Use Permit is set forth in HCC 21.71.020, General conditions, and establishes the following conditions:

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

Finding 1: HCC 21.14.030(c) authorizes Auto fueling stations as a conditional use in the Central Business District.

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

Finding 2: The purpose of the district includes the desire for centrally located businesses. This proposal expands an existing business use.

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

Finding 3: An expanded auto fueling station is not expected to negatively impact the adjoining properties greater than other permitted or conditional uses.

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

Finding 4: The proposal is compatible with existing uses of surrounding land.

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

Finding 5: Existing public, water, sewer, and fire services are adequate to serve the structure.

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 6: The proposal expands an established use that does 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 7: The proposed expansion is not expected to cause public health or safety concerns.

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

Finding 8: The proposal will comply with applicable regulations by adhering to the conditions of this CUP and following the issuance of a zoning permit.

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

Finding 9: Expanding the use of the site while retaining the existing site footprint further concentrates the site and is thusly consistent with the Comprehensive Plan.

j. The proposal will comply with the applicable provisions of the Community Design Manual (CDM).

Finding 10: The proposal will comply with the applicable provisions of the Community Design Manual.

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

- 1. Special yards and spaces:** No specific conditions deemed necessary.
- 2. Fences and walls:** No specific conditions deemed necessary.
- 3. Surfacing of parking areas:** No specific conditions deemed necessary.
- 4. Street and road dedications and improvements:** No specific conditions deemed necessary.
- 5. Control of points of vehicular ingress and egress:** No specific conditions deemed necessary.
- 6. Special provisions on signs:** No specific conditions deemed necessary.
- 7. Landscaping:** No specific conditions deemed necessary.
- 8. Maintenance of the grounds, building, or structures:** No specific conditions deemed necessary.
- 9. Control of noise, vibration, odors or other similar nuisances:** No specific conditions deemed necessary.
- 10. Limitation of time for certain activities:** No specific conditions deemed necessary.
- 11. A time period within which the proposed use shall be developed:** No specific conditions deemed necessary.
- 12. A limit on total duration of use:** No specific conditions deemed necessary.
- 13. More stringent dimensional requirements,** such as lot area or dimensions, setbacks, and building height limitations. Dimensional requirements may be made more lenient by conditional

use permit only when such relaxation is authorized by other provisions of the zoning code. Dimensional requirements may not be altered by conditional use permit when and to the extent other provisions of the zoning code expressly prohibit such alterations by conditional use permit.

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.

Condition 1: Install a fence of adequate height to screen the existing propane tank from public view. The fencing material shall follow the guidelines of page 32 of the CDM and be approved by the City Planner prior to installation.

Condition 2: Exterior and parking lot lighting plan must be approved by the City Planner prior to installation.

Conclusion: Based on the foregoing findings of fact and law, Conditional Use Permit 2018-02 is hereby approved, with Findings 1-10 and Condition 1 & 2.

Date

Vice Chair, Syverine Bentz

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 _____2018. A copy was also delivered to the City of Homer Planning Department and Homer City Clerk on the same date.

Date

Julie Engebretsen, Deputy City Planner

Kurt Lindsey
Petro 49 Inc.
1813 1st Ave.
Anchorage, AK 99503

Russel Cooper
2101 63rd Ave
Anchorage, AK 99507

Holly C. Wells
Birch, Horton, Bittner & Cherot
1127 West 7th Ave
Anchorage, AK 99501

Katie Koester, City Manager
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HOMER ADVISORY PLANNING COMMISSION

Approved CUP 2018-02 at the Meeting of March 7, 2018

RE: Conditional Use Permit (CUP) 2018-02

Address: 302 E. Pioneer Ave.

Legal Description: T 6S R 13W SEC 20 SEWARD MERIDIAN HM 0540251A NILS O SVEDLUND SUB AMD LOT 2 TRACT A

DECISION

Introduction

Derek & Catriona Reynolds, (the "Applicants") applied to the Homer Advisory Planning Commission (the "Commission") for a Conditional Use Permit (CUP) to construct a covered outdoor space and entryway, extending up to 8 feet into the 20-foot building setback, along Pioneer Avenue under Homer City Code 21.18.040(b)(4).

A public hearing was held for the application before the Commission on March 7, 2018 as required by Homer City Code 21.94. Notice the public hearing was published in the local newspaper and sent to 22 property owners of 25 parcels as shown on the Kenai Peninsula Borough tax assessor rolls.

At the March 7, 2018 meeting of the Commission, there were seven commissioners present. The Commission voted 7-0 to approve CUP 2018-02 with findings 1-11 and conditions 1.

Evidence Presented

At the meeting of March 7, 2018, City Planner Abboud summarized the staff report and responded to the written laydown provided by Mr. Griswold. City Planner Abboud pointed out that no examples or evidence was presented in the laydown about just how drainage and snow removal might be more of a problem in consideration of the proposal. City Planner Abboud also stated that he had evaluated the site for line of sight problems and found no safety issues. The applicants made a presentation. Marc Romano, Jason Herreman, and Wes Schocht, city residents, testified in favor of the proposal. The applicants and the City Planner responded to questions of the Commissioners.

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

Finding 7: The covered outdoor space and entryway will not be unduly detrimental to the health, safety or welfare of the surrounding area or the City as a whole.

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

Finding 8: Following CUP approval and issuance of a zoning permit, this proposal will comply with applicable regulations of HCC Title 21.

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

Finding 9: No evidence has been found that the proposal is contrary to the applicable land use goals and objectives of the Comprehensive Plan.

j. The proposal will comply with the applicable provisions of the Community Design Manual (CDM).

Finding 10: The proposal will comply with the applicable provisions of the Community Design Manual.

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

- 1. Special yards and spaces:** No specific conditions deemed necessary
- 2. Fences and walls:** Rental bicycles displayed outdoors must be screened from public view when remaining outdoors outside of open business hours, per HCC 21.18.080(b).
- 3. Surfacing of parking areas:** No specific conditions deemed necessary.
- 4. Street and road dedications and improvements:** No specific conditions deemed necessary.
- 5. Control of points of vehicular ingress and egress:** No specific conditions deemed necessary.
- 6. Special provisions on signs:** No specific conditions deemed necessary.
- 7. Landscaping:** No specific conditions deemed necessary.
- 8. Maintenance of the grounds, building, or structures:** No specific conditions deemed necessary.
- 9. Control of noise, vibration, odors or other similar nuisances:** No specific conditions deemed necessary.
- 10. Limitation of time for certain activities:** No specific conditions deemed necessary.

21.93.080, and shall be filed with the Homer City Clerk, 491 East Pioneer Avenue, Homer, Alaska 99603-7645.

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I certify that a copy of this Decision was mailed to the below listed recipients on _____ 2018. A copy was also delivered to the City of Homer Planning Department and Homer City Clerk on the same date.

Date

Julie Engebretsen, Deputy City Planner

Derek & Catriona Reynolds
4658 Tamara Street
Homer, AK 99603

Frank Griswold
519 Klondike Ave
Homer, AK 99603

Holly C. Wells
Birch, Horton, Bittner & Cherot
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Planning Department

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Charlie Pierce
Borough Mayor

3/9/2018

Rick Abboud, City Planner
City of Homer
491 East Pioneer Avenue
Homer, Alaska 99603

RE: Barnetts South Slope Subdivision Quiet Creek Park
Time Extension Request
KPB File 2014-016

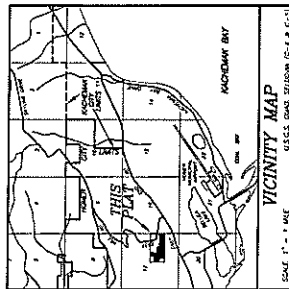
The owner is requesting a 1-year time extension for Barnetts South Slope Subdivision Quiet Creek Park, located in the City of Homer.

The proposed subdivision received preliminary plat approval by the KPB Planning Commission on March 10, 2014. Several time extensions have since extended preliminary approval to March 27, 2018.

Please schedule this item for review by the Homer Advisory Planning Commission. The time extension will be scheduled for a KPB Planning Commission meeting only after HAPC review. Please contact the Borough Planning Department with the results of that review. If the HAPC concurs with the time extension, staff will recommend extension of preliminary approval at the next available Planning Commission meeting.

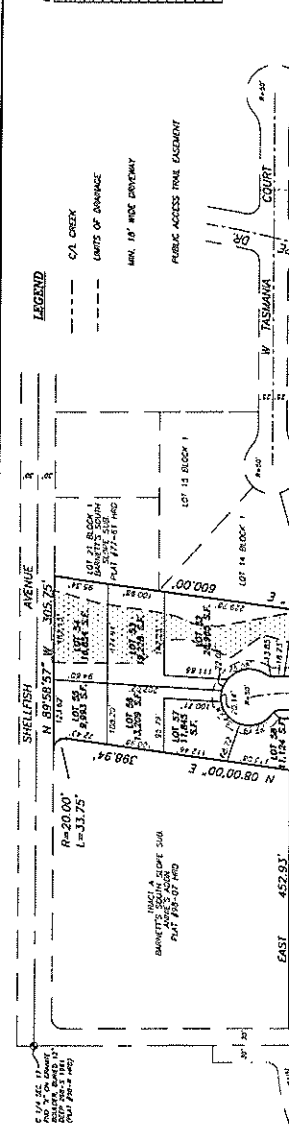
Thank You,

Jordan Reif
Platting Technician
jreif@kpb.us



CURVE TABLE

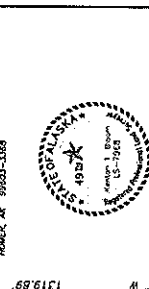
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VICINITY MAP
SCALE 1" = 1 MILE
USGS QUAD SHEET 6-4-8 (C-2)

CERTIFICATE OF OWNERSHIP
WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE ABOVE DESCRIBED LAND AND THAT WE HAVE THE RIGHT TO CONVEY THE SAME AND BY OUR FREE CONSENT DEED ALL RIGHTS OF THE ABOVE DESCRIBED LAND TO THE CITY OF HOMER AND ALL EASEMENTS TO THE USE SHOWN HEREON.

THAT WE HAVE MANAGED FOR THE CITY OF HOMER
FOR THE CITY OF HOMER
P.O. BOX 330
HOMER, AK 99603-3300



RECEIVED
HOMER PENINSULA BOROUGH
PLANNING DEPARTMENT
THIS PLAT WAS APPROVED BY THE HOMER PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF
HOMER PENINSULA BOROUGH
BY: _____
APPROVED OFFICIAL

PLAT APPROVAL
THIS PLAT WAS APPROVED BY THE HOMER PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF
HOMER PENINSULA BOROUGH
BY: _____
APPROVED OFFICIAL

RECEIVED
HOMER RECORDING DISTRICT
MPB FILE NO. 2013-
BARNETT'S SOUTH SLOPE SUB.
QUIET CREEK PARK

BEING A SUBDIVISION OF THE IMPROVED REMAINDER OF BARNETT'S SOUTH SLOPE SUBDIVISION AS PER PLAT 2001-44 BARNETT'S SOUTH SLOPE SUBDIVISION, CITY OF HOMER, HOMER PENINSULA BOROUGH, ALASKA, CONTAINING 34.00 ACRES.

SEABRIGHT SURVEY + DESIGN
1044 EAST ROAD, SUITE A
HOMER ALASKA 99603
(907) 233-1111
seabright@seabrightalaska.com

| DATE | BY | DATE | BY |
|------------|-----------|------------|-----------|
| 10/20/2013 | SEABRIGHT | 10/20/2013 | SEABRIGHT |
| 10/20/2013 | SEABRIGHT | 10/20/2013 | SEABRIGHT |

PLAT TABLE

| LINE | BEARING | DISTANCE |
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NOTARY'S ACKNOWLEDGMENT
SUBSCRIBED AND SIGNED TO BEFORE ME THIS
DAY OF _____, 2013.
FOR _____
NOTARY PUBLIC FOR ALASKA
MY COMMISSION EXPIRES _____

TRAIL UTILITY AND SLOPE EASEMENTS
THE CITY OF HOMER HAS REVIEWED THIS PLAT AND HAS ACCEPTED IT BY THE CITY OF HOMER.
DATE: _____

WATERWAY DISPOSAL
PLANS FOR THE WATERWAY DISPOSAL THAT MEET
THE REQUIREMENTS ARE ON FILE AT THE DEPT. OF
CIVIL ENGINEERING, CONSTRUCTION.
DATE: _____

DRAINAGE EASEMENTS
DRAINAGE AND BANK MAINTENANCE EASEMENTS
HAVE BEEN REVIEWED AND ACCEPTED BY THE CITY OF HOMER.
DATE: _____

NOTES
1. BASES OF BEARING FOR THIS SURVEY IS BETWEEN THE C 1/4 SECTION 17 AND E 1/2 SECTION 17 AS SHOWN ON RECORDED PLAT 87-61 M.D. 5 0705-55.
2. THE FRONT 15 FEET ALONG THE BOUNDARY LINE AND THE 5 FEET ALONG THE SIDE LOT LINES (UNLESS NOTED OTHERWISE) IS A UNIT OF EASEMENT TO THE CITY OF HOMER FOR THE PURPOSE OF THE CITY OF HOMER.
3. THESE LOTS WILL BE SERVED BY CITY OF HOMER WATER AND SEWER.
4. DEVELOPMENT OF THESE LOTS IS SUBJECT TO THE CITY OF HOMER ZONING.
5. PROPERTY OWNERS SHALL CONTACT THE CITY OF HOMER FOR ANY ON-SITE DEVELOPMENT OR CONSTRUCTION ACTIVITY TO OBTAIN THE NECESSARY PERMITS.
6. ALL LOTS WITHIN THIS SUBDIVISION ARE SUBJECT TO CITY OF HOMER ZONING.
7. CREEKS ARE 50 FT WIDE. ALL CREEK RETURNS ARE 20 FT WIDE.
8. CREEKS ARE SUBJECT TO PREVIOUS SEASONAL INUNDATIONS UPON DEVELOPMENT.
9. ALL WATERWAY DISPOSAL SYSTEMS SHALL COMPLY WITH EXISTING APPLICABLE LAWS AT THE TIME OF CONSTRUCTION.

NOTARY'S ACKNOWLEDGMENT
SUBSCRIBED AND SIGNED TO BEFORE ME THIS
DAY OF _____, 2013.
FOR _____
NOTARY PUBLIC FOR ALASKA
MY COMMISSION EXPIRES _____

TRAIL UTILITY AND SLOPE EASEMENTS
THE CITY OF HOMER HAS REVIEWED THIS PLAT AND HAS ACCEPTED IT BY THE CITY OF HOMER.
DATE: _____

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PLANS FOR THE WATERWAY DISPOSAL THAT MEET
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DATE: _____

DRAINAGE EASEMENTS
DRAINAGE AND BANK MAINTENANCE EASEMENTS
HAVE BEEN REVIEWED AND ACCEPTED BY THE CITY OF HOMER.
DATE: _____



City of Homer

www.cityofhomer-ak.gov

Planning

491 East Pioneer Avenue
Homer, Alaska 99603

Planning@ci.homer.ak.us

(p) 907-235-3106

(f) 907-235-3118

TO: Homer Advisory Planning Commission
FROM: Rick Abboud, City Planner
DATE: March 21, 2018
SUBJECT: City Planner's Report PL 18-15

City Council - 3.12.18

Ordinance 18-12, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 21.54.325, Standards for Recreational Vehicles in the Marine Commercial District and Marine Industrial District. Erickson. Recommended dates: Introduction March 12, 2018, Public Hearing and Second Reading March 27, 2018.

Ordinance 18-08, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 21.28.020, Permitted Uses and Structures; Adding Marijuana Retail Facilities in the Marine Commercial District. Aderhold/Cannabis Advisory Commission. Introduction February 26, 2018, Public Hearing and Second Reading March 12, 2018. Memorandum 18-021 from City Planner as backup

There were seven who testified. Four in favor and three opposed.

FAILED with discussion.

Ordinance 18-09, An Ordinance of the City Council of Homer, Alaska, Disbanding the Cannabis Advisory Commission and Repealing Homer City Code Chapter 2.78 Outlining the Duties of the Cannabis Advisory Commission. Aderhold. Introduction February 26, 2018, Public Hearing and Second Reading March 12, 2018.

There was one who testified.

ADOPTED with discussion.

Comprehensive Plan

We are still collecting comments until the end of March.

Information

Commissioners did ask about the process with CUP 2018-02 and I wanted to back-up the statements made at the meeting. I have attached the McGreenery decision of the Superior Court and a communication with then City Attorney Klinkner. You will see that both uphold the City's ability to deal with the setback in a CUP.

Also attached is **Griswold v. City of Homer (10/25/96), 925 P 2d 1015**. I have highlighted some particularly interesting insights from the case. It does touch on spot-zoning which Mr. Griswold is so fond of mentioning. Unfortunately, it is a bit of a moving target. A three legged stool method of evaluation is presented.

Planning Commission report schedule for City Council meetings

March 27: Franco

April 9: Tom

April 23:

Att.

Klinkner Email

McGreenery decision of the Superior Court

Griswold v. City of Homer (10/25/96)

Julie Engebretsen

HADC 4/16/14 laydown

From: Thomas Klinkner <tklinkner@BHB.com>
Sent: Wednesday, April 16, 2014 3:46 PM
To: Julie Engebretsen
Subject: CU 14-05

Julie,

I understand that a question has arisen whether this application more properly should be treated as an application for a variance. In short, the answer is no.

AS 29.40.040(a) authorizes the City to adopt various land use regulations. AS 29.40.040(b) authorizes the City to approve variances from those regulations if the criteria in the statute are met. The essential difference between a variance and a conditional use is that a variance permits something that a land use regulation otherwise prohibits, while a conditional use refers to a use or structure that a land use regulation permits provided that it meets certain conditions. Under AS 29.40.040(b), a variance may not permit a land use in a district in which that use is prohibited. A typical variance permits a change in a required minimum or maximum quantity or dimension where compliance with the requirement would subject the owner of the property to an unusual burden or hardship. In contrast, a typical conditional use is a use of land that the ordinance permits in a district subject to required administrative findings that the use in that particular location will not be harmful.

While conditional uses typically apply to uses of land, there is no reason why they cannot also apply to required minimum or maximum quantities or dimensions. Thus, HCC 21.18.040(b)(4) permits setbacks from most rights-of-way in the Central Business District to be reduced from 20 feet if the reduction conforms to the standards for a conditional use in HCC 21.71.010(b), which provides that "a conditional use permit may be granted to approve land **uses and structures** with special design or site requirements, operating characteristics, or potential adverse effects on surroundings" (emphasis added). The staff report on this application demonstrates that the setback reduction will meet the conditional use standards. Because the setback reduction is not sought to avert a hardship to the property owner, the variance standards would not apply.

Let me know if you have additional questions regarding this matter.

Thomas F. Klinkner | Birch Horton Bittner & Cherot
1127 W 7th Avenue | Anchorage, AK 99501
Tel: (907) 276-1550 | Fax: (907) 276-3680
Email: tklinkner@bhb.com | Website: www.birchhorton.com

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

FRANK GRISWOLD,

Appellant,

v.

CITY OF HOMER and
THOMAS McGREENERY,

Appellees.

RECEIVED

FEB 05 2008

PERKINS COIE
ANCHORAGE

Case No. 3HO-05-00229CI

ORDER

Appeal from a Final Decision of the City of Homer Board of Adjustment

I. Factual History

On 13 May 2005 Thomas McGreenery applied to the City of Homer for a conditional use permit (CUP) for the lot at 445 Grubstake Avenue, Lot 2, Block 11, Glacier View Subdivision. The property, located within the area designated by Homer's zoning regulations as the Central Business District (CBD), was a parking lot at the time of the application. McGreenery sought approval to place a mobile home on the lot for use as a single-family residence, and to reduce the 20-foot setback requirement from Grubstake Avenue, a dedicated right-of-way. McGreenery proposed an arctic entry for the mobile home, with the attached porch and connected staircase extending nine feet into the required 20-foot

3HO-05-00229CI
Griswold v. City of Homer
Decision on Appeal

setback. Homer City Code (HCC) permits mobile homes in the CBD¹, subject to certain requirements², which left only McGreenery's request to reduce the setback.

II. Procedural History

The Homer Advisory Planning Commission (Commission) held a public meeting on 1 June 2005 to consider CUP application #05-10 and hear testimony. The Commission approved CUP #05-10 on 16 June 2005, reducing the setback from a dedicated right-of-way pursuant to HCC 21.48.040(b)(4).

