

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. Reconsideration**
- 5. Adoption of Consent Agenda**

All items on the consent agenda are considered routine and non-controversial by the Planning Commission and are approved in one motion. There will be no separate discussion of these items unless requested by a Planning Commissioner or someone from the public, in which case the item will be moved to the regular agenda and considered in normal sequence.

A. Approval of Minutes of November 4, 2015 meeting **Page 1**
- 6. Presentations**
- 7. Reports:** Staff Report PL 15-77 City Planner's Report **Page 7**
- 8. Public Hearings** Testimony limited to 3 minutes per speaker. The Commission conducts Public Hearings by hearing a staff report, presentation by the applicant, hearing public testimony and then acting on the Public Hearing items. The Commission may question the public. Once the public hearing is closed the Commission cannot hear additional comments on the topic. The applicant is not held to the 3 minute time limit.

A. Staff Report PL 15-78 CUP 15-06 at 4242 Calhoun St. for 4 duplexes in the Urban Residential District **Page 9**

B. Staff Report PL 15-79 Vacation of easement – Waddell Way/HEA **Page 27**

C. Staff Report PL 15- 80 Zoning for Marijuana **Page 41**

D. Staff Report PL 15-82 CUP 15-07 at 1242 Ocean Drive in the General Com. 1 District **Page 67**
- 9. Plat Consideration:** Staff Report PL 15-81 Tsunami View No. 2 **Page 87**
- 10. Pending Business:** Staff Report PL 15-83 Towers Considerations **Page 99**
- 11. New Business** Staff Report PL 15-84 Marijuana Business Licenses **Page 159**
- 12. Informational Materials:** City Manager's Report November 23, 2015 **Page 161**
- 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:** Next regular meeting is scheduled for January 6, 2016. A work session maybe be held at 5:30 pm. Meetings will adjourn promptly at 9:30 p.m. An extension is allowed by a vote of the Commission.

Session 15-17, a Regular Meeting of the Homer Advisory Planning Commission was called to order by Chair Stead at 6:30 p.m. on November 4, 2015 at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

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

ABSENT: BOS

STAFF: CITY PLANNER ABBOUD
DEPUTY CITY CLERK JACOBSEN

Approval of Agenda

Chair Stead called for a motion to approve the agenda.

HIGHLAND/STROOZAS SO MOVED.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

Public Comment

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

Reconsideration

Adoption of Consent Agenda

All items on the consent agenda are considered routine and non-controversial by the Planning Commission and are approved in one motion. There will be no separate discussion of these items unless requested by a Planning Commissioner or someone from the public, in which case the item will be moved to the regular agenda and considered in normal sequence.

- A. Approval of Minutes of October 21, 2015
- B. Decision and Findings CUP 15-05 KHLT

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

HIGHLAND/BRADLEY SO MOVED.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

Presentations

Reports

A. Staff Report PL 15-74, City Planner's Report

City Planner Abboud reviewed his staff report.

Public Hearings

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

A. Staff Report PL 15-75 Zoning for Marijuana

City Planner Abboud reviewed the staff report.

Chair Stead opened the public hearing.

Jackie Dentz, city resident, commented in opposition to allowing retail sales on the spit because it's a recreational area. She owns Frosty Bear Ice Cream parlor which draws kids, families, and elderly visitors. She also noted visitors from cruise ships are not allowed to bring marijuana on the ship. She doesn't think a retail establishment for marijuana belongs on the spit. She is fine if locals want to buy it and if it's done safely, but encouraged the Commission to think about where they recommend putting retail.

Crisi Mathews, city resident, owns a boardwalk on the spit and real estate in town with her husband Chad. She commented that a CUP is warranted for any grow or retail facility in a residential area, she thinks they will hurt residential property values. She also expressed opposition to allowing retail for marijuana on the spit. She noted several recreational venues that draw youth and families throughout the summer including Islands and Ocean, Alaska Coastal Studies, and HOWL which conduct many of their outings on the beaches, trails, docks, and campgrounds, as well as the Kevin Bell arena in the winter. She added that if retail is allowed and is available year round, there will be minimal oversight as a majority of the area shuts down off season. With a business in Homer and rental cabins in Anchor Point, as well as raising four children here, they have a lot of vested interest in seeing this continue to be a family community.