Frank Griswold appealed this decision by detailing seven allegations of error to the Homer Board of Adjustment (Board) on 16 June 2005. McGreenery filed a rebuttal to the seven allegations of error on 5 July 2005. Griswold filed an opening brief 11 July 2005.³ The Board heard oral arguments from both Griswold and McGreenery on 8 August 2005, and issued a unanimous decision affirming CUP #05-10 on 26 September 2005. The Board modified the CUP to include a condition limiting the setback reduction to the proposed porch and stairwell.

Griswold filed his Notice of Appeal from this decision on 26 October 2005. That appeal was dismissed without prejudice for noncompliance

¹ HCC 21.48.020(p).

² Subject to the requirements set forth in HCC 21.61.080(g)(1) and (g)(2).

³ Griswold filed two supplements to his notice of appeal, which were rejected by the Homer City Clerk as untimely. The Board affirmed the rejection of the supplements. Griswold does not appeal this rejection.

with Appellate Rule 602(c)(1) on 23 November 2005. Griswold re-filed the instant appeal on 16 December 2005.

The Court has jurisdiction to hear this appeal pursuant to AS 22.10.020(d) and HCC 21.67.040 and 21.68.010. The standard of appellate review of zoning board decisions was articulated in *Griswold v. City of Homer*⁴ as follows:

Judicial review of zoning board decisions is narrow, and board decisions are accorded a presumption of validity. The zoning body's decision shall not be reversed if it is supported by substantial evidence.

Substantial evidence is generally defined as evidence that "a reasonable mind might accept as adequate to support a conclusion." Zoning board interpretations of zoning ordinances "should be given great weight and should be accepted whenever there is a reasonable basis for the meaning given by the board." This deferential standard reflects the fact that the Commission and the Board have expertise in administering zoning ordinances and they receive deference equal to that accorded to an administrative agency. With respect to questions of law that do not involve Commission or Board expertise, we substitute our independent judgment.⁵

III. Discussion

A. The Board of Adjustment may authorize a setback reduction by a conditional use permit.

Griswold claims that the Board erred by granting a conditional use

⁴ 55 P.3d 64 (Alaska 2002).

⁵ *Id.*, 55 P.3d at 67-68 (citations omitted).

permit that allowed McGreenery to place a porch and stair within the 20 foot setback. His argument is that what the Board should have issued was a variance from the setback requirement, rather than a conditional use permit. He argues that the permit process focuses exclusively on the type of activity the property owner seeks to pursue on the property and that the construction of a porch and stairs is not an activity and thus not a use.

Griswold's argument ignores the fact that the Homer Code defines what may be the subject of a conditional use permit. HCC 21.48.040(b)(4) allows for a reduced setback from a dedicated right of way if approved by a conditional use permit. Thus the Board utilized an authorized mechanism to review and approve McGreenery's request.

B. CUP 05-10 is consistent with the purposes of the zoning district.

Before the Board may issue a conditional use permit it must find that "[t]he use is consistent with the purposes of HCC Chapters 21.28 through 21.70 and the purposes of the zoning district[.]"⁶ Griswold argues generally that a variance can never be consistent with the basic setback requirement and therefore any permit that allows a variance from the setback required at the location does not meet the test set for conditional use permits in HCC 21.61.020.

⁶ HCC 21.61.020 (a).

Griswold reads too much into HCC 21.61.020. If the drafters of the code had intended to preclude variances of setback requirements, they would have said so expressly. Instead they expressly allowed for the possibility of deviations from setback requirements as long as the particular deviation was otherwise consistent with the type of activities and structures allowed in the particular zoning district. The activities and structures allowed in the CBD are identified in HCC 21.48.020. These include mobile homes, subject to certain requirements set forth in HCC 21.61.080 (g)(1) and (g)(2).⁷ Those two subsections merely set minimum facilities each mobile home must have. They have nothing to do with setbacks. The Board did not err in its conclusion that the modest setback deviation requested by allowed McGreenery was consistent with the purposes of the CBD zoning district.

C. The Board did not error in determining that the value of the adjoining property will not be negatively affected and the proposed use is in harmony with the community plan and surrounding land use.

HCC 21.61.020 requires, in part, that before a conditional use permit can be issued it must be shown that “(b.) The value of the adjoining property will not be negatively impacted greater than that anticipated from other permitted uses in this district; [and] (c.) The proposed use is in harmony with the community plan

⁷ HCC 21.48.020(p).

and with surrounding land use[.]” Griswold argues that the Board considered the impact of the construction of the mobile home when it should have considered the impact to the deviation from the setback requirement. Griswold is in error. While the Board did note that the construction of the mobile home would not have an adverse impact on property values, it also found that “the allowance of an arctic entry and staircase extending into the usual 20-foot setback will enhance the site for the future residents of the home the applicant proposes to place on the lot[.]”⁸ The Board considered the requisite specific use when it evaluated the impact of the request. It properly understood that the impact of the setback deviation was related to the structure that would intrude into the right-of-way and the nature of the structure that was not intruding.

Griswold argues that the Board did not have sufficient evidence to conclude that there would be no adverse financial impact of neighbors and that the setback deviation was in harmony with surrounding land use. Again Griswold is in error. The Court had before it the report of the City Planner wherein the neighborhood was described and the impact of the setback deviation was evaluated. While it is true that there was not an exacting evaluation of the financial impact, the Court concludes that the quality and sufficiency of the evidence and evaluation will depend upon the nature of the requested use. If the applicant had

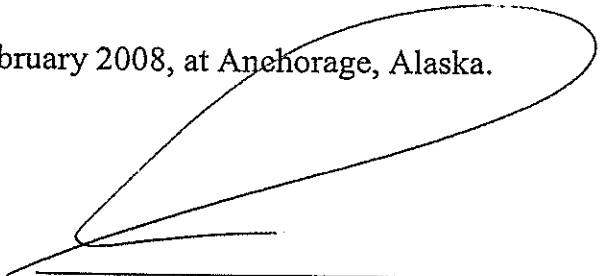
⁸ R. 37.

asked that he be able to place a structure such as a ten story building or a garbage dump, which would arguably be wildly incompatible with the neighborhood, then a more extensive evaluation of the impact would be reasonable and necessary. But McGreenery's request was far more modest. It is not hard to understand what an arctic entry and a staircase would look like or entail. It is not hard to evaluate the impact of such common structures would be upon the neighborhood. It is not necessary that the applicant or the Board undertake an expensive engineering study or detailed property value study to get a sufficiently accurate estimate of the impact that an arctic entry and staircase that extended into a right-of-way would have. The Board's findings were supported by substantial and sufficient evidence.

IV. Conclusion

The Board's decision is AFFIRMED.

DONE this 4th day of February 2008, at Anchorage, Alaska.




William F. Morse
Superior Court Judge

I certify that on 4 February 2008 a copy
of the above was mailed to each of the
following at their addresses of record:

Frank Griswold
519 Klondike Ave.
Homer, AK 99603

Thomas McGreenery
381 Klondike Ave.
Homer, AK 99603

G. Tans



Ellen Bozzini
Judicial Assistant

Griswold v. City of Homer (10/25/96), 925 P 2d 1015

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THE SUPREME COURT OF THE STATE OF ALASKA

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| FRANK S. GRISWOLD, |) | |
| |) | Supreme Court No. S-6532 |
| Appellant, |) | |
| |) | Superior Court No. |
| v. |) | 3HO-92-290 CI |
| |) | |
| CITY OF HOMER, |) | O P I N I O N |
| |) | |
| Appellee. |) | [No. 4419 - October 25, 1996] |
| |) | |

Appeal from the Superior Court of the State of
Alaska, Third Judicial District, Homer,
Jonathan H. Link, Judge.

Appearances: Frank S. Griswold, pro se,
Homer. Gordon J. Tans, Perkins Coie,
Anchorage, for Appellee.

Before: Moore, Chief Justice, Rabinowitz,
Matthews, Compton, and Eastaugh, Justices.

EASTAUGH, Justice.
RABINOWITZ, Justice, dissenting in part.

I. INTRODUCTION

In 1992 the Homer City Council adopted Ordinance 92-18 amending Homer's zoning and planning code to allow motor vehicle sales and services on thirteen lots in Homer's Central Business District. Frank Griswold claims Ordinance 92-18 is invalid because it constitutes spot zoning. We affirm the superior court's rejection of that claim. Griswold also claims the Ordinance is invalid because a council member with a personal interest

improperly participated in its adoption. We hold that the council member should not have participated. We consequently remand so the superior court can determine whether that participation invalidates the Ordinance. Finally, we hold that Griswold is a public interest litigant who cannot be assessed the City's attorney's fees and court costs.

II. FACTS AND PROCEEDINGS

Alaska Statute 29.40.020 requires that each first class borough establish a planning commission which will prepare, submit, and implement a comprehensive plan. (EN1) This plan must be adopted before the local government can adopt a zoning ordinance. AS 29.40.020-.040. A borough assembly "in accordance with a comprehensive plan adopted under AS 29.40.030 and in order to implement the plan . . . shall adopt or amend provisions governing the use and occupancy of land." AS 29.40.040. That statute requires the borough to implement the comprehensive plan by adopting provisions governing land use, including zoning regulations. Id. A borough may delegate this responsibility and the planning power to a city within the borough, if the city consents. AS 29.40.010(b). The Kenai Peninsula Borough delegated to the City of Homer the zoning authority for areas within the City.

The City adopted a comprehensive land use plan in 1983 and revised it in 1989. The City Council enacted zoning ordinances to implement the plans. Motor vehicle sales and services were not a permissible use within the Central Business District (CBD). Several businesses provided automobile services in the CBD before the City adopted the zoning ordinances. Those businesses were "grandfathered" into the zoning district and allowed to continue to provide those services as nonconforming uses, so long as those uses did not extend beyond the original lot boundaries and the property owners did not discontinue their nonconforming uses for more than one year.

Guy Rosi Sr. owns a parcel (Lot 13) in the CBD. (EN2) Rosi Sr. has continuously operated an automobile repair service on Lot 13. His repair business remains a valid nonconforming use in the CBD. Rosi Sr. also operated an automobile dealership on Lot 13 until sometime prior to 1990, but lost the right to continue that nonconforming use on that lot by discontinuing the vehicle sales business for more than one year.

Guy Rosi Jr. owns Lot 12, which is adjacent to his father's lot. Lot 12 is also in the CBD; because it had never been used for automobile sales or services, these uses were not grandfathered for Lot 12.

In 1986 the City received complaints that Lot 12 was being used for vehicle sales in violation of the zoning ordinance. In May 1986 Rosi Jr. applied to the Homer Advisory Planning Commission for a conditional use permit for Lot 12. The commission denied the application. It found that public services and facilities were adequate to serve the proposed use. The commission also found that automobile sales were not consistent with the purpose of the CBD; were not in harmony with the Comprehensive Plan; would negatively impact neighborhood character; but might not negatively impact the value of adjoining property more than permitted uses.

Rosi Jr. then applied for a contract rezone under Homer City Code (HCC) 21.63.020(c). The City granted the application in

1986, rezoning Rosi Jr.'s lot to General Commercial 1 (GC1) and restricting its use to vehicle sales. Griswold does not challenge the Lot 12 contract rezone in this litigation.

Rosi Sr.'s Lot 13 was not affected by the Lot 12 contract rezone. In September 1990 Rosi Sr. requested that the CBD be rezoned to allow vehicle sales and related services. In August 1991 Rosi Sr., stating that he had not received any response to his earlier request, asked that Lot 13 be rezoned to allow vehicle sales and related services. During this period, there were numerous zoning proposals and public hearings regarding automobile-related services in the CBD, but some people spoke in favor of rezoning the area.

In January 1992 a commission memorandum informed the City Manager that the commission had been wrestling with several possible amendments to the zoning code since 1990, and that "central to the issue is the Commission's desire to rezone the Guy Rosi property to allow for vehicle sales." The commission noted that a proposed ordinance would allow automobile-related services in the CBD only on Main Street from Pioneer Avenue to the Homer Bypass, excluding corner lots with frontage on Pioneer Avenue and the Homer Bypass Road. However, the commission staff recommended that the council pass an ordinance which would allow automobile-related services "everywhere in the Central Business District or nowhere." The memo stated that the City Attorney felt the proposed ordinance would be difficult to enforce and defend.

In April the City Council adopted Ordinance 92-18, which amended HCC 21.48.020 by adding the following section:

hh. Automobile and vehicle repair, vehicle maintenance, public garage, and motor vehicle sales, showrooms and sales lots, but only on Main Street from Pioneer Avenue to the Homer Bypass Road, excluding corner lots with frontage on Pioneer Avenue or the Homer Bypass Road, be allowed as a permitted use.

The Ordinance passed five-to-zero. One council member was absent. Brian Sweiven was one of the council members voting for the amendment. He owned one of the thirteen lots on which automobile sales and services were to be allowed under Ordinance 92-18. Sweiven both lived on his lot and operated an appliance repair business there. In 1994, stating he had a potential conflict of interest, he refrained from voting on Ordinance 94-13, which would have repealed subsection (hh). A week later he reversed that position and voted not to repeal subsection (hh).

Frank Griswold, the plaintiff in this case, owns an automobile repair shop in the CBD. Its operation was grandfathered in under the zoning code. He also lives in the CBD. Griswold's lot was not one of the thirteen lots directly affected by Ordinance 92-18. Griswold brought suit against the City, alleging under several theories that Ordinance 92-18 is an invalid exercise of the City's zoning power and that Sweiven's participation in the adoption of Ordinance 92-18 invalidates the Ordinance. Following a bench trial, the superior court found against Griswold on all issues. It later ordered him to pay a portion of the City's court costs and attorney's fees. Griswold appeals.

III. DISCUSSION

We have repeatedly held that it is the role of elected

representatives rather than the courts to decide whether a particular statute or ordinance is a wise one. (EN3) Norene v. Municipality of Anchorage, 704 P.2d 199, 202 (Alaska 1985); Seward Chapel, Inc. v. City of Seward, 655 P.2d 1293, 1299 (Alaska 1982). In Concerned Citizens of S. Kenai Peninsula v. Kenai Peninsula Borough, 527 P.2d 447, 452 (Alaska 1974), we stated:

A court's inquiry into arbitrariness begins with the presumption that the action of the legislature is proper. The party claiming a denial of substantive due process has the burden of demonstrating that no rational basis for the challenged legislation exists. This burden is a heavy one, for if any conceivable legitimate public policy for the enactment is apparent on its face or is offered by those defending the enactment, the opponents of the measure must disprove the factual basis for such a justification.

(Footnote omitted.) See also 6 Eugene McQuillan, Municipal Corporations sec. 20.05, at 12 (3d ed. 1988) ("The validity of an ordinance will be upheld where there is room for a difference of opinion 'even though the correctness of the legislative judgment is doubtful.'" (quoting Western Springs v. Bernhagen, 156 N.E. 753, 754 (Ill. 1927))).

However, we will invalidate zoning decisions which are the result of prejudice, arbitrary decision-making, or improper motives. See South Anchorage Coalition v. Coffey, 862 P.2d 168, 174 (Alaska 1993) ("In reviewing zoning decisions, courts generally try to guard against prejudice, arbitrary decision-making, and improper motives." (citing 3 Edward H. Ziegler Jr., Rathkoph's The Law of Zoning and Planning sec. 41.06, at 41-29, sec. 41.14(3)(b), at 41-93 (1992))). Similarly, a legislative body's zoning decision violates substantive due process if it has no reasonable relationship to a legitimate government purpose. Concerned Citizens of S. Kenai Peninsula, 527 P.2d at 452. Moreover, another court has noted, "The dividing line between . . . mere difference in opinion and what is arbitrary is the line between zoning based on objective factual evidence and zoning without a rational basis." Smith v. County of Washington, 406 P.2d 545, 548 (Or. 1965) (citations omitted). (EN4) In this case, Griswold argues that the City's Ordinance does not have a legitimate basis but rather is arbitrary spot zoning. (EN5)

We have not previously had the opportunity to consider whether a municipality's planning and zoning enactment is invalid because it constitutes "spot zoning." The City states that "this is not a case of 'spot zoning' at all" because the area in question remains zoned CBD. However, treatise discussions of spot zoning appear to make no distinction between cases where a zoning district has been reclassified and those where a new use without district reclassification is at issue. See, e.g., 1 Robert M. Anderson American Law of Zoning 3d sec. 5.12, at 358 (1986) ("The common [spot zoning] situation is one in which an amendment is initiated at the request of an owner or owners who seek to establish a use prohibited by the existing regulations." See also, Ballenger v. Door County, 388 N.W.2d 624, 627 (Wis. App. 1986) (applying spot

zoning analysis in a case where the zoning district remained the same but the permitted uses within the district were expanded); *Concerned Citizens of S. Kenai Peninsula*, 527 P.2d at 452 (whether zoning decision violates substantive due process depends on whether it has a reasonable relationship to a legitimate public purpose).

A. Claim of Spot Zoning

The "classic" definition of spot zoning is "the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners" *Anderson*, supra, sec. 5.12, at 359 (quoting *Jones v. Zoning Bd. of Adjustment of Long Beach*, 108 A.2d 498 (N.J. Super. 1954)). Spot zoning "is the very antithesis of planned zoning." *Id.* (EN6) Courts have developed numerous variations of this definition. *Id.* These variations have but minor differences and describe any zoning amendment which "reclassifies a small parcel in a manner inconsistent with existing zoning patterns, for the benefit of the owner and to the detriment of the community, or without any substantial public purpose." *Anderson*, supra, sec. 5.12, at 362. Professor Ziegler states:

Faced with an allegation of spot zoning, courts determine first whether the rezoning is compatible with the comprehensive plan or, where no plan exists, with surrounding uses. Courts then examine the degree of public benefit gained and the characteristics of land, including parcel size and other factors indicating that any reclassification should have embraced a larger area containing the subject parcel rather than that parcel alone. No one particular characteristic associated with spot zoning, except a failure to comply with at least the spirit of a comprehensive plan, is necessarily fatal to the amendment. Spot zoning analysis depends primarily on the facts and circumstances of the particular case. Therefore the criteria are flexible and provide guidelines for judicial balancing of interests.

3 Edward H. Ziegler Jr., *Rathkoph's The Law of Zoning and Planning* sec. 28.01, at 28-3 (4th ed. 1995).

In accord with the guidance offered by Professor Ziegler, in determining whether Ordinance 92-18 constitutes spot zoning, we will consider (1) the consistency of the amendment with the comprehensive plan; (2) the benefits and detriments of the amendment to the owners, adjacent landowners, and community; and (3) the size of the area "rezoned."

1. Consistency with the comprehensive plan

Just as an ordinance which complies with a comprehensive plan may still constitute an arbitrary exercise of a city's zoning power, *Watson v. Town Council of Bernalillo*, 805 P.2d 641, 645 (N.M. App. 1991), nonconformance with a comprehensive plan does not necessarily render a zoning action illegal. *Anderson*, supra, sec. 5.06, at 339-40. However, consistency with a comprehensive plan is one indication that the zoning action in question has a rational

basis and is not an arbitrary exercise of the City's zoning power.

Homer's comprehensive plan divides the city into several zoning areas. By its own terms, Homer's comprehensive plan is not intended to set specific land use standards and boundaries; specific standards and boundaries are instead implemented through the City's zoning ordinance. The plan states, "The City shall encourage a mix of business/commercial and public/governmental activities in areas zoned or planned as central business district." The plan states that the CBD is "intended primarily for retail sales and services occurring within enclosed structures." The plan's objectives for the CBD are (1) to guide growth and development to provide a centrally located business and commercial area and focal point for the community; (2) to encourage infilling of the area already designated CBD before expanding the area; (3) to promote a safe, attractive, and easily accessible business and commercial core for pedestrian and vehicular visitors and residents; (4) to attract and accommodate a variety of uses to fill the business and commercial needs of downtown Homer; and (5) to tie into state and federal programs that beautify the business and commercial core.

Griswold does not dispute that the CBD is intended to allow commercial uses. He notes however, that although auto-related services are explicitly permitted in the General Commercial I District under HCC 21.49.020(d), the planning commission previously denied a conditional use permit for auto-related services on Main Street, specifically finding, inter alia, that automobile sales were not consistent with the purpose of the CBD and were not in harmony with the comprehensive plan. He also notes that the comprehensive plan provides that the CBD was meant primarily for retail sales and services occurring within enclosed structures. Further, the fact that the City began phasing out auto-related services in the CBD when it adopted the comprehensive plan, while simultaneously specifically permitting these services in the General Commercial I District, indicates to Griswold that auto-related sales and services were, at least at one time, considered incompatible with the CBD.