Chad Mathews, city resident, added that there are buildings on their boardwalk. The way it is worded now, the people who own those buildings, don't have to their permission as the boardwalk owner, to open a dispensary. He encouraged that be readdressed. He thinks with the amount of accidents and almost accidents they see on the spit and impaired drivers could be an issue, as well as the potation for increased break in attempts.

Garth Bradshaw had a business on the spit for many years and his preference is no sales at all within the community, as other communities in Alaska have done. He encourages them to follow suit. That being said, if they allow one person to sell it, how will they restrict others? He suspects there will need

to be limits on licenses, like with alcohol. He supports not selling it in Homer at all, his adult kids and his grandchildren are here and he doesn't like the exposure, and doesn't think it's the thing to do to our community.

Megan Murphy attempted to comment regarding the Waddell Park 2016 Replat Preliminary Plat. It was explained that topic would be addressed under Plat Consideration and if she was unable to stay, she could contact the planning staff for more information regarding the preliminary plat.

Shlomo Gherman commented that if the recreational sale of marijuana in town is done right it could be really effective, specifically bringing in more taxable revenue to the city. We could have a PFD type situation for many of the people living here. Colorado school district received \$6 million in additional funding from sales. No matter where you place a dispensary, once it's known the town has one, there is no stopping purchasing it. Whether it's on the spit or in town, it won't really make a difference, the real concern is managing how it's sold and who is able to purchase. It's very accessible now. If the issue is stoned people on the spit, they are already there.

There were no further public comments.

City Planner Abboud said limiting the number of establishments will be in the code under licensing and not zoning. He will have something on the next agenda for the Commission to make a recommendation.

VENUTI/STROOZAS MOVED THAT EAST END MIXED USE AREA BE ALLOWED TO HAVE SMALL VOLUME CULTIVATION.

There was brief discussion to clarify small grow operations would be allowed anywhere in the district with this motion. Other comments were that this should be more restrictive to begin with.

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

Motion carried.

HIGHLAND/VENUTI MOVED TO ADD A CUP FOR ALL SMALL CULTIVATION IN RURAL RESIDENTIAL.

Commissioner Highland commented that rural residential is the largest district, it is family oriented, and there are a lot of lots over 40,000 square feet. Allowing it outright doesn't give the residents the opportunity to speak about small grow operations in their neighborhood. Lighting is also an issue, as well as security, in rural residential.

It was noted that currently no small cultivation is allowed on lots under 20,000, and this motion allows it in all of rural residential with a CUP. It would include the smaller lots if approved as presented.

ERICKSON/HIGHLAND MOVED TO AMEND THAT A CUP BE REQUIRED ON LOTS OVER 20,000 SQUARE FEET.

There was brief discussion.

VOTE (Amendment): NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

There was brief discussion.

VOTE (Main motion as amended): NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

There was discussion about buffers that are outlined by the state. City Planner Abboud said he would bring that back with information along with the license restrictions.

Discussion ensued regarding allowing retail on the spit and the comments from the public tonight.

HIGHLAND/ERICKSON MOVED TO DISALLOW RETAIL FOR MARIJUANA IN MARINE COMMERCIAL.

Commissioner Highland said tonight's public comments included good reasons to be concerned about retail sales out there.

Commissioner Venuti noted there are bars and liquor stores on the spit now that sell cheap liquor which he thinks is more dangerous.

Commissioner Erickson agrees with the public comments about not allowing retail in marine commercial.

Commissioner Bradley commented that a CUP is required for retail in marine commercial which is fairly restrictive.

Commissioner Stroozas expressed his thought that the fishing hole is a recreational facility for families with kids and youth based fishing events that are held there. Based on state buffers, that could justify disallowing retail on the spit. If the CUP remains in place, then an applicant complies with all the regulations, the Commission would have to allow it.

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

Motion failed for lack of a majority.

No further amendments were proposed and another public hearing is scheduled for December 2nd.

Plat Consideration

- A. Staff Report PL 15-76 Waddell Park 2016 Replat Preliminary Plat

City Planner Abboud reviewed the staff report.