The superior court concluded that the Ordinance was consistent with the comprehensive plan. In so concluding, it considered the policy statement implementing the Ordinance, and found that the Ordinance "encourages private investment and infilling" and "enhances convenient access to other parts of the CBD which are designated for other uses." It noted that Policy 4.1 provided: "The City shall research the nature of land uses and CBD land use needs and evaluate the need for subzones in the CBD."

Griswold points to trial evidence that the expansion of auto-related services in the CBD does not further all the goals of the comprehensive plan, but he fails to demonstrate that the superior court's finding -- that the Ordinance is consistent with the plan -- is clearly erroneous. Although the evidence presented by Griswold would permit a finding that the City Council had believed in 1986 that auto-related uses were incompatible with the CBD and the zoning ordinance as it then read, that evidence does not compel a finding that auto-related uses are in fact incompatible with the CBD or comprehensive plan, or that the City Council's 1992 change of opinion is unsupportable and arbitrary.

The superior court did not clearly err in making the findings discussed above. The court permissibly relied on Policy

4.1, which anticipates the type of action at issue here. The comprehensive plan does not expressly prohibit automobile sales or service establishments in the CBD. As the City notes, motor vehicle sales are most appropriately classified as a business and commercial use, for which the CBD was intended under the plan. Homer's city planner testified at trial that the Ordinance is in accordance with Homer's comprehensive plan. We conclude that the superior court did not err in holding that Ordinance 92-18 is consistent with the City's comprehensive plan.

2. Effect of small-parcel zoning on owner and community

Perhaps the most important factor in determining whether a small-parcel zoning amendment will be upheld is whether the amendment provides a benefit to the public, rather than primarily a benefit to a private owner. See Anderson, supra, sec.sec. 5.13-5.14; Ziegler, supra, sec. 28.03, sec. 28.04, at 28-19 (calling an amendment intended only to benefit the owner of the rezoned tract the "classic case" of spot zoning). Courts generally do not assume that a zoning amendment is primarily for the benefit of a landowner merely because the amendment was adopted at the request of the landowner. Anderson, supra, sec. 5.13, at 368. If the owner's benefit is merely incidental to the general community's benefit, the amendment will be upheld. Ziegler, supra, sec. 28.04, at 28-19 to 28-20. The City argues that Ordinance 92-18 serves the interests of the general community rather than primarily the interests of the Rosis. We agree.

a. Benefits and detriments to the community

Griswold argues that there are many negative aspects of the City's decision to allow auto-related uses in the CBD. Griswold presented evidence that the neighborhood character would be harmed by the zoning amendment. He presented evidence that a newspaper article quoted Planning Commissioner Cushing as saying that public opinion was overwhelmingly against allowing auto-related services in the CBD and that many Homer citizens expressed the opinion that their homes and businesses would be harmed by introducing auto-related services into the area. A real estate agent testified that property in the CBD has a higher value than property in the GC1 District.

Many jurisdictions, including this one, have held that interests such as the preservation of neighborhood character, traffic safety, and aesthetics are legitimate concerns. Barber v. Municipality of Anchorage, 776 P.2d 1035, 1037 (Alaska) (holding the government's interest in aesthetics is substantial and should be accorded respect), cert. denied, 493 U.S. 922 (1989); Cadoux v. Planning and Zoning Comm'n of Weston, 294 A.2d 582, 584 (Conn.) (holding increased traffic a valid reason to deny application for rezone), cert. denied, 408 U.S. 924 (1972). Contrary to the implication of the City's argument, (EN7) these are tangible harms. Moreover, the City itself appears to be concerned about the effects of auto-related services on property values and aesthetics, as evidenced by the council's findings supporting its confinement of the zoning change to Main Street, (EN8) and the commission's earlier finding that use for automobile sales would negatively impact neighborhood character.

However, despite this negative aspect of Ordinance 92-18, it appears that the Ordinance will result in genuine benefits for

the City of Homer. The City notes that before adopting Ordinance 92-18, for a year and a half it deliberated proposals which would allow auto-related uses in the CBD and delineated the many benefits which it believed the Ordinance will confer upon the community.

These benefits include encouraging filling in vacant places in the CBD; increasing the tax base and employment in the CBD; increasing convenience and accessibility for local and regional customers for vehicle repairs or purchases; and promoting orderly growth and development in the CBD. (EN9) Homer's city planner testified that the Ordinance provides a convenience to the public and guides growth and development to a centrally located area, while restricting such uses to areas away from tourists or to areas for visitors and pedestrians.

The superior court stated that Ordinance 92-18 advances legitimate legislative goals articulated in HCC 21.28.020 including but not limited to regulating and limiting the density of populations; conserving and stabilizing the value of properties; providing adequate open spaces for light and air; preventing undue concentration of population; lessening congestion on streets and highways; and promoting health, safety and general welfare. The court found "as a matter of fact and law that Ordinance No. 92-18 bears a substantial relationship between legitimate legislative goals and the means chosen to achieve those goals."

Griswold has demonstrated that there are some negative aspects of allowing auto-related uses in the CBD. Nonetheless, giving proper deference to the City Council as legislative policymaker and to the superior court as finder of fact, we cannot conclude that these detriments so outweigh the benefits of Ordinance 92-18 that we must hold the Ordinance was arbitrarily and capriciously adopted.

b. Benefit to the landowner

It appears that initially the City was primarily concerned with Rosi Sr.'s interests. (EN10) Rosi Sr. initiated the inquiry into rezoning the CBD. Before the City amended the zoning code, the planning commission chair stated that "[c]entral to the issue is the Commission's desire to rezone the Guy Rosi property to allow for vehicle sales." In 1991 commissioners "voiced their dislike for spot zoning but felt it important to right a wrong [done to Mr. Rosi]." The City planning staff stated that "'spot zoning' is not good planning; however there are extenuating circumstances that support the proposed change in zone." The commission supported these conclusions with the following findings of fact: (1) the property owner had owned and operated a business on the property since the early 1950's; (2) public testimony and response to staff were positive; (3) the City Attorney's response was positive; and (4) the business was an expensive business to establish and maintain. This desire to accommodate the needs of a businessman who had been in the community for decades is understandable. Nevertheless, small-parcel zoning designed merely to benefit one owner constitutes unwarranted discrimination and arbitrary decision-making, unless the ordinance amendment is designed to achieve the statutory objectives of the City's own zoning scheme, even where the purpose of the change is to bring a nonconforming use into conformance or allow it to expand. See *Speakman v. Mayor of N. Plainfield*, 84 A.2d 715, 718-19 (N.J. 1951). Otherwise, the City would be forced either to discriminate arbitrarily among landowners seeking relaxed restrictions or to

abandon the concept of planned zoning altogether. Thus, if assisting Guy Rosi Sr. was the primary purpose of the Ordinance, we would invalidate it even if it was not the product of discriminatory animus.

However, it appears that the City Council was ultimately motivated to pass the Ordinance because of the community benefits the council perceived rather than because of the benefit the Ordinance would confer upon Rosi Sr. The Ordinance restricted auto-related uses to one street not because its real intent was to benefit Rosi Sr.'s property, but, as Homer's city planner testified, because the City desired to minimize the negative impact of auto-related uses, especially the impact of such uses on more pedestrian and tourist-oriented areas such as Pioneer Avenue. See also supra note 7. Similarly, it appears that vacant lots located farther from Pioneer Avenue were excluded not because Rosi did not own these lots, but in an attempt to prevent urban sprawl by filling in vacant places in developed areas before expanding development. These reasons are legitimate, nondiscriminatory justifications for enacting the Ordinance.

3. Size of "rezoned" area

Ordinance 92-18 directly affects 7.29 acres. (EN11) The size of the area reclassified has been called "more significant [than all other factors] in determining the presence of spot zoning." Anderson, supra, sec. 5.15, at 378. The rationale for that statement is that "[i]t is inherently difficult to relate a reclassification of a single lot to the comprehensive plan; it is less troublesome to demonstrate that a change which affects a larger area is in accordance with a plan to control development for the benefit of all." Id. at 379.

We believe that the relationship between the size of reclassification and a finding of spot zoning is properly seen as symptomatic rather than causal, and thus that the size of the area rezoned should not be considered more significant than other factors in determining whether spot zoning has occurred. A parcel cannot be too large per se to preclude a finding of spot zoning, nor can it be so small that it mandates a finding of spot zoning. Although Anderson notes that reclassifications of parcels under three acres are nearly always found invalid, while reclassifications of parcels over thirteen acres are nearly always found valid, id., as Ziegler notes, the relative size of the parcel is invariably considered by courts. Ziegler, supra, sec. 28.04, at 28-14. One court found spot zoning where the reclassified parcel was 635 acres in an affected area of 7,680 acres. Chrobuck v. Snohomish County, 480 P.2d 489, 497 (Wash. 1971).

Nor does the reclassification of more than one parcel negate the possibility of finding spot zoning. Ziegler, supra, sec. 28.04, at 28-15. In this case, there was some evidence that the reclassified area may have been expanded to avoid a charge of spot zoning. Other courts have invalidated zoning amendments after finding that a multiple-parcel reclassification was a subterfuge to obscure the actual purpose of special treatment for a particular landowner. Id. See Atherton v. Selectmen of Bourne, 149 N.E.2d 232, 235 (Mass. 1958) (holding that the amendment is "no less 'spot zoning' by the inclusion of the additional six lots than it would be without them" where proponents of a zoning change apparently anticipated a charge of spot zoning and enlarged the area to include the three lots on either side of the lot in question).

Homer's CBD is over 400 acres; the reclassified area is 7.29 acres. The CBD appears to contain approximately 500 lots; the reclassified area contains 13 lots. A comparison of the size of the area rezoned and the size of the entire CBD is not in itself sufficient to persuade us that the City's decision was the product of prejudice, arbitrary decision-making, or improper motives. *South Anchorage Coalition v. Coffey*, 862 P.2d 168, 174 (Alaska 1993).

Further, it is not necessarily appropriate to compare the area of the affected lots with that of the entire CBD. The comprehensive plan recognized the possibility of subzones. The City considered significant portions of the CBD to be inappropriate for automobile sales and services, particularly Pioneer Avenue and the Bypass. Subtracting those areas from the entire CBD, the reclassified area on Main Street is a relatively larger part of the remaining CBD.

Thus, having considered the relative size of the rezoned area in determining whether Ordinance 92-18 constituted spot zoning, we hold that the size of the area rezoned does not require a finding of spot zoning given other factors supporting a contrary conclusion. We conclude that the superior court did not err in finding that Ordinance 92-18 does not constitute spot zoning.

B. Claim of Conflict of Interest

Homer City Council member Brian Sweiven owned one of the thirteen lots in the reclassified area. He was one of nine owners directly affected by Ordinance 92-18. It appears that it was Sweiven who first recommended to the commission that the rezone apply only to Main Street. An article in the Homer News was titled "Sweiven proposes commercial zoning for downtown Homer." The article refers to the idea of rezoning Main Street as "Sweiven's proposal." Griswold alleges that Sweiven had a disqualifying conflict of interest under Homer municipal law and that his participation in the adoption of Ordinance 92-18 therefore invalidates the Ordinance, even though Sweiven's vote was not necessary for passage. The superior court found that Sweiven did not have a disqualifying conflict of interest and that even if he had, his participation in the deliberations and vote would not invalidate Ordinance 92-18.

1. Was there a conflict of interest?

Homer City Code 1.24.040(g) states:

A member of the Council shall declare a substantial financial interest the member has in an official action and ask to be excused from a vote on the matter. The Mayor or other presiding officer shall rule on the request; however, the decision may be overridden by the majority vote of the Council. Should a Council member fail to declare a substantial financial interest, the Council may move to disqualify that member from voting by a majority vote of the body. A Council member with a conflict of interest regardless of whether excused from voting, shall not be allowed to participate in discussion about the matter. [(EN12)]

The code defines "substantial financial interest" as

1. An interest that will result in immediate financial gain; or
2. An interest that will result in financial gain which will occur in the reasonably foreseeable future.

HCC 1.12.010(a). Under common law, "the focus . . . [is] on the relationship between the public official's financial interest and the possible result of the official's action, regardless of the official's intent." Carney v. State, Bd. of Fisheries, 785 P.2d 544, 548 (Alaska 1990) (citing Marsh v. Town of Hanover, 313 A.2d 411, 414-15 (N.H. 1973)). (EN13) The plain language of HCC 1.24.040(g) appears to coincide with this principle.

The City Council did not address Sweiven's alleged conflict of interest until after the Ordinance had been passed. After the council passed the Ordinance, the City Attorney advised the council to address the matter at its next meeting by having Sweiven declare the facts concerning his ownership of the land and ask the council to determine whether his participation in the matter constituted a conflict of interest under the City Code, and to have the Mayor then rule on this question. The City Attorney stated that if the City were to determine that Sweiven had a disqualifying conflict of interest, it should declare the Ordinance void. The City Attorney also stated that, in his opinion, Sweiven's ownership did not constitute a disqualifying conflict of interest.

The superior court found that [t]here has been no showing that passage of the ordinance will result in a financial gain to Council member Sweiven, now or in the future. In fact, it may act as a detriment. Council member Sweiven's interest in Ordinance No. 92-18 is simply too remote and/or speculative to require his disqualification as a legislative official.

This finding is clearly erroneous. The court further stated, Plaintiff correctly surmises that Council Member Sweiven's purpose and intent at the time he promoted and voted for the ordinance are of crucial importance in determining whether or not he had a conflict of interest.

This holding incorrectly states the law, because the proper focus is on the relationship between the official's financial interest and the result of the official's action, "regardless of the official's intent." Carney, 785 P.2d at 548.

Sweiven had a "substantial financial interest" within the meaning of HCC 1.12.010(a)(2) in a reclassification which would increase the permissible uses of his property. Indeed, it seems inconsistent for the City to argue both that the Ordinance will benefit the City by increasing the tax base and property values, and that it will not benefit Sweiven's lot in a similar fashion.

The City nevertheless asserts that Sweiven's interest in the passage of Ordinance 92-18 is too remote and speculative to constitute a disqualifying interest, and argues that Sweiven's property is affected the same way as other citizens' property. The

City attempts to distinguish Carney in which we held that fishermen who sat on the Board of Fisheries could vote on matters affecting the fishing industry as a whole but were disqualified from voting on regulations which affected the area in which they actively fished. We reasoned in Carney that the members should have abstained from decision-making in areas in which they had a narrow and specific interest. Id. at 548. The City argues that Sweiven did not have a narrow and specific interest because "Mr. Sweiven's operations (his home and appliance repair business) are not affected at all by Ordinance 92-18 (automobile sales and services)." ;

Ordinance 92-18 does not directly affect all of Homer, or even a large part of the City or an entire class of its citizens. Sweiven voted on an amendment which directly affects only thirteen lots, including his own, out of the 500-some lots in the CBD. According to the Alaska Department of Law, the common law requires that a legislator refrain from voting on a bill which will inure to the legislator's financial benefit if the legislator's interest "is peculiarly personal, such as when a bill benefits only a tiny class of which the legislator is a member." 1982 Formal Op. Att'y Gen. 4133.

Furthermore, it is said in the context of zoning: Most of the cases [of disqualifying conflict of interest] have involved a charge of a more-or-less direct financial interest, and it is clear that such an interest is a proper ground of disqualification, as where the officer himself holds property which is directly involved in or affected by the proceeding.

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The clearest situation in which disqualifying bias or prejudice is shown is that where the zoning officer himself owns property the value of which will be directly promoted or reduced by the decision to be made and it is not surprising that upon a showing of such interest the courts have usually held the officer disqualified.

W.E. Shipley, Annotation, Disqualification for Bias or Interest of Administrative Officer Sitting in Zoning Proceeding, 10 A.L.R.3d 694, 697 (1966). Sweiven himself apparently believed that the Ordinance would increase the value of his property. In recommending the limited rezone to the planning commission, he stated that "it would increase the tax base and property values" of the area. The record reflects that when Sweiven was advocating rezoning the entire CBD, he was quoted in the Homer News as stating: "Even my own business. I can't sell my business, but I can sell my building, and someone who wants to put a VW repair shop there -- he can't. . . . It's not just me. This gives everybody in town a lot more options as far as selling their business." Finally, Sweiven initially refrained from voting on Ordinance 94-13, which would have repealed Ordinance 92-18, on the ground that he had a potential conflict of interest. It consequently appears that Sweiven had a "substantial financial interest" as that term is defined in HCC 1.12.010(a).

The superior court's finding that Sweiven did not have a disqualifying conflict of interest is clearly erroneous.

2. What was the effect of the conflict of interest?

There are six voting members on the Homer City Council. Five voted for Ordinance 92-18 on its first reading. One was absent. Four weeks later, it passed its second and final reading, again by a vote of five in favor and one absent. Thus, without counting Sweiven's vote, Ordinance 92-18 would have passed. The superior court held that even if Sweiven had a disqualifying conflict of interest, his participation and voting would not invalidate the result. In support it cited Waikiki Resort Hotel v. City of Honolulu, 624 P.2d 1353, 1370-71 (Hawaii 1981).

Waikiki followed the rule, also articulated in several other jurisdictions, that where the required majority exists without the vote of the disqualified member, the member's participation in deliberation and voting will not invalidate the result. 624 P.2d at 1371 (citing Singewald v. Minneapolis Gas Co., 142 N.W.2d 739 (Minn. 1966); Anderson v. City of Parsons, 496 P.2d 1333 (Kan. 1972); Eways v. Reading Parking Auth., 124 A.2d 92 (Pa. 1956)). The Waikiki court also cited Marshall v. Ellwood City Borough, 41 A. 994 (Pa. 1899), where the court reasoned that because the other four members voted in favor of the disputed ordinance, the invalid vote of one city councilman had no legal efficacy; thus, the court would not invalidate the ordinance. Waikiki, 624 P.2d at 1371.

Waikiki cited decisions from three other jurisdictions holding that a vote cast by a disqualified member vitiates the decision in which the member participated, even if the vote does not change the outcome of the decision. 624 P.2d at 1370 (citing Piggott v. Borough of Hopewell, 91 A.2d 667 (N.J. Super. 1952); Baker v. Marley, 170 N.E.2d 900 (N.Y. 1960); Buell v. City of Bremerton, 495 P.2d 1358 (Wash. 1972)). In Buell, the court stated:

The self-interest of one member of the planning commission infects the action of the other members of the commission regardless of their disinterestedness. The recommendation of the planning commission to the city council could not be assumed to be without impact on the council. More importantly, it would not appear to the affected public that it was without impact, and [the disqualified member's] actual financial gain is sufficient to invalidate the entire proceeding.

495 P.2d at 1362-63 (citations omitted).

These lines of authorities offer a choice between vote-counting (Waikiki) and automatic invalidation (Buell). We have not had occasion to consider this exact issue. In Carney, we found that four of seven fisheries board members had a disqualifying conflict. We then held the board's regulation invalid: "Because a majority of the votes cast to pass the regulation are invalid, so is the regulation." 785 P.2d at 549. Carney did not raise the issue now before us because there the measure would have been invalidated under either doctrine.

We decline to follow the vote-counting approach adopted in Waikiki, notwithstanding its appealing ease of application. A

council member's role in the adoption or rejection of an ordinance cannot necessarily be measured solely by that member's vote. A conflicted member's participation in discussion and debate culminating in the final vote may influence the votes of the member's colleagues. Moreover, the integrity required of public officeholders demands that the appearance of impropriety be avoided; the approach adopted in Waikiki will not always do so.

See *Falcon v. Alaska Pub. Offices Comm'n*, 570 P.2d 469, 477 (Alaska 1977) (holding financial disclosure laws preserve the integrity and fairness of the political process both in fact and appearance); *Warwick v. State ex rel. Chance*, 548 P.2d 384, 388 (Alaska 1976) ("[I]t is important that the legislature not only avoid impropriety, but also the appearance of impropriety." Cf. AS 39.50.010(b)(1) (public office is a public trust which should be free from the danger of conflict of interest). The superior court erred in holding that Ordinance 92-18 is valid simply because Sweiven did not cast the decisive vote in its adoption.

We also decline, however, to adopt the rule of automatic invalidation endorsed in cases such as *Buell*, 495 P.2d at 1362-63. The vote and participation of a conflicted member will not invariably alter the votes of other members or affect the merits of the council's decision. This is especially true if the conflict is disclosed or well-known, allowing other members to assess the merits of the conflicted member's comments in light of his or her interest. Automatic invalidation could needlessly overturn well-considered measures which would have been adopted even if the disqualified member had refrained from participating. Automatic invalidation has the potential for thwarting legislative enactments which are not in fact the result of improper influence.