Public Works Director Meyer had no presentation and was available for questions.

There were no public comments.

Chair Stead asked if the connections and other improvements associated with Lake Street are okay with the state. Public Works Director Meyer said the state is aware of the proposed improvements and will be issuing a formal permit soon.

HIGHLAND/BRADLEY MOVED TO APPROVE STAFF REPORT PL 15-76 AND WADDELL PARK 2016 REPLAT PRELIMINARY PLAT WITH STAFF COMMENTS AND RECOMMENDATIONS.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

Pending Business

New Business

- A. 2016 Planning Commission Meeting Schedule

ERICKSON/BRADLEY MOVED TO APPROVE THE 2016 MEETING SCHEDULE.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

Informational Materials

- A. City Manager's Report October 26, 2015
B. 2015 Commissioner Attendance at City Council Meetings

Comments of the Audience

Comments of Staff

City Planner Abboud commented that there is one more meeting this year. Marijuana zoning is a priority to move forward so the city will be ready when the permit filing period opens on February 24th and applicants have 90 days to act up on the license. He noted retail places won't likely have product to sell right away because cultivators would have to have a license before they could grow. He predicts the scenario would likely be the end of summer at best before product would be available.

He is working on a manageable schedule for the Comp Plan review.

Comments of the Commission

Commissioner Highland and Erickson had no comment.

Commissioner Bradley commented she is looking forward to speaking at the city council meeting on the 23rd and will be getting ahold of the City Planner for assistance with talking points. She thought the comments tonight were interesting.

Commissioner Stroozas said he expected standing room only tonight for the public hearing. It's nice to get done early. It was a well conducted meeting and thanked Chair Stead for moving things along.

Commissioner Venuti agreed it was an interesting discussion tonight. He thinks that for what it will cost to get licensed and into operation on the spot for a three month season, doesn't make economic sense. He doesn't think there will be a lot of people jumping at that opportunity. Regarding commissioner comments at council meetings he encouraged that speakers work with staff to get a script or talking points to ensure they aren't giving personal feedback.

Chair Stead said he thinks they did good tonight.

Adjourn

There being no further business to come before the Commission, the meeting adjourned at 8:01 p.m. The next regular meeting is scheduled for December 2, 2015 at 6:30 p.m. in the City Hall Cowles Council Chambers. A worksession will be held at 5:30 p.m.

MELISSA JACOBSEN, CMC, DEPUTY CITY CLERK

Approved: _____



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STAFF REPORT PL 15-77

TO: Homer Advisory Planning Commission
FROM: Rick Abboud
MEETING: December 2, 2015
SUBJECT: City Planner's Report

Zoning for Marijuana: Since the writing of the staff report, it was found that the public hearing for this item was improperly noticed. To fix this item, we would solicit a motion to move the item to the "Pending Business" section on the agenda and ask that any public testimony be provided at the beginning of the meeting. If any amendments are made, we will need to have another public hearing January 6th. If no amendments are made we have held a public hearing and may forward the item to City Council.

Thank you Savanna for providing City Council with an HAPC update. Dec. 7th is the next City Council meeting. If you are available, let staff know so we can prepare talking points.

City Council: The City Council passed the Bridge Creek ordinance with unanimous consent. There was also some conversation regarding how money from the HART program was allocated. The conversation revolved around the proposal to fund a sidewalk down Soundview to make a missing connection that lead to Homer Middle School and whether this would lead to funding for sidewalks throughout the city. The Planning Commission may be asked to review policy at some point.

Congratulations to the Homer Chamber & Tom Stroozas for obtaining an ADOT permit to construct a 16 ft wide enclosed Cupola-kiosk at the Baycrest Pullout. The chamber and volunteers have been exploring this concept for years.

All-Hazard Mitigation Plan (AHMP): The AHMP is posted on the Planning webpage for the public review and comment. Catriona Reynolds continues to provide the City Council with updates and will be sponsoring a resolution in Jan. 2016 for the plan's adoption.

January 6, 2016: Please let the Planning staff know if you are NOT available for the Jan. 6th HAPC meeting.