The dissenting opinion cites HCC 1.12.030 as justification for its conclusion that participation by a disqualified member requires invalidation of the council's action. (EN14)

HCC 1.12.030 and 1.24.040(g), however, determine whether a member may vote or participate. They deal with disqualification, and do not address the consequences of participation by a conflicted member. The drafters of the code must have contemplated that violations might occur notwithstanding the prohibition. They nonetheless specified no remedy. Had they intended that particular consequences would follow from violation of the prohibition, such as the clear-cut remedies of automatic invalidation or vote-counting, they could have easily so provided. Their failure to specify a remedy for violation implies that the drafters intended that the courts fashion the remedy.

In determining whether the vote of a conflicted member demands invalidation of an ordinance, courts should keep in mind the two basic public policy interests served by impartial decision-making: accuracy of decisions, and the avoidance of the appearance of impropriety. See generally Mark W. Cordes, *Policing Bias and Conflicts of Interest in Zoning Decisionmaking*, 65 N.D. L. Rev. 161 (1989).

Guided by these basic policy concerns, we conclude that the following analysis should be applied in determining the effect of a conflicted vote. Initially the court must determine whether a member with a disqualifying interest cast the decisive vote. If so, the ordinance must be invalidated. *Carney*, 785 P.2d at 549. If the ordinance would have passed without the vote of the

conflicted member, the court should examine the following three factors: (1) whether the member disclosed the interest or the other council members were fully aware of it; (2) the extent of the member's participation in the decision; and (3) the magnitude of the member's interest. The first two factors squarely bear on the accuracy of the council's decision. All three factors directly relate to any appearance of impropriety.

If the interest is undisclosed, the ordinance will generally be invalid; it can stand only if the magnitude of the member's interest, and the extent of his or her participation, are minimal. If the interest is disclosed, the ordinance will be valid unless the member's interest and participation are so great as to create an intolerable appearance of impropriety. The party challenging the ordinance bears the burden of proving its invalidity. We recognize that this analysis is more difficult to apply than the vote-counting and automatic invalidation rules. Simple to apply, those rules are unacceptably rigid.

The factual record before us is not so clear that we can decide as a matter of law whether invalidation is appropriate. The record does not reveal whether the other council members had actual knowledge of Sweiven's interest. While Sweiven's interest in his lot, where he lived and worked, was open and obvious, this is a matter of potential factual dispute to be explored on remand. Likewise, we cannot weigh the extent of Sweiven's participation or say whether it may have affected the outcome of the measure. Nor does the record establish whether Sweiven was likely in the foreseeable future to realize any significant appreciation from the reclassification by selling or servicing motor vehicles or by selling his lot to someone who intended to do so. We therefore remand so that the superior court, applying the analysis discussed above, can determine whether Ordinance 92-18 must be invalidated.

C. Public Interest Litigant Status

The superior court found that Griswold was not a public interest litigant. That finding was clearly erroneous because Griswold met all four criteria of a public interest litigant in this case: (1) his lawsuit was designed to effectuate strong public policies; (2) if Griswold succeeded, numerous people would have benefited from the lawsuit; (3) only a private party could be expected to bring the action; and (4) Griswold lacked sufficient economic incentive to bring the lawsuit if it did not also involve issues of general importance. See *Oceanview Homeowners Ass'n, Inc. v. Quadrant Constr. and Eng'g*, 680 P.2d 793, 799 (Alaska 1984) (citing *Kenai Lumber Co. v. LeResche*, 646 P.2d 215, 222-23 (Alaska 1982)).

In *Oceanview*, the plaintiff was a homeowners' association which objected to a Zoning Board of Appeals decision to set aside orders issued by the Zoning Enforcement Office of the Anchorage Department of Public Works. These orders restricted improvements to and the use of a private airstrip located in a residential area. 680 P.2d at 795. We held that the homeowners' association was a public interest litigant. *Id.* at 799. We found that "Oceanview's appeal was designed to vindicate a strong public policy in effectuating zoning ordinances, that numerous people in the area would have benefited had it succeeded, and that only a private party could have been expected to bring the appeal." *Id.*

The superior court stated that "it is hard to see how declaring a valid legislative enactment 'illegal' would be of

benefit to anyone." That statement misapprehends the meaning of the public interest litigant criteria and has no application here. Griswold's appeal was designed to vindicate the strong public policy of ensuring that zoning ordinances are not arbitrary or capricious. This public policy is quite similar to, and at least as important as, ensuring that zoning ordinances are properly enforced. The importance of this issue to the general public is evidenced by the considerable amount of public comment regarding the passage of the Ordinance, prompting one planning commissioner to state, "the car lot deal drew as much public comment as anything we (planners) have had but the sign ordinance." Likewise, just as the Oceanview suit benefited at least the community of homeowners, Griswold's suit was intended to benefit the entire community of Homer, especially those who live, shop, and operate small businesses in the CBD, by challenging the City's alleged arbitrary deviation from its zoning plan. It is also true in this case, as in Oceanview, that only private citizens can be expected to bring suit against a municipality for a zoning violation of this nature, not because the issue is not one of general importance, as the superior court stated, but because the defendant in this case is the public entity which would normally be enforcing Homer's zoning code.

Only the fourth component of the public interest litigant test appears even arguable. That criterion requires that the public interest litigant not have "sufficient economic incentive to bring the lawsuit even if it involved only narrow issues lacking general importance." Griswold lives in the CBD and owns an automobile repair shop on a lot located in the CBD but not included in the reclassified area. He thus continues to be restricted by his "grandfather" status in the operation of his business, and may lose his rights if he ceases operation for more than one year. The superior court agreed with Griswold that "any economic advantage he might have gained, if successful, was slight." The court nevertheless found that this fact "does not obviate the fact that one of [Griswold's] primary motives in pursuing this litigation was to achieve this goal." Thus, the court found that even a "slight" economic gain can be sufficient to constitute a plaintiff's primary motivation in bringing a lawsuit. Neither case law nor the record in this case supports the court's finding.

In Oceanview we found that the homeowners' association which claimed that the "immediate effect of the [adverse zoning board] decision is to deny or diminish the value of real property owned or leased by appellant" was nevertheless a public interest litigant, citing Oceanview's "consistent emphasis on health and safety to the virtual exclusion of economic concerns." 680 P.2d at 799 n.3. Likewise, in this case, Griswold's emphasis was always on the harm to the community, the importance of public accountability, and fairness in municipal government. Griswold stated in a sworn affidavit that he did not have any expectation of financial gain as a result of filing the lawsuit. He wrote a letter to the Homer Advisory Planning Commission stating that he opposed rezoning any areas of the CBD to GC1. These facts are not contested. Moreover, it appears that Griswold only discussed the exclusion of his own lot to illustrate the equal protection problems and arbitrariness inherent to spot zoning cases, and to demonstrate his standing, disputed by the City early in the suit, to bring this lawsuit. See

id. (stating that appellant's claim of standing due to immediate economic harm is "not synonymous with 'economic incentive'"). The court's emphasis on Griswold's "political motivation" also conflicts with its finding that the hope of slight economic gain was Griswold's primary motivation.

Griswold satisfies Alaska's four-factor public interest litigant test. We consequently hold that he is a public interest litigant.

IV. CONCLUSION

We hold that Ordinance 92-18 does not constitute spot zoning, and consequently AFFIRM that aspect of the judgment below. We hold, however, that council member Sweiven had a conflict of interest which should have disqualified him from participating in consideration of the Ordinance. We consequently REVERSE the court's finding that there was no conflict of interest and REMAND so the superior court can determine whether the Ordinance must be invalidated. We also REVERSE that portion of the judgment imposing costs and fees on Griswold. RABINOWITZ, Justice, dissenting in part.

I believe it is of particular significance that Sweiven participated in the discussion of and voted for Ordinance 92-18. As the court observes, this ordinance does not directly affect all of Homer, or even a large segment of the City or an entire class of its citizens. More particularly, the ordinance directly affects only thirteen lots, including Sweiven's own, out of approximately 500 lots located within the Central Business District. The record further reveals Sweiven's belief that Ordinance 92-18 would increase the value of his property. Indeed Sweiven explicitly stated that "[the proposal] would increase the tax base and property values" of the area when recommending the Limited Rezone to the planning commission. (EN1)

Based on the foregoing, the court correctly concludes that "Sweiven had a substantial financial interest within the meaning of HCC 1.12.010(a) [(EN2)] in a reclassification which would increase the permissible uses of his property The superior court's finding that Sweiven did not have a disqualifying conflict of interest is clearly erroneous." Op. at 25, 28.

My disagreement with the court's opinion goes to its discussion of the effect of Sweiven's conflict of interest and the appropriate remedy given the factual context of this case. Central to my differing analysis are the provisions of the Homer City ordinances which address the subject of conflict of interest. In my view, the court's analysis ignores that part of the Homer Municipal Code 1.12.030, which states:

A City Councilmember or Mayor with a conflict of interest under section 1.12.020 shall so declare to the body as a whole and ask to be excused from voting on the matter. However, a City Councilmember or Mayor with a conflict of interest, regardless of whether excused from voting, shall not be allowed to participate in discussion about the matter. (Ord. 92-49(A) sec.4, 1992; Ord. 86-22(S) sec.1(part), 1986). [(EN3)]

The City of Homer, as expressed in section 1.12.030 of its Code, has adopted a policy which flatly contradicts the court's statement that

[t]he vote and participation of a conflicted

member will not invariably alter the votes of other members or affect the merits of the council's decision. This is especially true if the conflict is disclosed or well known, allowing other members to assess the merits of the conflicted member's comments in light of his or her interest.

Regardless of the wisdom of the City of Homer's legislative enactment barring conflicted council members' participation in decisions, (EN4) the fact remains that the City of Homer has expressly adopted a rule specifically prohibiting conflicted council members from taking part in discussion or voting on the matter of interest. In fact, the prohibition on discussion is more stringent than the rule on voting -- even when the "Mayor or other presiding officer" decides that the member need not be excused from voting, and even when the council chooses not to override that decision by a simple majority vote, the member is nonetheless forbidden to participate in the discussion.

The rule adopted by the court pays no heed to this participation ban contained in the City of Homer's municipal code. The portions of the court's rule which conflict with the express non-participation policy of HCC 1.12.030 are the following: If the interest is undisclosed, the ordinance will generally be invalid; it can stand only if the magnitude of the member's interest, and the extent of his or her participation, are minimal. If the interest is disclosed, the ordinance will be valid unless the member's interest and participation are so great as to create an intolerable appearance of impropriety.

(Emphasis added.) In short, the court's rule would permit a conflicted council member to participate in the discussion of a matter before the body responsible for official action in cases where the conflicting interest has been disclosed, or where the conflicting interest is undisclosed and the conflicted member's participation does not create an intolerable appearance of impropriety.

Although the court's formulation might well be adopted as a general rule, I think it inappropriate to do so in the face of an ordinance completely prohibiting participation by any city council member with a substantial conflicting interest in the subject matter of a proposed ordinance. In this regard, it is noteworthy that HCC 1.12.030 is not couched in terms of de minimis levels of participation. On the contrary, it imposes a complete ban on the conflicted member's participation.

Given the participation ban imposed by HCC 1.12.030, Sweiven's conflict generating significant financial interest, and Sweiven's participation in the discussion of Ordinance 92-18, I conclude that the appropriate remedy is invalidation of the ordinance.

As the court recognizes, a council member's role in the adoption or rejection of an ordinance cannot necessarily be measured solely by that member's vote. A conflicted member's participation in discussion and debate culminating in the final

vote may influence the votes of the member's colleagues. The court also appropriately recognizes that the integrity required of public office holders demands that even the appearance of impropriety be avoided. (EN5)

Guided by these principles and the City of Homer's explicit ban on a conflicted member's participation, I respectfully dissent from the court's remedy. Rather than remand this issue, I would hold Ordinance 92-18 invalid because of council member Sweiven's participation. (EN6)

ENDNOTES:

1. AS 29.40.030 defines a comprehensive plan as follows:

[A] compilation of policy statements, goals, standards, and maps for guiding the physical, social, and economic development, both private and public, of the first or second class borough, and may include, but is not limited to, the following:

- (1) statements of policies, goals, and standards;
- (2) a land use plan;
- (3) a community facilities plan;
- (4) a transportation plan; and
- (5) recommendations for implementation of the comprehensive plan.

2. Although the Borough's tax assessment records indicate that Guy Rosi Sr. owns only part of Lot 13, the parties and the trial court have referred to his parcel as "Lot 13." We do the same.

3. This appeal concerns the validity of an enactment of a legislative body, rather than a decision of a zoning board. See *Concerned Citizens of S. Kenai Peninsula v. Kenai Peninsula Borough*, 527 P.2d 447, 452 (Alaska 1974) (analyzing a Borough Assembly's ordinance as a legislative enactment). We are here reviewing a superior court judgment rejecting claims that a municipal ordinance is invalid. We give independent consideration to the legal conclusions of the superior court. *Beesley v. Van Doran*, 873 P.2d 1280, 1281 (Alaska 1994). We will uphold the superior court's findings of fact unless they are clearly erroneous. In *re R.K.*, 851 P.2d 62, 66 (Alaska 1993).

4. We have held that, although a planning commission is not required to make specific findings supporting its decisions, it must articulate reasons for its decisions sufficient to assist the parties preparing for review and to restrain agencies within the bounds of their jurisdiction. *South Anchorage Coalition v. Coffey*, 862 P.2d 168, 175 (Alaska 1993) (citing *City of Nome v. Catholic*

Bishop of N. Alaska, 707 P.2d 870, 875 (Alaska 1985); and Kenai Peninsula Borough v. Ryherd, 628 P.2d 557, 562 (Alaska 1981)).

5. Griswold also argues that the Ordinance is invalid because it is inconsistent with the City's zoning code and comprehensive plan. We consider this argument in conjunction with our discussion of spot zoning.

6. The City argues that spot zoning should not be considered per se illegal, but merely descriptive. Thus, whether spot zoning is valid or invalid would depend upon the facts of each case. See *Chrismon v. Guilford County*, 370 S.E.2d 579, 588 (N.C. 1988); *Save Our Rural Env't v. Snohomish County*, 662 P.2d 816 (Wash. 1983); *Tennison v. Shomette*, 379 A.2d 187 (Md. Spec. App. 1977). However, we will follow the vast majority of jurisdictions which hold that, while not all small-parcel zoning is illegal, spot zoning is per se illegal. See *Chrismon*, 370 S.E.2d at 588 (noting that majority of jurisdictions regard spot zoning as a legal term of art); 3 Edward H. Ziegler Jr., *Rathkoph's The Law of Zoning and Planning* sec. 28.01 n.2 (4th ed. 1995) (compiling cases holding same); *Anderson*, supra, sec. 5.12, at 359 n.46 (same).

Thus, spot zoning is simply the legal term of art for a zoning decision which affects a small parcel of land and which is found to be an arbitrary exercise of legislative power. Cf. *Concerned Citizens of S. Kenai Peninsula*, 527 P.2d at 452 ("[T]he constitutional guarantee of substantive due process assures only that a legislative body's decision is not arbitrary but instead based upon some rational policy."

7. The City argues that Griswold could not show any "concrete detriment" but instead "could only argue that car lots were not pleasant to look at, they didn't alleviate traffic, and other similar arguments."

8. At trial the City's planner testified that the Ordinance was restricted to Main Street to avoid certain negative impacts in more tourist-oriented areas. These negative impacts include traffic congestion, visual blight, detracting from the pleasing aesthetic nature of Pioneer Avenue, and conflict with the comprehensive plan's goal of promoting sidewalks, pocket parks, and pedestrian amenities in the CBD.

9. Not all of the goals articulated by the City can be considered legitimate per se. For example, any zoning change which eases restrictions on property use could be said to further the goal of "filling in vacant places." Similarly, increasing the tax base and the employment of a community is not automatically a legitimate zoning goal. See *Concerned Citizens for McHenry, Inc. v. City of McHenry*, 395 N.E.2d 944, 950 (Ill. App. 1979) (an increase in the tax base of the community as the primary justification for a rezoning is "totally violative of all the basic principles of zoning"); *Oakwood at Madison, Inc. v. Township of*

Madison, 283 A.2d 353, 357 (N.J. Super. 1971) (finding that "fiscal zoning per se is irrelevant to the statutory purposes of zoning [although] 'alleviating tax burden is a permissible zoning purpose if done reasonably and in furtherance of a comprehensive plan' (citing Gruber v. Mayor of Bariton, 186 A.2d 489, 493 (N.J. 1962))"'); Chrobuck v. Snohomish County, 480 P.2d 489, 497 (Wash. 1971) (allowing industrial development on only one site would be arbitrary spot zoning despite the potential tax revenue the oil refinery would produce). Thus, the goal of increasing the tax base and employment opportunities is usually legitimate only if the ordinance is otherwise reasonable and in accordance with the comprehensive plan.

Some courts have allowed inconsistent small or single parcel rezoning in order to raise tax revenues or stimulate needed industry if the public receives higher tax revenue or employment industries. Ziegler, supra, sec. 28.04, at 28-20. Generally, the facility being built must be indisputably needed, and the city must have secured assurance as to the existence and amount of increased employment and tax revenue. For example, in Information Please Inc. v. County Comm'rs of Morgan County, 600 P.2d 86 (Colo. App. 1979), the county rezoned agricultural area to industrial to accommodate an electric utility after determining the plant would add \$46,000,000 to the tax base of the county, and provide approximately 250 jobs after it was completed. Id. at 88. In Watson v. Town Council of Bernalillo, 805 P.2d 641, 647 (N.M. App. 1991), the county made findings that the rezone would employ eighty-seven people from the community and would produce tax revenues constituting twenty-five percent of the city's budget. In Chrismon v. Guilford County, 370 S.E.2d 579, 590 (N.C. 1988), the court approved the rezoning of two contiguous tracts from agricultural to conditional use industrial district to facilitate expansion of an already-operating grain elevator. The court stated that the "[e]vidence clearly shows that [the owner's] operation is beneficial to area farmers." Id. It also noted that spot zoning will be allowed even where the adjacent property owners object and the owner receives a greater benefit than others if there is a community-wide need for the rezone. Id.

10. Currently, Rosi Jr.'s lot is not affected by Ordinance 92-18 since that lot has been contract rezoned to GC1.

11. There may be an immaterial discrepancy about the size of the reclassified area. There was testimony Ordinance 92-18 affected 7.29 acres, but the trial court's memorandum decision stated the affected lots contained about 7.44 acres. That decision did not state that the exact size of the parcel was significant to its determination that the amendment does not constitute illegal spot zoning.

12. In addition, Homer's City Code mandates that a city official "disclose any financial interest in any matter before the board or commission before debating or voting upon the matter" and prohibits the official from participating in the debate or vote unless the board or commission determines that a financial interest is not substantial as defined in HCC 1.12.010. HCC 1.12.070 (emphasis added).

13. At first glance it may appear that the Executive Branch Ethics Act, AS 39.52.010-.960, which explicitly supersedes the common law on conflicts of interest, see AS 39.52.910, requires intent on the part of public officials subject to that Act. See AS 39.52.120(b)(4). However, that Act does not apply to municipal officials. *Gates v. City of Tenakee Springs*, 822 P.2d 455, 462 (Alaska 1992). Thus, the common law of conflicts of interest continues to apply to municipal officers. *Carney*, 785 P.2d at 547-48.

14. The portion of HCC 1.12.030 cited by the dissent states:

A City Councilmember or Mayor with a conflict of interest under section 1.12.020 shall so declare to the body as a whole and ask to be excused from voting on the matter. However, a City Councilmember or Mayor with a conflict of interest, regardless of whether excused from voting, shall not be allowed to participate in discussion about the matter. (Ord. 92-49(A) sec.4, 1992; Ord. 86-22(S) sec.1(part), 1986).

This language is nearly identical to the similar prohibition in HCC 1.24.040(g), but also applies to the mayor.

ENDNOTES (Dissent):

1. The court notes:

The record reflects that when Sweiven was advocating rezoning the entire CBD, he was quoted in the Homer News as stating: "Even my own business. I can't sell my business, but I can sell my building, and someone who wants to put a VW repair shop there -- he can't. . . . It's not just me. This gives everybody in town a lot more options as far as selling their business." Finally, Sweiven refrained from voting on Ordinance 94-13, which would have repealed Ordinance 92-18, on the ground that he had a potential conflict of interest.

Op. at 27.

2. At all times relevant to the case at bar, HCC 1.12.010(a) defined "substantial financial interest" as follows:

1. An interest that will result in immediate financial gain; or

2. An interest that will result in financial gain which will occur in the reasonably foreseeable future.

(HCC 1.12.010 has subsequently been amended.)

HCC 1.12.020 provides:

A City Councilmember or Mayor with a substantial financial interest in an official action to be taken by the Council has a conflict of interest. (Ord. 92-49(A) sec. 3, 1992; Ord. 86-22(S) sec. 1(part), 1986).

3. HCC 1.12.040 provides:

The Mayor or, in his absence, the Mayor Pro-Tem or other presiding officer, shall rule on a request by a City Councilmember to be excused from voting on a matter because of a declared conflict of interest. The Mayor Pro-Tem or other presiding officer shall rule on a request by the Mayor to be excused from participating in a matter because of a declared conflict of interest. (Ord. 92-49(A) sec.5, 1992; Ord. 86-22(S) sec.1(part), 1986).

HCC 1.12.050 further provides:

A decision of the Mayor or other presiding officer under Section 1.12.040 may be overridden by a majority vote of the City Council. (Ord. 86-22(S) sec.1(part), 1986).

4. This court has consistently held that it is not our function to question the wisdom of legislation. *University of Alaska v. Geistauts*, 666 P.2d 424, 428 (Alaska 1983); *Alaska Interstate v. Houston*, 586 P.2d 618, 621 (Alaska 1978).

5. See generally Mark W. Cordes, *Policing Bias and Conflict of Interest in Zoning Decisionmaking*, 65 N.D. L. Rev. 161 (1989). Here the author writes in part:

The second and more common provision is to prohibit participation when a conflict of interest exists. The rationales behind this are obvious. Although disclosure has some restraining effect, a significant conflict might still affect the substantive outcome of a decision. More importantly, perceptions of fairness and legitimacy are only partly addressed by disclosure.

For these reasons disqualification rather than disclosure is the preferable approach. Although in some instances disclosure might adequately address the need for impartiality, in many instances it will only be partially effective. The inconvenience of adjusting to

the disqualification of a decisionmaker is not so great as to justify the threat to accuracy and legitimacy posed by the requirement of mere disclosure.

Beyond determining what effect a conflict of interest should have on a particular decisionmaker is what judicial remedies should be available when a zoning decision in fact involved an improper conflict of interest. In those instances in which the biased decisionmaker casts a dispositive vote, courts have consistently invalidated the decision. This seems appropriate in that both accuracy and legitimacy concerns are clearly threatened when a decision appears to turn on the vote of a self-interested decisionmaker.

A more difficult issue is whether the participation of a conflicting member whose vote was not determinative to a decision should also result in invalidation. This might occur in two general situations. First is where the tainted vote was numerically unnecessary for the decision. Courts have evenly split on this issue, with a slight majority favoring invalidation. Courts refusing to invalidate such decisions have primarily reasoned that even without the tainted vote the decision would have occurred anyway and therefore invalidation is improper. In this sense the threat to accuracy and legitimacy concerns is arguably *de minimis* when the particular vote is apparently not crucial to a decision. In particular, legitimacy concerns are less threatened when a decision appears inevitable. As a result, the administrative burden of invalidating and remanding a decision outweighs any threat to substantive results and perceptions of fairness.

Despite these distinctions, several strong reasons exist for invalidating decisions even when a tainted decisionmaker's vote was numerically unnecessary for the decision. First, courts invalidating such decisions have noted that collegial decisionmaking ideally involves the exchange of ideas and views, often with the intent of persuading toward a particular position. The actual contribution of any particular decisionmaker cannot be measured with precision, but frequently extends significantly beyond the actual vote cast. For this reason, a significant threat to accuracy can exist even when a particular vote

was numerically unnecessary for the decision.

For similar reasons legitimacy concerns also exist even when a vote is numerically unnecessary. Although legitimacy concerns are less substantial in such circumstances, the perception of collegial decisionmaking and the potential influence of a tainted decisionmaker on others would violate "appearance of fairness" standards. Thus, for both accuracy and legitimacy reasons the better view is that even when a vote is numerically unnecessary for a decision courts should still invalidate it.

Id. at 214-216 (footnotes omitted).

6. I note my agreement with the court's other holdings.



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Staff Report PL 18-16

TO: Homer Advisory Planning Commission
FROM: Rick Abboud, City Planner
DATE: March 21, 2018
SUBJECT: Comp Plan Comments

Introduction

Our comment period is still open. I decided to share comments and questions submitted so far, for future consideration. This also allows for someone to come to the meeting and provide testimony on the comprehensive plan. We have advertised that we would be taking comments until the end of March.

Included in the attachments is a list of uses allowed in all districts for comparison purposes. The table was made in 2014. An issue that I have found is that there are mild semantic variations of several uses that create duplicates within the table. Several uses have some special considerations that vary between the districts.

In general, you will find that GC1 has some outright permitted uses that are conditional in the CBD and that retail is much more open without some of the restrictions or prohibitions found in the CBD, such as outdoor storage of material. Also the provision for dwellings in GC1 is more restrictive than in the CBD.

Analysis

Attached you will find two comments from our web submission form and a list of question from Mr. Griswold. I wish for you to review the submissions and make any requests for any additional information you may want to see.

Mr. Allen's comments to some degree have been previously visited and his concerns are something to keep in mind when developing work lists.

Mr. Radeke brings up the concept of the hospital district. This also is not a new idea. The area around the hospital has become a cluster for medical services, having changed in the ten years that I have been in town. I do believe that this subject deserves further conversation and research.

Mr. Griswold presents a list of questions. He is most concerned about the proposal to consider a future GC1 District in an area currently designated as CBD. Here are my points.

- Larger lots (compared to what is available in the Ocean Drive GC1 area) next to major streets with a full accompaniment of utilities would be the best place to expand GC1 type uses. The only other option for businesses that are not allowed in the CBD is to locate in the East End Mixed Use District, GC2, or out of town, not the ideal locations in relation to population and traffic patterns. There are several 'GC1 like' businesses in the area. Is it better to push them out than to cluster? We wish to find a logical location to support the growth of Homer without encouraging sprawl development.
- We will complete/continue an analysis/investigation of the GC1 and CBD districts to include current land use and a detailed evaluation of the zoning regulations. So far, the first task was to get input from the community that this concept is supported in theory and to gauge what the support or opposition is most concerned about. Right now, feedback indicates that most citizens are ambivalent and one in particular is opposed.
- Regarding that the CBD is ridiculously large to encourage walkability. This is based on the fact that most people are not inclined to walk for miles at a time. We already have sidewalks throughout the proposed area and that does not make it particularly walkable in the sense that it is not inviting to walk in the area. The stores are at distance from the street, the traffic is fairly intense, and you have to walk through parking lots to get to the stores. This can lead to a larger discussion of the entire CBD and why it was designated as 'Downtown Mixed Use' in the current comprehensive plan which lists creating high quality public spaces and friendly, pedestrian-orientated streetscapes as priorities.
- The proposal is a suggestion at this stage and input will be evaluated as we move forward before recommending a final draft. The draft of the current plan took 18 months to 'iron out'. I am hoping that we don't need that much time, but also recognize changes will most likely be warranted before we make a recommendation to the council.
- The City of Homer is working toward making a recommendation to the Borough to adopt our amended plan.

Staff Recommendation

Please consider the materials presented and request any additional information you may want to see at a future meeting.

Att.

Allen comment
Radeke comment
Griswold Email
Uses table

Rick Abboud

From: Julie Engebretsen
Sent: Monday, March 12, 2018 3:49 PM
To: Rick Abboud
Subject: FW: Form submission from: Homer Comprehensive Plan 2018 Update

-----Original Message-----

From: City of Homer Alaska Official Website [mailto:info@cityofhomer-ak.gov]
Sent: Monday, March 12, 2018 11:41 AM
To: Department Planning <Planning@ci.homer.ak.us>
Subject: Form submission from: Homer Comprehensive Plan 2018 Update

Submitted on Monday, March 12, 2018 - 11:41am Submitted by anonymous user: 65.74.106.216 Submitted values are:

Submit Your Comments Here:

A few suggestions for inclusion in the new comprehensive plan:

1. Include regulations for storm run-off control in new constructions. It was recently stated in a Planning and Zoning Commission meeting by a contractor that the city has no regulations regarding storm run-off, which everyone knows is a huge issue in the Homer area.
2. Include regulations which REQUIRE all new road construction, including residential housing areas, to have sidewalks and bike lanes incorporated into the design. The developers should pay for this.
3. Make a traffic light at the intersection of the highway and Main Street a priority.
4. Make putting in a sidewalk on Main Street (the whole length) a priority.

First Name: Paul

Last Name: Allan

Your Email (optional): pallan99@gmail.com Your Phone (optional):

The results of this submission may be viewed at:

<https://linkprotect.cudasvc.com/url?a=https://www.cityofhomer-ak.gov/node/30781/submission/16101&c=E,1,gs2zSQ2DuAnDKLh63BvFlyLyISA4mAzWGkdI6cqCjvarHaz72wqSZod3fOsOT1Bex2DNGkfZGk5CXn00SFAO4pidcBKRWXF8wlz4cD4nVg,,&typo=1>

Rick Abboud

From: Julie Engebretsen
Sent: Monday, March 12, 2018 3:49 PM
To: Rick Abboud
Subject: FW: Form submission from: Homer Comprehensive Plan 2018 Update

-----Original Message-----

From: City of Homer Alaska Official Website [mailto:info@cityofhomer-ak.gov]
Sent: Thursday, March 08, 2018 10:16 AM
To: Department Planning <Planning@ci.homer.ak.us>
Subject: Form submission from: Homer Comprehensive Plan 2018 Update

Submitted on Thursday, March 8, 2018 - 10:15am Submitted by anonymous user: 216.67.102.194 Submitted values are:

Submit Your Comments Here:

City of Homer Planning Office,

I would like to suggest a zoning area "hospital district" to help assist with some of the challenges that South Peninsula Hospital faces for future growth.

Respectfully submitted,

Glenn Radeke

Facilities Director

South Peninsula Hospital

First Name: Glenn

Last Name: Radeke

Your Email (optional): ger@sphosp.org

Your Phone (optional): 907-235-0351

The results of this submission may be viewed at:

[https://linkprotect.cudasvc.com/url?a=https://www.cityofhomer-](https://linkprotect.cudasvc.com/url?a=https://www.cityofhomer-ak.gov/node/30781/submission/15991&c=E,1,YJxAfMKZXr7b_k4klCkT-6eObEESCAvI99G96eDdPQnNM3CNwhPqnWGGs92nY1vxFgMBRWFAZ_2I3xTCUomX_iNn16y0lglpdk2N76b3yZARtPw,&tppo=1)

[ak.gov/node/30781/submission/15991&c=E,1,YJxAfMKZXr7b_k4klCkT-](https://linkprotect.cudasvc.com/url?a=https://www.cityofhomer-ak.gov/node/30781/submission/15991&c=E,1,YJxAfMKZXr7b_k4klCkT-6eObEESCAvI99G96eDdPQnNM3CNwhPqnWGGs92nY1vxFgMBRWFAZ_2I3xTCUomX_iNn16y0lglpdk2N76b3yZARtPw,&tppo=1)

[6eObEESCAvI99G96eDdPQnNM3CNwhPqnWGGs92nY1vxFgMBRWFAZ_2I3xTCUomX_iNn16y0lglpdk2N76b3yZARtPw,&tppo=1](https://linkprotect.cudasvc.com/url?a=https://www.cityofhomer-ak.gov/node/30781/submission/15991&c=E,1,YJxAfMKZXr7b_k4klCkT-6eObEESCAvI99G96eDdPQnNM3CNwhPqnWGGs92nY1vxFgMBRWFAZ_2I3xTCUomX_iNn16y0lglpdk2N76b3yZARtPw,&tppo=1)

Rick Abboud

From: Rick Abboud
Sent: Friday, March 16, 2018 12:31 PM
To: 'Frank Griswold'
Cc: Katie Koester; Julie Engebretsen; Melissa Jacobsen; Department Planning
Subject: RE: 2018 Comprehensive Plan Update/GC1 Spot Zone

Mr. Griswold,

I will forward your concerns to the Planning Commission and City Council. I plan to continue the discussion of the proposal and will provide an opportunity to comment on the record with the Planning Commission at the next meeting. My response may be found in staff report 18-16 prepared for next week's meeting.

Sincerely,

RICK ABBOUD, AICP

City Planner
491 E Pioneer Ave
Homer, AK 99603
(o) 907-235-3106
(f) 907-235-3118

From: Frank Griswold [mailto:fsgriz@alaska.net]
Sent: Thursday, March 8, 2018 3:41 PM
To: Rick Abboud <RAbboud@ci.homer.ak.us>
Cc: Katie Koester <kkoester@ci.homer.ak.us>; Julie Engebretsen <JEngebretsen@ci.homer.ak.us>; Melissa Jacobsen <MJacobsen@ci.homer.ak.us>; Department Planning <Planning@ci.homer.ak.us>
Subject: 2018 Comprehensive Plan Update/GC1 Spot Zone

Mr. Abboud,

1. What commercial properties are currently desired in Homer, which properties suitable for (GC1) commercial uses are currently available within the area proposed for rezone, why do you believe they will be priced cheaply enough for someone to make money on a year-round basis, does this constitute fiscal zoning *per se*, and/or is it a legitimate justification for the proposed rezoning?
2. What activities does the GC1 District support that are unique and not offered in other districts?
3. How would the proposed rezone increase the "walkability" of the "ridiculous large" CBD? Is it your contention that reducing the area zoned CBD will make it easier for someone to walk every pedestrian pathway therein in one shot? Is it your contention that a GC1 spot zone adjacent to the CBD will somehow enhance walkability within the remaining CBD? ?????
4. Have you conducted any statistical analysis regarding the availability of land and demand/need for activities in the Central Business District and/or cost/value of CBD property vs. GC1 property?
5. Is your greatest question regarding the proposed rezone still about demand?

6. Where in the Council minutes or elsewhere can I find the Council's action/authorization that resulted in your June 3, 2015 Staff Report PL 15-48?
7. On June 7, 2017, the Homer Advisory Planning Commissioners, by unanimous consent, directed the City Planner to "investigate rezoning a portion of the Central Business District to General Commercial 1 District as displayed in the June 7, 2017 Draft Future Land Use Map." Did this investigation ever take place and if so, where can I read its results?
8. Why didn't this investigation take place *before* the proposed rezoning was incorporated into the June 7, 2017 Draft Future Land Use Map?
9. The recent mailer to Lake Street and Heath Street property owners states "a need for additional space in Homer for general commercial activities has been identified." What is the factual basis for this statement?
10. The proposed rezone includes the parcel designated SBS. SBS was grandfathered for lumber yard use on its original parcel but later acquired an adjacent parcel for which it then acquired a CUP, presumably related to the construction of its present retail store. At some point these two parcels were re-platted into one "new" parcel. Since the original parcel no longer exists, did the nonconforming use status associated with that parcel expire?
11. Is it legal for SBS to now store culverts and building materials on the portion of its property that was not previously grandfathered?
12. Under CBD zoning regulations, would it be legal for HEA to create a "solar garden" consisting primarily of solar panels (presumably public utility use) on the vacant lot it acquired from Al Waddell as a result of litigation initiated by him?
13. Have you discussed "solar garden" use or expansion of public utility use with anyone associated with HEA or otherwise?
14. Is the proposed rezone designed to legalize illegal activities that are currently occurring within the area proposed for rezone?
15. Like you, the City of Homer has no planning authority and has never requested planning authority from the KPB. So why is the City updating its own Comprehensive Plan when this is solely the duty of the Kenai Peninsula Borough per AS 29.40.010(a)?
16. KPB 21.01.025 provides that cities in the Borough requesting extensive comprehensive plan amendments may recommend to the Borough a change to the city comprehensive plan. Has the City of Homer requested extensive comprehensive plan amendments to its existing comprehensive plan and/or formally recommended to the Borough a change to its Homer Comprehensive Plan?
17. Is it your contention that the City's preparation and submittal to the KPB of a complete 2018 Comprehensive Plan Update merely constitutes a request to the KPB for extensive comprehensive plan amendments and/or a recommendation of a change to the Homer Comprehensive Plan?
18. AS 29.40.010(b) provides that the Borough may delegate any of its powers and duties to a city. In May of 1990, the Borough enacted Ordinance 90-31 delegating authority to the City of Kenai to enact land use amendments to the comprehensive plan. In light of its longstanding but unauthorized practice of crafting/updating its own comprehensive plan, why hasn't the City of Homer requested that the Borough delegate planning (but not platting) powers to the City of Homer?

Please cc the Planning Commission, Mayor, and Council with your responses. Thank you.

Frank Griswold

| Uses | RR | UR | RO | CB D | TC D | GB D | GC 1 | GC 2 | EE MU | MC | MI | OS R | CO | SG CO | BC WP | SB HO |
|--|----|----|----|---------|---------|---------|---------|---------|----------|----|----|---------|----|----------|----------|----------|
| Accessory uses to the uses permitted in the GC2 district that are clearly subordinate to the main use of the lot or building, such as wharves, docks, restaurant or cafeteria facilities for employees; or caretaker or dormitory residence if situated on a portion of the principal lot; provided, that separate permits shall not be issued for the construction of any type of accessory building prior to that of the main building; | | | | | | | | ✓ | | | | | | | | |
| Agricultural activities, including general farming, truck farming, livestock farming, nurseries, and greenhouses; provided, that: 1. Other than normal household pets, no poultry or livestock may be housed and no fenced runs may be located within 100 feet of any residence other than the dwelling on the same lot; 2. No retail or wholesale business sales office is maintained on the premises; | ✓ | | | | | | | | | | | | | | | |
| Agricultural activities, including general farming, truck farming, nurseries, tree farms and greenhouses; | | | | | | | | ✓ | | | | | | | | |
| Air charter operations and floatplane tie-up facilities; | | | | | | | ✓ | | | | | | | | | |
| Airports and air charter operations; | | | | | | | | ✓ | | | | | | | | |
| Apartment units located in buildings primarily devoted to business or commercial uses; | | | | ✓ | | | | | | | | | | | | |
| Appliance sales and service; | | | | | | | ✓ | | | | | | | | | |
| As an accessory use incidental to residential use, storage of personal commercial fishing gear in a safe orderly manner and separated by at least five feet from any property line; | | ✓ | | | | | | | | | | | | | | |
| As an accessory use incidental to residential use, the private outdoor storage of noncommercial equipment, including noncommercial trucks, boats, and not more than one recreational vehicle in a safe and orderly manner and separated by at least five feet from any property line, provided no stored equipment, boat or vehicle exceeds 36 feet in length; | ✓ | ✓ | | | | | | | | | | | | | | |
| As an accessory use, one small wind energy system per lot having a rated capacity not exceeding 10 kilowatts. [Ord. 09-34(A) § 20, 2009; Ord. 08-29, 2008]. | | | | | | | | | | | | | | | ✓ | |
| As an accessory use, one small wind energy system per lot having a rated capacity not exceeding 10 kilowatts. [Ord. 11-23(A) § 1, 2011; Ord. 09-34(A) § 4, 2009; Ord. 08-29, 2008]. | ✓ | | | | | | | | | | | | | | | |
| As an accessory use, one small wind energy system per lot having a rated capacity not exceeding 10 kilowatts; | | ✓ | ✓ | ✓ | | | | | | | | | | | | |
| As an accessory use, one small wind energy system per lot. [Ord. 09-34(A) § 16, 2009; Ord. 08-29, 2008]. | | | | | | | ✓ | | | | | | | | | |
| As an accessory use, one small wind energy system per lot. [Ord. 09-34(A) § 17, 2009; Ord. 08-29, 2008]. | | | | | | | | ✓ | | | | | | | | |
| As an accessory use, one small wind energy system per lot. [Ord. 13-11(A) § 2, 2013; Ord. 09-34(A) § 18, 2009; Ord. 08-29, 2008]. | | | | | | | | | | ✓ | | | | | | |
| As an accessory use, one small wind energy system per lot. [Ord. 13-11(A) § 6, 2013; Ord. 09-34(A) § 19, 2009; Ord. 08-29, 2008]. | | | | | | | | | | | ✓ | | | | | |
| As an accessory use, one small wind energy system per lot; | | | | | | | | | ✓ | | | | | | | |
| Auto and trailer sales or rental areas; | | | | | | | ✓ | | | | | | | | | |
| Auto fueling stations and drive-in car washes; | | | | | | | ✓ | | | | | | | | | |
| Auto repair and auto and trailer sales or rental areas, but only on Main Street from Pioneer Avenue to the Sterling Highway, excluding lots with frontage on Pioneer Avenue or the Sterling Highway, subject to the following additional requirements: Vehicles awaiting repair or service, inoperable vehicles, vehicles for parts, and vehicles awaiting customer pickup shall be parked indoors or inside a fenced enclosure so as to be concealed from view, on all sides. The fence shall be a minimum height of eight feet and constructed to prohibit visibility of anything inside of the enclosure. The portion of any vehicle exceeding eight feet in height may be visible outside of the fence. Vehicle parts (usable or unusable), vehicle service supplies, and any other debris created in the repair or servicing of vehicles shall also be stored indoors or inside the fenced enclosure out of view of the public; | | | | ✓ | | | | | | | | | | | | |
| Auto repair; | | | | | | | ✓ | | | | | | | | | |
| Auto, trailer, truck, recreational vehicle and heavy equipment sales, rentals, service and repair, excluding storage of vehicles or equipment that is inoperable or in need of repair; | | | | | | | | ✓ | | | | | | | | |
| Auto, trailer, truck, recreational vehicle and heavy equipment sales, rentals, service and repair; | | | | | | | | | ✓ | | | | | | | |
| Banks, savings and loans, credit unions and other financial institutions; | | | | | | | ✓ | | | | | | | | | |
| Boat and marine equipment sales, rentals, manufacturing, storage yard, service and repair; | | | | | | | | ✓ | | | | | | | | |

| Uses | RR | UR | RO | CB D | TC D | GB D | GC 1 | GC 2 | EE MU | MC | MI | OS R | CO | SG CO | BC WP | SB HO |
|---|----|----|----|---------|---------|---------|---------|---------|----------|----|----|---------|----|----------|----------|----------|
| Boat and marine equipment sales, rentals, service and repair; | | | | | | | ✓ | | | | | | | | | |
| Boat launching or moorage facilities, marinas, boat charter services; | | | | | | | | | | | ✓ | | | | | |
| Boat launching or moorage facilities, marinas; | | | | | | | | | | ✓ | | | | | | |
| Building supply and equipment sales and rentals; | | | | | | | ✓ | | ✓ | | | | | | | |
| Business offices for water-dependent and water-related activities such as fish brokers, off-shore oil and gas service companies, and stevedores; | | | | | | | | | | ✓ | | | | | | |
| Campgrounds; | | | | | | | | | | ✓ | | | | | | |
| Caretaker, business owner or employee housing as an accessory use to a primary use, and limited to no more than 50 percent of the floor area of a building and for use by an occupant for more than 30 consecutive days; | | | | | | | | | | ✓ | ✓ | | | | | |
| Cold storage facilities; | | | | | | | | ✓ | ✓ | ✓ | | | | | | |
| Cold storage; | | | | | | | | | | | ✓ | | | | | |
| Construction, assembly and storage of boats and boat equipment; | | | | | | | | ✓ | | | | | | | | |
| Customary accessory uses that are clearly subordinate to the main use of the lot or building such as piers or wharves; provided, that separate permits shall not be issued for the construction of an accessory structure prior to that of the mainstructure; | | | | | | | | | | ✓ | | | | | | |
| Customary accessory uses to any of the permitted uses listed in the CBD district; provided, that a separate permit shall not be issued for the construction of any detached accessory building prior to that of the main building; | | | | ✓ | | | | | | | | | | | | |
| Customary accessory uses to any of the permitted uses listed in the GBD district; provided, that separate permit shall not be issued for the construction of any type of accessory building prior to that of the main building. [Ord. 11-23(A) § 6, 2011; Ord. 08-29, 2008]. | | | | | | ✓ | | | | | | | | | | |
| Customary accessory uses to any of the permitted uses listed in the GC1 district; provided, that no separate permit shall be issued for the construction of any type of accessory building prior to that of the main building; | | | | | | | ✓ | | | | | | | | | |
| Customary accessory uses to any of the permitted uses listed in the UR district; provided, that no separate permit shall be issued for the construction of any detached accessory building prior to that of the main building; | | ✓ | | | | | | | | | | | | | | |
| Customary accessory uses to any of the uses permitted in the EEMU district that are clearly subordinate to the main use of the lot or building, including without limitation wharves, docks, storage facilities, restaurant or cafeteria facilities for employees; or caretaker or employee dormitory residence if situated on a portion of the same lot as the principal use; provided, that no permit shall be issued for the construction of any type of accessory building prior to the establishment of the principal use; | | | | | | | | | ✓ | | | | | | | |
| Day care facilities; | | | | | | | | | | | | | | | ✓ | |
| Day care homes and facilities; provided, however, that outdoor play areas must be fenced; | | | ✓ | ✓ | | | | | | | | | | | | |
| Day care homes and facilities; provided, however, that play areas must be fenced; | | | | | ✓ | | | | | | | | | | | |
| Day care homes; | | | | | | | | | | | | | | | ✓ | |
| Day care homes; provided, however, that outdoor play areas must be fenced; | ✓ | ✓ | | | | | | | | | | | | | | |
| Day care homes; provided, that a conditional use permit was obtained for the dwelling, if required by HCC 21.24.030; all outdoor play areas must be fenced; | | | | | | | ✓ | | | | | | | | | |
| Dormitory; | | | | ✓ | | | ✓ | ✓ | | | | | | | | |
| Drive-in car washes; | | | | | | | | | ✓ | | | | | | | |
| Dry cleaning, laundry, and self-service laundries; | | | | | | | ✓ | | ✓ | | | | | | | |
| Dry docks; | | | | | | | | | | | ✓ | | | | | |
| Duplex dwelling, excluding mobile home; | | ✓ | | | | | | | | | | | | | | |
| Duplex dwelling; | ✓ | | | | | | | | | | | | | | ✓ | |
| Dwelling units and nonresidential uses (if otherwise allowed by this chapter) in the same building; | | | | | | ✓ | | | | | | | | | | |
| Dwelling units and nonresidential uses in the same building, if each use is otherwise allowed by this chapter; | | | | | ✓ | | | | | | | | | | | |
| Dwelling units located in buildings primarily devoted to business uses; | | | | | | | ✓ | | | | | | | | | |
| Entertainment establishments; | | | | ✓ | ✓ | ✓ | | | | | | | | | | |
| Farmers' market; | | | | ✓ | ✓ | | | | | | | | | | | |
| Financial institutions; | | | | ✓ | ✓ | ✓ | | | | | | | | | | |
| Fish and wildlife habitat protection and enhancement. | | | | | | | | | | | | | ✓ | | | |
| Floatplane tie-up facilities and air charter services; | | | | ✓ | | | | | | | | | | | | |
| Garden supplies and greenhouses; | | | | | | | ✓ | | ✓ | | | | | | | |
| General business offices and professional offices; | | | | | | ✓ | ✓ | | | | | | | | | |

| Uses | RR | UR | RO | CB D | TC D | GB D | GC 1 | GC 2 | EE MU | MC | MI | OS R | CO | SG CO | BC WP | SB HO |
|--|----|----|----|---------|---------|---------|---------|---------|----------|----|----|---------|----|----------|----------|----------|
| Heavy equipment and truck sales, rentals, service and repair; | | | | | | | ✓ | | | | | | | | | |
| Heliports; | | | | | | | | ✓ | | | | | | | | |
| Home occupations on a lot whose principal permitted use is residential, provided they conform to the requirements of HCC21.51.010; | | | | | | | | | ✓ | | | | | | | |
| Home occupations, provided they conform to the requirements of HCC 21.51.010; | ✓ | ✓ | | ✓ | | | | | | | | | | | | |
| Home occupations, provided they conform to the standards in HCC 21.51.010; | | | | | ✓ | ✓ | | | | | | | | | | |
| Home occupations; provided they conform to the requirements of HCC 21.51.010; | | | ✓ | | | | | | | | | | | | | |
| Hotels and motels; | | | | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | | | |
| Itinerant merchants, provided all activities shall be limited to uses permitted outright under this zoning district; | | | | ✓ | | | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | |
| Lodging as an accessory use, limited to no more than 50 percent of the floor area of a building; | | | | | | | | | | ✓ | | | | | | |
| Lumberyards; | | | | | | | ✓ | | | | | | | | | |
| Manufacture and assembly of pottery and ceramics, musical instruments, toys, novelties, small molded products, electronic instruments and equipment and electrical devices; | | | | | | | | ✓ | | | | | | | | |
| Manufacturing of electronic equipment, electrical devices, pottery, ceramics, musical instruments, toys, novelties, small molded products and furniture; | | | | | | | ✓ | | | | | | | | | |
| Manufacturing, fabrication and assembly; | | | | | | | | | ✓ | | | | | | | |
| Manufacturing, processing and packing of sea products; | | | | | | | | | | | ✓ | | | | | |
| Manufacturing, processing, cooking, and packing of seafood products; | | | | | | | | | | ✓ | | | | | | |
| Marine equipment sales, rentals, service, repair and storage; | | | | | | | | | | ✓ | ✓ | | | | | |
| Marine recreation activities such as fishing and boating; | | | | | | | | | | | | ✓ | | | | |
| Marine-life and wildlife sanctuary or preserve. [Ord. 11-32 § 2, 2011; Ord. 08-29, 2008]. | | | | | | | | | | | | | ✓ | | | |
| Marine-life and wildlife sanctuary or preserve; | | | | | | | | | | | | ✓ | | | | |
| Marine-life raising or production for recreational purposes, but not for commercial fishing purposes; | | | | | | | | | | | | ✓ | | | | |
| Ministorage; | | | | ✓ | | | | | | | | | | | ✓ | |
| Mobile commercial structures; | | | | | | | | ✓ | ✓ | | | | | | | |
| Mobile food services on City-owned land only; | | | | | ✓ | | | | | | | | | | | |
| Mobile food services; | | | | ✓ | | | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | |
| Mobile homes, provided they conform to the requirements set forth in HCC 21.54.100; | | | | ✓ | | | | | | | | | | | | |
| Mobile homes, subject to the requirements of HCC 21.54.100; | ✓ | | | | | | | | | | | | | | | |
| Mobile homes, subject to the requirements set forth in HCC 21.54.100; | | | | | | | | | | | | | | | ✓ | |
| More than one building containing a permitted principal use on a lot; | | | | | | | | | ✓ | | ✓ | | | | | |
| More than one building containing a principal permitted use on a lot. [Ord. 11-23(A) § 5, 2011; Ord. 08-29, 2008]. | | | | | ✓ | | | | | | | | | | | |
| Mortuaries and crematoriums; | | | | | | | | | ✓ | | | | | | | |
| Mortuaries; | | | | ✓ | | | ✓ | | | | | | | | | |
| Multiple-family dwelling, only if the structure conforms to HCC 21.14.040(a)(2) and excluding mobile home; | | ✓ | | | | | | | | | | | | | | |
| Multiple-family dwelling, only if the structure conforms to HCC 21.14.040(a)(2); | ✓ | | | | | | | | | | | | | | | |
| Multiple-family dwelling, provided the structure conforms to HCC 21.14.040(a)(2) and excluding mobile homes; | | | ✓ | | | | | | | | | | | | | |
| Multiple-family dwelling, provided the structure conforms to HCC 21.14.040(a)(2); | | | | | | | | | | | | | | | ✓ | |
| Museums and libraries; | | | | ✓ | ✓ | ✓ | | | | | | | | | | |
| Museums, libraries and similar institutions; | | | ✓ | | | | | | | | | | | | | |
| Nursing facilities, convalescent homes, homes for the aged, assisted living homes; | | | ✓ | | | | | | | | | | | | | |
| Offices for tourism-related charter and tour businesses, such as fishing, flightseeing, day excursions and boat charters and tours; | | | | | | | | | | ✓ | | | | | | |
| Offices; | | | | | ✓ | | | | | | | | | | | |
| One detached dwelling unit, excluding mobile homes, as an accessory building to a principal single-family dwelling on a lot. [Ord. 11-44(S) § 1, 2011; Ord. 11-23(A) § 2, 2011; Ord. 09-34(A) § 6, 2009; Ord. 08-29, 2008]. | | ✓ | | | | | | | | | | | | | | |
| One detached dwelling unit, excluding mobile homes, as an accessory building to a principal single-family dwelling on a lot. [Ord. 11-44(S) § 2, 2011; Ord. 11-23(A) § 3, 2011; Ord. 09-34(A) § 8, 2009; Ord. 08-29, 2008]. | | | ✓ | | | | | | | | | | | | | |
| One detached dwelling unit, excluding mobile homes, as an accessory building to a principal single-family dwelling on a lot. [Ord. 11-44(S) § 3, 2011; Ord. 11-23(A) § 4, 2011; Ord. 09-34(A) § 10, 2009; Ord. 08-29, 2008]. | | | | ✓ | | | | | | | | | | | | |

| Uses | RR | UR | RO | CB D | TC D | GB D | GC 1 | GC 2 | EE MU | MC | MI | OS R | CO | SG CO | BC WP | SB HO |
|---|----|----|----|---------|---------|---------|---------|---------|----------|----|----|---------|----|----------|----------|----------|
| Open air businesses; | | | | | | | ✓ | | ✓ | | | | | | | |
| Open space, but not including outdoor recreational facilities described in HCC 21.12.030; | ✓ | | | | | | | | | | | | | | | |
| Open space, not including outdoor recreational facilities; | | ✓ | | | | | | | | | | | | | | |
| Open space, such as park, playground and related recreation activities; | | | | | | | | | | | | ✓ | | | | |
| Open space; | | | | | | ✓ | | | | | | | | | | |
| Other customary accessory uses incidental to any of the permitted uses listed in the RR district; provided, that no separate permit shall be issued for the construction of any detached accessory building prior to that of the main building; | ✓ | | | | | | | | | | | | | | | |
| Other customary accessory uses incidental to any of the principal permitted uses listed in the BCWP district, such as limited personal use gardening as described in HCC 21.40.090(c); | | | | | | | | | | | | | | | ✓ | |
| Other customary accessory uses to any of the permitted uses listed in the Residential Office District; provided, that no separate permit shall be issued for the construction of any detached accessory building prior to that of the main building; | | | ✓ | | | | | | | | | | | | | |
| Parking lots and parking garages, in accordance with Chapter 21.55 HCC; | | | | ✓ | ✓ | | ✓ | ✓ | ✓ | | | | | | | |
| Parks and open space; | | | | | | | ✓ | | ✓ | | | | | | | |
| Parks; | | | | ✓ | ✓ | | | | | ✓ | ✓ | | | | | |
| Personal service establishments; | | | | ✓ | ✓ | ✓ | | | | | | | | | | |
| Personal services; | | | | | | | | | ✓ | | | | | | | |
| Plumbing, heating and appliance service shops, only if such use, including the storage of materials, is wholly within an enclosed building; | | | | ✓ | ✓ | | | | | | | | | | | |
| Plumbing, heating and appliance service shops; | | | | | | | | | ✓ | | | | | | | |
| Port and harbor facilities; | | | | | | | | | | | ✓ | | | | | |
| Private exterior storage of the occupant's personal noncommercial equipment, including noncommercial trucks, boats, campers and not more than one recreational vehicle in a safe and orderly manner and separated by at least five feet from any property line as an accessory use incidental to a permitted or conditionally permitted principal use; | | | ✓ | | | | | | | | | | | | | |
| Private floatplane tie-down as an accessory use incidental to residential use; | ✓ | | | | | | | | | | | | | | | |
| Private floatplane tie-up facility as an accessory use incidental to residential use; | | ✓ | | | | | | | | | | | | | | |
| Private stables; | ✓ | | | | | | | | ✓ | | | | | | | |
| Private storage in yards, in a safe and orderly manner, of equipment, including trucks, boats, recreational vehicles and automobiles; provided, that all are in good mechanical and operable condition, and if subject to licensing, currently able to meet licensing requirements; and further provided, that the stored items do not create impervious cover in excess of the limits in HCC21.40.070; | | | | | | | | | | | | | | | ✓ | |
| Private, public, and commercial schools; | | | | | ✓ | | | | | | | | | | | |
| Production, processing, assembly and packaging of fish, shellfish and seafood products; | | | | | | | | ✓ | ✓ | | | | | | | |
| Professional offices and general business offices; | | | ✓ | ✓ | | | | | | | | | | | | |
| Public and private schools; | | | | | | ✓ | | | | | | | | | | |
| Public parks and playgrounds; | ✓ | ✓ | ✓ | | | | | | | | | | | | ✓ | |
| Public schools and private schools; | | ✓ | | | | | | | | | | | | | ✓ | |
| Public, private and commercial schools; | | | | ✓ | | | | | | | | | | | | |
| Publishing, printing and bookbinding facilities; | | | | | | | | ✓ | | | | | | | | |
| Publishing, printing and bookbinding; | | | | ✓ | ✓ | | ✓ | | | | | | | | | |
| Recreation vehicle sales, rental, service and repair; | | | | | | | ✓ | | | | | | | | | |
| Recreational vehicle parks only if located south of the Sterling Highway (Homer Bypass) from Lake Street west to the boundary of the Central Business District abutting Webber Subdivision, and from Heath Street to the west side of Lakeside Village Subdivision, provided they shall conform to the standards in HCC 21.54.200 and following sections; | | | | ✓ | | | | | | | | | | | | |
| Recreational vehicle parks, provided they shall conform to the standards in Article II of Chapter 21.54 HCC. [Ord. 08-29, 2008]. | | | | | | | | | | | | ✓ | | | | |
| Recreational vehicle parks, provided they shall conform to the standards in Article II of Chapter 21.54 HCC; | | | | | | | ✓ | | | | | | | | | |
| Recreational vehicle parks, provided they shall conform to the standards in Chapter 21.54 HCC; | | | | | | | | ✓ | | ✓ | ✓ | | | | | |
| Recreational vehicles, subject to the requirements of HCC 21.54.320; | ✓ | | | | | | | | | | | | | | | |
| Recreational vehicles, subject to the standards in HCC 21.54.320(a), (b) and (c); | | | | | | | | | ✓ | | | | | | | |
| Recreational vehicles, subject to the standards set out in HCC 21.54.320; | | ✓ | ✓ | | | | | | | | | | | | | |
| Religious, cultural and fraternal assemblies; | | | | | ✓ | | | | | | | | | | | |

| Uses | RR | UR | RO | CB D | TC D | GB D | GC 1 | GC 2 | EE MU | MC | MI | OS R | CO | SG CO | BC WP | SB HO |
|---|----|----|----|---------|---------|---------|---------|---------|----------|----|----|---------|----|----------|----------|----------|
| Religious, cultural and fraternal assembly; | | | ✓ | | | | | | | | | | | | | |
| Religious, cultural, and fraternal assembly; | | | | ✓ | | ✓ | | | ✓ | | | | | | ✓ | |
| Research and development laboratories; | | | | | | | | ✓ | ✓ | | | | | | | |
| Restaurant as an accessory use; | | | | | | | | | | | ✓ | | | | | |
| Restaurants and clubs; | | | | | | ✓ | | | | | | | | | | |
| Restaurants, clubs and drinking establishments that provide food or drink for consumption on the premises; | | | | ✓ | | | | | | | | | | | | |
| Restaurants, clubs and drinking establishments which provide food or drink for consumption on the premises; | | | | | ✓ | | | | | | | | | | | |
| Restaurants, including drive-in restaurants, clubs and drinking establishments; | | | | | | | ✓ | | ✓ | | | | | | | |
| Restaurants; | | | | | | | | | | ✓ | | | | | | |
| Retail and wholesale sales of building supplies and materials, only if such use, including storage of materials, is wholly contained within one or more enclosed buildings; | | | | ✓ | | | | | | | | | | | | |
| Retail business where the principal activity is the sale of merchandise and incidental services in an enclosed building; | | | | ✓ | ✓ | | | | | | | | | | | |
| Retail business; | | | | | | ✓ | | | | | | | | | | |
| Retail businesses; | | | | | | | ✓ | | ✓ | | | | | | | |
| Retail sale of building supplies and materials, only if such use, including storage of materials, is wholly contained within an enclosed building; | | | | | ✓ | | | | | | | | | | | |
| Retail stores limited to the sale of seafood products, sporting goods, curios, and arts and crafts; | | | | | | | | | | ✓ | | | | | | |
| Rooming house and bed and breakfast; | | | | | | | ✓ | | | | | | | | | |
| Rooming house, bed and breakfast and hostel; | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | | | | | |
| Rooming houses or bed and breakfast establishments; | | | | | | | | | | | | | | | ✓ | |
| Single-family and duplex dwelling, excluding mobile homes; | | | ✓ | | | | | | | | | | | | | |
| Single-family and duplex dwellings, only as an accessory use incidental to a permitted principal use; provided, that no permit shall be issued for the construction of an accessory dwelling prior to the establishment of the principal use; | | | | | | | | | ✓ | | | | | | | |
| Single-family dwelling, excluding mobile home; | | ✓ | | | | | | | | | | | | | | |
| Single-family dwelling; | ✓ | | | | | | | | | | | | | | ✓ | |
| Single-family, duplex, and multiple-family dwellings, but not including mobile homes or townhouses; | | | | | ✓ | | | | | | | | | | | |
| Single-family, duplex, and multiple-family dwellings, including townhouses, but not including mobile homes; | | | | ✓ | | ✓ | | | | | | | | | | |
| Storage and distribution services and facilities, including truck terminals, warehouses and storage buildings and yards, contractors' establishments, lumberyards and sales, or similar uses; | | | | | | | | ✓ | ✓ | | | | | | | |
| Storage of heavy equipment, vehicles or boats; | | | | | | | | | ✓ | | | | | | | |
| Storage of personal commercial fishing gear in a safe and orderly manner and separated by at least five feet from any property line as an accessory use incidental to residential use; | ✓ | | | | | | | | | | | | | | | |
| Storage of personal commercial fishing gear in a safe and orderly manner; | | | | | | | | | | | | | | | ✓ | |
| Storage of the occupant's personal commercial fishing gear in a safe and orderly manner and separated by at least five feet from any property line as an accessory use incidental to a permitted or conditionally permitted principal use; | | | ✓ | | | | | | | | | | | | | |
| Studios; | | | | ✓ | ✓ | ✓ | | | ✓ | | | | | | | |
| Taxi operation limited to a dispatch office and fleet parking of no more than five vehicles; maintenance of taxis must be conducted within an enclosed structure, and requires prior approval by the City Planner of a site, access and parking plan; | | | | ✓ | | | | | | | | | | | | |
| Taxi operation; | | | | | | | ✓ | ✓ | ✓ | | | | | | | |
| Temporary (seasonal) roadside stands for the sale of produce grown on the premises; | ✓ | | | | | | | | | | | | | | ✓ | |
| The outdoor harboring or keeping of dogs, small animals and fowl as an accessory to a residential use in a manner consistent with the requirements of all other provisions of the Homer City Code and as long as such animals are pets of the residents of the dwelling and their numbers are such as not to unreasonably annoy or disturb occupants of neighboring property; | | ✓ | | | | | | | | | | | | | | |
| The outdoor harboring or keeping of dogs, small animals and fowl as an accessory use in a manner consistent with the requirements of the Homer City Code and as long as such animals are kept as pets and their numbers are such as not to unreasonably annoy or disturb occupants of neighboring property; | | | ✓ | | | | | | | | | | | | | |

| Uses | RR | UR | RO | CB D | TC D | GB D | GC 1 | GC 2 | EE MU | MC | MI | OS R | CO | SG CO | BC WP | SB HO |
|---|----|----|----|---------|---------|---------|---------|---------|----------|----|----|---------|----|----------|----------|----------|
| The outdoor harboring or keeping of dogs, small animals and fowl as an accessory use to a residential use in a manner consistent with the requirements of all other provisions of the Homer City Code and as long as such animals are pets of the residents of the dwelling and their numbers are such as not to unreasonably annoy or disturb occupants of neighboring property. [Ord. 12-10 § 1, 2012]. | | | | | | | | | ✓ | | | | | | | |
| The repair, replacement, reconstruction or expansion of a single-family or duplex dwelling, including a mobile home, that existed lawfully before its inclusion in the GC1, GC2 or EEMU zoning districts, notwithstanding any provision of Chapter 21.61 HCC to the contrary; provided, that a mobile home may not be used to replace or expand such a dwelling; | | | | | | | | | ✓ | | | | | | | |
| Townhouses subject to the standards of HCC 21.53.010(c), (f), (h), (i), and (o) only; | | | | | ✓ | | | | | | | | | | | |
| Trade, skilled or industrial schools; | | | | | | | ✓ | | ✓ | | | | | | | |
| Trade, skills or industrial schools; | | | | | | | | ✓ | | | | | | | | |
| Transient or itinerant merchants, provided all activities shall be limited to uses permitted outright under this zoning district, and only on City-owned land; | | | | | ✓ | | | | | | | | | | | |
| Underground bulk petroleum storage; | | | | | | | | ✓ | | | | | | | | |
| Up to four recreational vehicles on a lot as a temporary dwelling not to exceed 90 days' occupancy per vehicle in any calendar year; | | | | | | | | | | | | | | | ✓ | |
| Warehouse and marshaling yards for storing goods awaiting transfer to marine vessels or off-loaded from a marine vessel and awaiting immediate pickup by land-based transportation; | | | | | | | | | | | ✓ | | | | | |
| Warehousing, commercial storage and mini-storage; | | | | | | | ✓ | | ✓ | | | | | | | |
| Welding and mechanical repair; | | | | | | | ✓ | | ✓ | | | | | | | |
| Wharves and docks, marine loading facilities, ferry terminals, marine railways; | | | | | | | | | | | ✓ | | | | | |
| Wholesale businesses, including storage and distribution services incidental to the products to be sold; | | | | | | | ✓ | | ✓ | | | | | | | |

| Conditional Uses | RR | UR | RO | CB D | TC D | GB D | GC 1 | GC 2 | EE MU | MC | MI | OS R | CO | SG CO D | BC WP D | SB HO D |
|---|----|----|----|---------|---------|---------|---------|---------|----------|----|----|---------|----|---------------|---------------|---------------|
| Agricultural activity and stables, if they conform to HCC 21.40.090, but not including farming of swine; | | | | | | | | | | | | | | | ✓ | |
| Any structures used for usespermitted outright in the district; | | | | | | | | | | | | ✓ | | | | |
| Assisted living home; | ✓ | | | | | | | | | | | | | | | |
| Auto fueling stations; | | | | ✓ | | | | | | | | | | | | |
| Boat sales, rentals, service, repair and storage, and boat manufacturing; | | | | | | | | | | | ✓ | | | | | |
| Bulk petroleum product storage above ground; | | | | | | | | ✓ | | | | | | | | |
| Bulk petroleum product storage; | | | | | | | | | ✓ | | | | | | | |
| Bulk petroleum storage; | | | | | | | | | | | ✓ | | | | | |
| Campgrounds; | | | | | | | ✓ | | | | | | | | | |
| Cemeteries; | ✓ | | | | | | | | | | | | | | | |
| Commercial greenhouses and tree nurseries offering sale of plants or trees grown on premises; | ✓ | | | | | | | | | | | | | | | |
| Construction camps; | | | | | | | | ✓ | | | | | | | | |
| Crematoriums; | | | | | | | ✓ | | | | | | | | | |
| Customary accessory uses to any of the permitted uses listed in the TCD district; provided, that a separate permit shall not be issued for the construction of any type of accessory building prior to that of the main building; | | | | | ✓ | | | | | | | | | | | |
| Day care facilities; provided, however, that outdoor play areas must be fenced; | ✓ | | | | | | | | | | | | | | | |
| Drinking establishments; | | | | | | | | | | ✓ | | | | | | |
| Drive-in car washes, but only on the Sterling Highway from Tract A-1 Webber Subdivision to Heath Street; | | | | ✓ | | | | | | | | | | | | |
| Educational and interpretive displays and signs. | | | | | | | | | | | | | ✓ | | | |
| Extractive enterprises related to other uses permitted in the district; | | | | | | | | | | | ✓ | | | | | |
| Extractive enterprises, including crushing of gravel, sand and other earth products and batch plants for asphalt or concrete; | | | | | | | | | ✓ | | | | | | | |
| Extractive enterprises, including the mining, quarrying and crushing of gravel, sand and other earth products and batch plants for asphalt or concrete; | | | | | | | | ✓ | | | | | | | | |
| Fishing gear and boat storage; | | | | | | | | | | | | ✓ | | | | |
| Greenhouses and garden supplies; | | | | ✓ | | | | | | | | | | | | |
| Group care home; | ✓ | | | | | | | | | | | | | | | |
| Group care homes and assisted living homes; | | | | ✓ | | | | | | | | | | | | |
| Group care homes; | | | ✓ | | | | | | | | | | | | | |
| Heliports; | | | | ✓ | | | | | | | | | | | | |
| Hospitals and medical clinics; | | | ✓ | | | | | | | | | | | | | |
| Hospitals; | | ✓ | | | | | | | | | | | | | | |
| Hotels and motels; | | | | | | | | | | ✓ | | | | | | |
| Impound yards; | | | | | | | | ✓ | | | | | | | | |
| Indoor recreational facilities and outdoor recreational facilities; | | | | ✓ | | | | | | | | | | | | |
| Indoor recreational facilities; | ✓ | | | | | | | | | | | | | | | |
| Junk yard; | | | | | | | | ✓ | | | | | | | | |
| Kennels; | ✓ | | | | | | | | | | | | | | | |
| Light or custom manufacturing, repair, fabricating, and assembly, provided such use, including storage of materials, is wholly within an enclosed building; | | | | ✓ | | | | | | | | | | | | |
| Lodging; | | | | | | | | | | ✓ | | | | | | |
| Mobile home parks; | | | | ✓ | | | | | | | | | | | | |
| More than one building containing a permitted principal use on a lot. | | | | | | ✓ | | | | | | | | | | |
| More than one building containing a permitted principal use on a lot. [Ord. 10-05, 2010; Ord. 08-29, 2008]. | | | | | | | | | | | | | | | ✓ | |
| More than one building containing a permitted principal use on a lot; | | | | ✓ | | | | | | | | | | | | |
| Mortuaries; | | | ✓ | | | | | | | | | | | | | |
| Multiple-family dwelling; | | | | | | | ✓ | | | | | | | | | |
| One small wind energy systemhaving a rated capacity exceeding 10 kilowatts; provided, that it is the only wind energy system of any capacity on the lot. [Ord. 09-34(A) § 5, 2009; Ord. 08-29, 2008]. | ✓ | | | | | | | | | | | | | | | |
| One small wind energy systemhaving a rated capacity exceeding 10 kilowatts; provided, that it is the only wind energy system of any capacity on the lot. [Ord. 09-34(A) § 7, 2009; Ord. 08-29, 2008]. | | ✓ | | | | | | | | | | | | | | |
| One small wind energy systemhaving a rated capacity exceeding 10 kilowatts; provided, that it is the only wind energy system of any capacity on the lot; | | | | ✓ | | | | | | | | | | | | |
| One wind energy system having a rated capacity exceeding 10 kilowatts; provided, that it is the onlywind energy system of any capacity on the lot. | | | | | | ✓ | | | | | | | | | | |
| One wind energy system having a rated capacity exceeding 10 kilowatts; provided, that it is the onlywind energy system on any capacity of the lot. [Ord. 09-34(A) § 13, 2009; Ord. 08-29, 2008]. | | | | | ✓ | | | | | | | | | | | |

| Conditional Uses | RR | UR | RO | CB D | TC D | GB D | GC 1 | GC 2 | EE MU | MC | MI | OS R | CO | SG CO D | BC WP D | SB HO D |
|--|----|----|----|---------|---------|---------|---------|---------|----------|----|----|---------|----|---------------|---------------|---------------|
| Other conservation uses that will enhance the Conservation District, approved by the Planning Commission, provided, however, a finding of no adverse impact to the integrity of the fish and wildlife resources and habitat must be found. [Ord. 11-32 § 3, 2011; Ord. 08-29, 2008]. | | | | | | | | | | | | | ✓ | | | |
| Other open space and recreationuses; | | | | | | | | | | | | ✓ | | | | |
| Other uses approved pursuant to HCC 21.04.020. [Ord. 09-34(A) § 11, 2009; Ord. 08-29, 2008]. | | | | ✓ | | | | | | | | | | | | |
| Other uses approved pursuant to HCC 21.04.020. [Ord. 09-34(A) § 15, 2009; Ord. 08-29, 2008]. | | | | | | ✓ | | | | | | | | | | |
| Other uses approved pursuant to HCC 21.04.020. [Ord. 10-06 § 1, 2010; Ord. 09-34(A) § 9, 2009; Ord. 08-29, 2008]. | | | ✓ | | | | | | | | | | | | | |
| Other uses approved pursuant to HCC 21.04.020. [Ord. 12-10 § 1, 2012]. | | | | | | | | | ✓ | | | | | | | |
| Other uses approved pursuant to HCC 21.04.020; | | | | | ✓ | | | | | | | | | | | |
| Other uses similar to usespermitted and conditionally permitted in the BCWP district, as approved by written decision of the Planning Commission upon application of the property owner and after a public hearing; | | | | | | | | | | | | | | | ✓ | |
| Outdoor recreational facilities. [Ord. 08-29, 2008]. | | | | | | | ✓ | | | | | | | | | |
| Outdoor recreational facilities; | ✓ | | | | | | | | | | | | | | | |
| Overslope development. [Ord. 09-44(S) § 3, 2009]. | | | | | | | | | | | | | | | | ✓ |
| Parking areas; | | | | | | | | | | | | ✓ | | | | |
| Parking lots incidental to a permitted or conditionally permitteduse. | | | | | | | | | | | | | ✓ | | | |
| Pedestrian trails, including boardwalks and viewing platforms. | | | | | | | | | | | | | ✓ | | | |
| Pipeline and railroads; | | | | ✓ | | | | | | | | | | | | |
| Pipelines and railroads; | ✓ | | | | | | | | | | | | | | | |
| Planned unit development, excluding all industrial uses; | | ✓ | | | | | | | | | | | | | | |
| Planned unit development, limited to residential uses only; | ✓ | | | | | | | | | | | | | | | |
| Planned unit development, limited to water-dependent or water-relateduses and excluding all dwellings; | | | | | | | | | | | ✓ | | | | | |
| Planned unit developments, excluding all industrial uses; | | | | ✓ | | | | | | | | | | | | |
| Planned unit developments, excluding residential uses; | | | | | | | | ✓ | | | | | | | | |
| Planned unit developments, limited only to uses otherwise permitted in this district; | | | | | ✓ | | | | | | | | | | | |
| Planned unit developments, limited to water-dependent andwater-related uses, with no dwellingunits except as permitted by HCC21.28.020(o); | | | | | | | | | | ✓ | | | | | | |
| Planned unit developments; | | | | | | | ✓ | | | | | | | | | |
| Plumbing, heating and appliance repair shops, but only if such use, including storage of goods and materials, is wholly contained within one or more enclosed buildings; | | | | | ✓ | | | | | | | | | | | |
| Private stables and the keeping of larger animals not usually considered pets, including paddocks or similar structures or enclosures utilized for keeping of such animals as an accessory use incidental to a primary residential use; such use shall be conditioned on not causing unreasonable disturbance or annoyances to occupants of neighboring property, and on sufficient land to harbor such animals; | | ✓ | | | | | | | | | | | | | | |
| Public or private schools; | | | ✓ | | | | | | | | | | | | | |
| Public utility facilities andstructures that cannot be reasonably located in another district. | | | | | | | | | | | | | ✓ | | | |
| Public utility facilities andstructures; | | | | ✓ | | | | | | | | | | | | |
| Public utility facility or structure; | | | | | | | ✓ | | | | | | | | | |
| Public school and private school; | ✓ | | | | | | | | | | | | | | | |
| Religious, cultural and fraternal assembly; | ✓ | | | | | | | | | | | | | | | |
| Retail sales of hardware, appliances and furniture, buildingsupplies and materials, but only if such use, including storage of goods and materials, is wholly contained within one or more enclosedbuildings; | | | | | ✓ | | | | | | | | | | | |
| Self-service laundries; | | | | | ✓ | | | | | | | | | | | |
| Shelter for the homeless, provided any lot used for such shelter does not abut a residential zoning district; | | | | ✓ | | | | | | | | | | | | |
| Shelter for the homeless, provided any lot used for such shelter does not abut an RO, RR, or UR zoning district; | | | | | | | ✓ | | | | | | | | | |
| Shelter for the homeless, provided any lot used for such shelter does not abut an urban, rural or officeresidential zoning district; | | | | | | | | ✓ | | | | | | | | |
| Storage of heavy equipment or boats over 36 feet in length as anaccessory use incidental to a permitted or conditionally permittedprincipal use; | | ✓ | | | | | | | | | | | | | | |

| Conditional Uses | RR | UR | RO | CB D | TC D | GB D | GC 1 | GC 2 | EE MU | MC | MI | OS R | CO | SG CO D | BC WP D | SB HO D |
|---|----|----|----|---------|---------|---------|---------|---------|----------|----|----|---------|----|---------------|---------------|---------------|
| Storage of heavy equipment, vehicles or boats over 36 feet in length as an accessory use incidental to a permitted or conditionally permitted principal use; | ✓ | | | | | | | | | | | | | | | |
| The location of a building within a setback area required by HCC 21.28.040(b). In addition to meeting the criteria for a conditional use permit under HCC 21.71.030, the building must meet the following standards: 1. Not have a greater negative effect on the value of the adjoining property than a building located outside the setback area; and 2. Have a design that is compatible with that of the structures on the adjoining property. [Ord. 13-11(A) § 3, 2013; Ord. 08-29, 2008]. | | | | | | | | | | ✓ | | | | | | |
| The location of a building within a setback area required by HCC 21.30.040(b). In addition to meeting the criteria for a conditional use permit under HCC 21.71.030, the building must meet the following standards: 1. Not have a greater negative effect on the value of the adjoining property than a building located outside the setback area; and 2. Have a design that is compatible with that of the structures on the adjoining property. [Ord. 13-11(A) § 7, 2013; Ord. 08-29, 2008]. | | | | | | | | | | | ✓ | | | | | |
| Timber harvesting operations, timber growing, and forest crops, provided they conform to HCC 21.40.100; | | | | | | | | | | | | | | | ✓ | |
| Townhouse developments; | | ✓ | | | | | | | | | | | | | | |
| Townhouses; | | | ✓ | | | | | | | | | | | | | |
| Uses, activities, structures, exceptions, or other things described as requiring a conditional use permit in HCC 21.40.080(a), 21.40.110(b) or any other provision of this chapter; | | | | | | | | | | | | | | | ✓ | |



City of Homer

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Memorandum

TO: Mayor Zak and Homer City Council
FROM: Katie Koester, City Manager
DATE: March 7, 2018
SUBJECT: City Manager's Report

Pittman-Robertson Funding

In the last City Manager's Report I mentioned an opportunity for trail/wildlife viewing grants that Representative Seaton brought up during our time in Juneau. Since then, staff has been working with his office on how we would go about advocating for City of Homer projects. However, because the State does not have staff to administer Pittman-Robertson or Dingell-Johnson grants, even if the City proposes to fund the entire required local match, the Federal dollars cannot be attained. Therefore, **Representative Seaton's office has requested from the City a letter advocating for restoring funding** to administer these programs (attached). The State stands to lose \$4 million in Federal grant dollars without this capacity. The City of Homer Load and Launch Ramp was replaced using Dingell-Johnson funds; I don't know of Pittman-Robertson funding we have used in the recent past, but if the program is restored we would work on positing City of Homer projects for funding as the opportunity became available.

Visit with Candidates Galvin and Dunleavy

When the City receives a request to visit with candidates for higher office, we jump at the opportunity to educate about Homer and our needs. If scheduling allows, the Mayor and/or the Mayor Pro-tem generally meet with City staff. Recently we have been visited by Congressional Candidate Alyse Galvin and Gubernatorial Candidate Mike Dunleavy. With both candidates the conversation centered on our major capital priorities, the Police Station and the Large Vessel Harbor. The Large Vessel Harbor in particular has so many nexuses to Federal infrastructure priorities and economic development it provides a platform for lots of great conversation.

How to Stay Abreast of the Legislature?

Last year in February the City Council established a standing Legislative Worksession every Tuesday to track issues and provide timely input to the Legislature. The standing worksession was an opportunity for individual members to report on issues they were following and discuss the merits of following up with a formal action on the Council agenda so the City could weigh in on an issue. Following the trip to Juneau in February, the question came up as to whether or not the Council should re-establish such a worksession. As you know, the issue that continues to dominate legislative discourse is the fiscal crisis the state finds itself in. Consensus seemed to be that establishing a regular draw on the Permanent Fund Earnings Reserve through a Percent of Market Value (POMV) formula may pass this year, but that a broad based tax (income, sales, payroll, etc) was unlikely to pass in an election year. This of course

could change and the Legislature can be wildly unpredictable. In lieu of a regularly scheduled worksession, one option could be to commit to continuing to track legislative issues individually and through the Alaska Municipal League and hold a special worksession if it appears something is popping up that needs to be discussed for development of a resolution, letter, position statement, etc. I would like to get your feedback on this at the meeting.

Rotary Dinner

As a fundraiser, the Kachemak Bay Rotary Club is hosting small dinner parties to promote informal relationship building among our community leaders and raise funds for scholarships. Last Saturday Mayor Zak and I had the opportunity to dine with Councilmember Aderhold and her spouse Wayne and PARCAC Commissioner Harrauld and her partner George at the home of distinguished Rotarians Vivian **Finley and Clyde Boyer. These events help promote Rotary's mission of peace through one to one** interactions – and they are lots of fun. Please let me know if you would be interested in participating and I will share your name with the club for the next round.

Enc:

Letter to House Finance advocating for ADF&G staff to administer Pittman Robertson Grant funds
Letter to Federal Delegation advocating for City of Homer major infrastructure projects
Letter of Support for Homer Senior Citizens, Inc. re: Adult Day Services
Council member Aderhold Winter AML Meeting and Legislative Report



City of Homer

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Homer City Council

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March 27, 2018

Alaska State Legislature House Finance Committee,

Alaska's vast land and water resources, and diverse habitats support healthy and abundant fish and wildlife. Our wildlife has a significant positive impact on Alaska residents and communities, and on our economy.

Two Federal programs provide valuable funding to States to assist with projects that restore, conserve and manage wildlife and their habitat, as well as enhance safe public access to these resources. However, due to budget cuts, Alaska will be losing out on these funds for lack of Alaska Division of Fish and Game staff to administer the funds.

We are writing in support of adding funding to the State budget to restore ADF&G staffing to a level at which the division can administer Pittman-Robertson and Dingell-Johnson federal grants. Without it, the State is poised to forfeit millions of dollars in federal funding for habitat protection and public access programs.

Responsible use and development of our lands and waters is important to Alaska's economy and culture in terms of quality of life, money spent in the state and job creation. Over the last thirty years, Dingell-Johnson funds have completed more than 160 capital improvement projects to provide new and improved access to waters throughout the state. Homer's harbor users recently benefitted from the program. Dingell-Johnson funds helped upgrade the load and launch ramp.

Likewise, Pittman-Robertson Wildlife Restoration Program funds have helped rehabilitate and enhance wildlife habitat and populations, and provided public access for hunting and other wildlife-oriented recreation. The City of Homer has Pittman-Robertson eligible trail and wayside projects and a dedicated fund for the required match which would provide public access for wildlife-oriented recreation.

Adjusting funding levels for ADF&G will allow the State to leverage these important Federal dollars which can be put to work for the benefit of Alaska and its communities.

Sincerely,

Mayor Bryan Zak

On behalf of the Homer City Council



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Dear Senator Last Name,

I am writing to make you aware of the City of Homer's Capital Improvement Plan and FY2019 Legislative Request. The CIP was compiled and approved through an extensive public process. The projects selected as Federal priorities are critical for Homer's public safety and economic well-being and contribute to federal goals for infrastructure funding. Thank you for taking a moment to familiarize yourself with Homer's request.

A new police station tops the priority list for the fourth year in a row and after many years on the City's Capital Improvement Plan. Built over thirty years ago, Homer's police station suffers a series of design inadequacies and operational deficiencies that put our public safety officers, victims and the integrity of our justice system at great risk.

The Police Station project aligns with Federal infrastructure priorities in that it addresses an immediate life/safety concern not readily addressable by other means, is nearly shovel ready and is backed by significant local investment. To date, the City has invested \$575,000 in planning, design and public involvement and has secured a building site and an additional \$2,500,000 in local funds. The City is seeking \$5,000,000 in federal funds to help complete construction.

Homer's other two Federal priority projects support Alaska's marine industrial transportation network, an economic driver regionally and nationally and strategic to America's energy security. The Large Vessel Harbor will accommodate current and future demand for large vessel moorage, and relieve moorage pressure in Homer's small boat harbor where large vessels are currently rafted three abreast. It also replaces critical moorage infrastructure that has long served as home port to US Coast Guard cutters, but will not be able to accommodate the new class of Sentinel fast-response cutters being deployed. We are requesting \$10,258,000 to complete design and permitting.

The Barge Mooring/Haul-Out Repair Facility expands Alaska's capacity to meet current demands in the shipping, commercial fishing and resource development industries, particularly the barge fleet, which is essential to developing regional and national economic opportunities such as the Cook Inlet Oil & Gas industry, the Alaskan LNG pipeline and the opening of the Arctic. Homer is strategically positioned to provide this essential infrastructure: it is home to the only ice-free deep water port serving Cook Inlet and the northern Gulf Coast and is home to a nationally recognized, comprehensive marine trades industry.



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These Federal Priority projects contribute to several federal goals of the infrastructure funding program in that they promote American energy security, help improve the balance of international trade and promote American jobs and economic growth. The shovel-ready Barge Mooring/Haul-Out Repair Facility earned top ranking among Kenai Peninsula projects that were submitted to the Alaska Office of the Economic Development Administration for inclusion in a potential federal infrastructure funding package. Our request is \$4,768,500 to complete construction.

You will find more information about the top three capital improvement priorities for the City of Homer in the enclosed document. Please don't hesitate to contact me with questions.

Sincerely,

Mayor Zak on Behalf of Homer City Council

Enc: City of Homer Capital Improvement Plan FY2019 Federal Request

Cc: Regional Staff, Kenai Regional Director



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March 13, 2018

Grant Administrator
State of Alaska Health and Human Services
PO Box 110650
Juneau, AK 9811-0650

Grant Administration,

I am writing to express the City of Homer's support for the Homer Senior Citizen's grant for the Adult Day Service Program and the meal delivery program.

Homer Senior Citizens, Inc. provides services that are vital to the health of our community including meals, adult day services, independent housing, transportation, and assisted living. The program enables participants to remain in a home, or community based setting reducing long-term care costs. In particular, the Adult Day services assists seniors by providing safe and engaging social activities so that their family/caregivers can remain working during the day.

In closing, the City of Homer encourages your support of a vital program to our community, Adult Day Services and the meal delivery program offered by the Homer Senior center.

Sincerely,

Katie Koester
City Manager
907-435-3102

3 March 2018

Alaska Municipal League Winter Meeting and Legislative Fly-In, Juneau, 20-24 February 2018

Trip Report

Councilmember Donna Aderhold

I had the privilege to travel to Juneau to meet with Homer's state legislators and state and federal agencies, and attend the Alaska Municipal League's winter meeting. These trips are valuable on many fronts, and I appreciate the chance to attend. Important aspects of these trips that are not reflected in my meeting notes below include the opportunity to visit and work informally with the City Manager and fellow elected officials, the opportunity to get "the lay of the land" in Juneau and learn how the state legislature operates, and the opportunity to talk to and learn from other municipalities that are facing similar and different issues from ours in Homer.

Alaska Department of Transportation and Public Facilities

Councilmember Erickson, City Manager Koester, and I met with Deputy Commissioner Amanda Holland and Central Region managers, engineers, and hydrologists (on the phone) to discuss issues around Sterling Highway drainage at the Baycrest Subdivision. Councilmember Erickson provided an overview of the problem and proposed solutions based on a packet of information the city had provided to the agency. The group discussed the issue: groundwater flows, steep slopes, unstable soils, natural drainage and culverts under the highway, etc. Several action items arose from the meeting:

- DOT&PF will provide DCCED grant information to the City of Homer
- DOT&PF will provide engineering and hydrology expertise to holistically evaluate the problem (Paul Jahnke and Newton Bingham); however, any engineering designs would need to be stamped by on non-DOT&PF engineer
- DOT&PF will evaluate the conceptual idea of how to move drainage from the beehive (page 27 of packet)

Senator Gary Stevens

Mayor Zak, Councilmember Erickson, City Manager Koester, and I met with Senator Gary Stevens. City Manager Koester presented Senator Stevens with Homer's top 5 capital projects and we discussed the police station and the large vessel harbor, for which the city has reinitiated a feasibility study with the U.S. Army Corps of Engineers. We also discussed the large vessel haulout project that scored well for funding at the federal level. Senator Stevens noted that he had just attended the Boat Show in Seattle and noted the impressive

contingent from Homer promoting Homer marine trades. He noted that although NOAA had declared a fisheries disaster for Alaska, the Trump administration had not yet funded the disaster program.

Senator Stevens raised the issue of state budget, revenues, and the backlog of important capital projects and maintenance of state facilities. He is hoping the legislature can come to agreement on using percent of market value from the permanent fund earnings reserve to fund the state budget, which would solve about 2/3 of the shortfall. He recently met with state troopers who are asking the legislature to change their retirement earnings from a defined contribution to a defined benefit. He noted that the governor did not include municipal revenue sharing in his proposed budget to the legislature, but it's needed and he believes the senate will add it. The Republican caucus wants to cut more from the state budget, but Senator Stevens does not think more cuts are good. He added that it is unlikely that there will be any funds for municipal capital projects, but that we should be prepared just in case. He is working on the senate side on a bill for early funding of education so school districts and teachers know sooner what their budgets will be.

Senator Stevens stated that his district is supportive of an income tax but that other districts are not, and there are not 11 senators who are willing to vote for an income tax, but it's getting closer. In his opinion, it's not a disaster yet, but the legislature will need to do something next year.

Wrapping up, we discussed Homer's resolution requesting the legislature reevaluate municipal recall statute. We discussed the need for the process to be clear and well defined for clerks, city attorneys, elected officials, and the public. He is supportive of considering a bill. Senator Stevens stated that he will visit Homer as soon as the legislative session is over.

Representative Paul Seaton

Representative Seaton raised the issue of Pittman-Robertson (P-R) funds from the Federal government. P-R funds come from excise taxes on hunting goods and are dispersed to the states. They are to be used for wildlife-related projects, including wildlife viewing, and require a 25% non-federal match. State budget cuts mean that Alaska has not had the match to receive P-R funds. Last year the state returned \$1.6 million and this year it may be \$4 million. He suggested that Homer propose potential projects related to wildlife viewing for the federal funding. At this time, neither Alaska Departments of Fish and Game nor Natural Resources have the capacity to administer the funds and he will be adding funds to the budget for one position in each agency to administer the funds. He would appreciate our support for these positions. Representative Seaton will send information on the P-R program to City Manager Koester, and city manager Koester will review Homer's capital

improvement plan for projects that may qualify for the funds and that could have match through the city's HART fund.

We discussed fish taxes and Representative Seaton noted that manipulation of fish on the dock is processing, so even removing cheeks from halibut would be considered processing so that Homer could receive more fish taxes.

Similar to the discussion with Senator Stevens, we discussed Homer's top CIP priorities: police station replacement (possible federal infrastructure funding? May be worth discussing with Murkowski staff), large vessel harbor, and large vessel haulout facility.

Representative Seaton discussed his early funding education bill which will be presented to the Senate on Friday. The group discussed the importance of marine trades in Homer and the pairing of Kate Mitchell and Reba Temple to present marine trades to high school students—a great way to introduce students to trade jobs they may not have known about.

Representative Seaton noted that the budget and revenue are looking pretty good on the house side. He noted that Governor Walker had appointed Mayor Zak to the Workforce Investment Commission.

Wrapping up, we discussed Homer's resolution requesting the legislature revise municipal recall statute. He noted that his office has been working on it and that proposed language for the bill was under review by the legal department. After their review, the bill will be introduced and sent to the House State Affairs Committee. It may not pass this year, but will get good scrutiny from legislators and can be introduced next year in the next session.

Alaska Municipal League Meeting

City Manager Koester, Mayor Zak, Councilmember Erickson, and I attended the Alaska Municipal meeting. Following are brief summaries of presentations made during the 1.5-day meeting.

Mike Navarre, DCCED Commissioner

Good news in oil and gas: modest increase in production, federal lands on the North Slope (NPR-A and ANWR), state LNG project. But, from an investor's perspective there are hurdles in the state: over-reliance on oil and gas, deficits, spent savings, competition with other oil and gas basins in the lower 48 (e.g., Bakken, Eagle Ford, and Permian Basin which are all larger than Alaska basins). Oil and gas production in Alaska will never return to what it was in the 1980s. The economy has not dipped as much as it could have in the last few years because the economy has diversified. Alaska has diversified its economy but has not diversified its revenues.

Leslie Ridle, Department of Administration

PERS/TRS presentation. PERS began in the 1960s. Tiers I, II, and III of PERS were defined benefit plans. Tier IV, the current tier, is a defined contribution plan. TRS began pre-statehood.

Governor Walker

Governor Walker's cabinet includes many individuals who came from local Alaska municipalities, so he understands what municipalities face in the current economic times.

He is interested in school safety in Alaska and is looking for ideas.

Fiscal situation—the legislature has a decision making crisis and he is hoping the legislature will turn wishbones into backbones. We cannot wish more oil in the pipe and we cannot wish a higher oil prices into being. POMV is in the works in both houses and he is optimistic that it will pass. He left community assistance out of his budget to the legislature, hoping the legislature will include it in the supplemental budget to the full amount.

Infrastructure—community infrastructure requests were sent to the Trump administration. The president's plan came out backwards with the federal government contributing only 20% of funding and relying on state and local governments to pick up 80% of costs.

Economy—The Alaska gasline is unique in that we own the resource and can build our own infrastructure. Compared to the 1980s we have diversified our economy, but we have not diversified our revenues. The state has \$1.8 billion in deferred maintenance—we need to keep up with opportunities, work can be done by local firms, work can be done with the economy is low to give it a boost.

Public safety—Alaskans do not feel safe. Last year's budget cuts were too deep. This year adding officers, VPSOs, etc. back into the budget.

Alaska Education Challenge—plan developed by Education Commissioner, Board of Education, parents, etc.

Alaska gasline—told stories of being in China and being at the signing of the agreement between the US and China. China has its eye on Alaska as a trade partner.

A-Star program—DNR working on year-round roads on the North Slope, working on getting an exemption to the roadless rule in the Tongass National Forest.

Alaska has been eating off a menu with no prices. Now we have the prices. We need to decide what we want as a state and how we are going to pay for it.

Alaska Oil and Gas Association

5,000 oil and gas workers in Alaska; spent \$6.4 billion with 1,000 Alaska vendors; multiplier effect. Revenues from oil and gas fund state government and the permanent fund dividend. Approx. 540,000 barrels/day production now; unpaid tax credits from state; production increased in the last 2 years and expected to continue; new production requires new investment.

Presentation really about how oil and gas is the 800-lb gorilla and why the state should do whatever the industry asks, because without oil and gas, the state is broke.

Robert Venables, Southeast Conference—Alaska Marine Highway System Strategic Plan

Revenue analysis—42% non-resident travel; service from Bellingham, WA essential for revenue; \$50 million operating revenue generated, but will always rely on public funds

Operational analysis—complex system; aging fleet; dedicated personnel and vital service

Corporate structure and benefits—analyzed converting AMHS into a public corporation (similar to Alaska Railroad); maintains existing benefits; addresses existing limitations

Public and stakeholder engagement

Doing now—moving to action plan; legislative process; actions to do now; stabilize funding; fleet and terminal standardization; labor relations in how; continue market and revenue analysis

www.amhsreform.com

Ray Gillespie and Diane Blumer, AML Legislative Update

\$2.5 billion deficit—will need to spend permanent fund earnings (POMV); \$2.7 billion available, but dividend checks need to come from this amount; cannot balance budget with POMV alone; potential revenue sources: statewide income tax, education head tax, motor fuel tax, statewide sales tax, payroll tax

Community assistance (revenue sharing)—funding source is currently power cost equalization fund earnings which is not sustainable or predictable

FY19 PERS/TRS—governor's proposed budget short funds PERS and TRS by \$61 million; increase to 22% contribution is likely to be proposed

Future revenue sharing—community dividend from earnings reserve?

Bills on the move—PERS/TRS 22% contribution HB83/SB212; change from defined contribution to defined benefit HB306; small pesky bills: APOC bill would charge \$50 fee to run for municipal office; Quality design bill mandates proposal reviews based on qualifications not price; Timber receipts gone from federal government to communities in national forests (Chugach and Tongass); Statewide building code; Shopping bag tax at state level; Health Care Authority does not identify costs; HB176 ground transport for EMS fees through Medicaid, potentially a good thing; HB123 medical care price transparency

Alaska Gasline Update

Building coalition of gasline project support. Would AML support the coalition? A statement is available for review.

Congressman Don Young—Dean of the House

Transportation bill this year—get project requests in early; hoping for bipartisan support; we have to pay for it; \$21 trillion in debt and need to develop resources to pay for transportation; highway transportation fund is not indexed but needs to be, behind the curve.

Deregulating agencies—12 years from concept to initial road construction because of too much regulation and lawsuits.

Taxes are used money not new money—hostile to businesses.

Hydropower all across the state instead of burning fossil fuels—need Su Hydro.

Proud of Zinke and Pruitt; EPA is the villain.

Bipartisan work needed.

National League of Cities

Federal legislative priorities—budget and appropriations, telecommunications, disaster mitigation recovery, infrastructure

Infrastructure biggest issue—“rebuild with us” Congress work with cities to rebuild and reimagine America’s infrastructure

Bipartisan, centrist, practical, pragmatic, state league partners and municipalities; smart cities, broadband, resiliency, public safety, workforce development and training

Cities need to tell their stories

Representatives Charisse Millett, Gary Knopp, and Dan Ortiz

Updates on budget and revenue; all say the state legislature is working better this year than last year and expressed some level of optimism

AML President's Update

Kathie Wasserman is retiring at the end of May, a search is ongoing for her replacement.

Laurie Wolf, Foraker Group—Alaska Nonprofits Report

Nonprofit sustainability model

4th economic sustainability report

Nonprofits play a critical role in the state's economy—1 nonprofit for every 135 Alaskans; support quality of life; partners to industry and municipalities

Nonprofit organizations as an “industry” are the 2nd largest non-governmental employer in the state behind oil and gas

22% of Alaskans who itemize contribute financially to nonprofits; Alaskans volunteer more than US as a whole on average—4th overall among states; people who give time are more likely to give money

Report available for download from Foraker Group at www.forakergroup.org

Senator Lisa Murkowski

Work together on difficult issues

Six continuing resolutions is not the way to pass a budget

Omnibus bill coming out in late March

Congress appropriates—weigh in with delegation on municipal priorities; tell Congress what infrastructure projects are for state; focus on rural Alaska is important

Crime, public safety, and drugs

FEMA—resilient infrastructure in continuing resolution that just passed

University of Alaska resiliency analysis

U.S. Coast Guard

City Manager Koester, Mayor Zak, Councilmember Erickson, and I met with the U.S. Coast Guard to discuss our plan to build a large vessel harbor and receive an update from them on the status of their plans on where to station new fast response cutters (FRCs at ports along the Gulf of Alaska). Other potential ports include Ketchikan (a new FRC is already stationed there), Kodiak, and Seward.

There have been no decisions on port selection by the commandant and there are many levels of input. The FRCs have twice the displacement of the existing 110s (such as the Naushon stationed in Homer). They also have a much larger landside footprint than the existing cutters. Because of this they plan to cluster vessels for greater efficiency of shoreside support. There will be six FRCs based in Alaska covering an operating area from Ketchikan to King Cove. They are looking at 2 to 4 home ports. Vessels would be delivered approximately 2022 to 2023.

The three primary operations criteria include offshore fishery enforcement (85% of time offshore), search and rescue, and ports and waterways coastal security (escort of large vessels). The final decision on port locations is weeks to months away. The Coast Guard is currently working with the Congressional Delegation on harbor decisions. Some of the issues they grapple with include housing (each FRC has 24 people onboard and 20 people shoreside; 64 people needed for 2 FRCs) and availability of existing infrastructure (not having existing infrastructure increases risk).

City Manager Koester provided an update of the status of the City of Homer's progress toward a large vessel harbor. The group discussed Homer's great working relationship with the Coast Guard and interest in keeping them in Homer. We also discussed the Coast Guard Auxiliary based in Homer: it is one of the best flotillas but membership is declining as the fleet ages.

The Coast Guard also mentioned its interest in finding a better mooring for the buoy tender Hickory. The current mooring is one of the most challenging in the state.