2016 Planning Commission meeting schedule:

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

APA Alaska Annual Conference: It has been quite busy since the conference and we have been short staffed because of illness and vacation. A report in greater detail may have to be made later. A list of the session I attended: Green Before Gray: Elements of Sustainable Infrastructure, Brownfield Resources, Law of the Land: An Interactive Legal Review, Regulating Marijuana: Lessons from Year One, Modern Stormwater Treatment in Anchorage through Green Infrastructure and Low Impact Development, Multi-Agency Cooperation with the Management of Habitat Protection District and Floodplain Regulations, and Marijuana Regulations in Local Communities – The Path Forward.



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Staff Report PL 15-78

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
FROM: Julie Engebretsen, Deputy City Planner
DATE: December 2, 2015
SUBJECT: Conditional Use Permit 15-06

Synopsis The applicant proposes to build four duplexes, for a total of eight dwelling units. A Conditional Use Permit (CUP) is required per HCC 21.14.030 (k), more than one building containing a permitted principle use on a lot.

Applicants:	Josiah Fisher (Developer) PO Box 1476 Homer, AK 99603	James Hornaday (Land owner) PO Box 2489 Homer, AK 99603
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Location:	Calhoun St, between E Danview Ave and E Bayview Ave.
Parcel ID:	17702002
Size of Existing Lot:	1.89 acres/82,328 square feet
Zoning Designation:	Urban Residential
Existing Land Use:	Vacant
Surrounding Land Use:	North: Residential South: Residential East: Residential West: Residential/vacant

Wetland Status: No designated wetlands on this parcel. ACOE documentation provided.

Flood Plain Status: Zone D, Areas in which flood hazards are undetermined, but possible.

BCWPD: Not within the Bridge Creek Watershed Protection District

Utilities: Public utilities will serve the site. The developer and another property owner across the street are in the process of constructing city water and sewer lines, and an access roadway.

Public Notice: Notice was sent to 50 property owners of 42 parcels as shown on the KPB tax assessor rolls.

ANALYSIS: The applicant is proposing to build four buildings. Each building is a duplex with two housing units, for a total of 8 units on the lot. There are two styles of buildings. Buildings A and C are single story buildings, and B and D each have a one single story unit and one two story unit. The buildings have enough separation distance that they will not be required to have a fire marshal review. A CUP is required per HCC 21.14.030 (k), more than one building containing a permitted principle use on a lot.

OPEN SPACE

Homer City code 21.14.020(a)2 describes open space requirements for multiple family dwellings. Code defines multiple family dwellings as three or more units in one building. Technically, the proposed development does not have to meet the open space requirement because no multi-family dwellings will be constructed. However, staff calculated the open space requirement to be able to quantify coverage and density impacts, and the proposal does meet the standards.

21.14.040(a)2(a):

a. The total floor area shall not be more than four-tenths the lot area;

Staff comments: Total floor area is 10,888 square feet, and the lot area is 1.89 acres. 40% lot coverage would allow for over 32,000 square feet of building area. The proposed floor area is much less than what could be permitted on this lot.

b. The total open area shall be at least 1.1 times the total floor area. Open area is any portion of the lot not covered or used for parking spaces and maneuvering.

Staff comments: The applicant calculated the driveways and parking areas as covering 10,000 square feet, and the building floor area is 10,888 square feet. 110% of the floor area is 11,976 square feet of open area. Staff calculates the open area to be more than 61,000 square feet. The applicant's proposal provides ample open space and exceeds the requirement.

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 21.14.020 (b) authorizes duplex dwellings, and HCC 21.14.030(k) authorizes more than one building containing a permitted principle use on a lot as a conditional use in the Urban Residential District.

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

Purpose: The Urban Residential District is primarily intended to provide a sound environment for medium-density residential occupancy including single-family, duplex and low-rise multiple-family dwellings of various types and designs and other compatible uses as provided in this chapter.

Finding 2: The construction of four duplexes, creating eight dwelling units on a 82,328 Sq. ft. lot, provides low rise, medium density residential dwellings. The proposed development is compatible with the purpose of the zoning district.

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.

Analysis: Many uses in the urban residential district have greater negative impacts than would be realized from this housing development. Pipelines, railroads, heliports and storage of heavy equipment would have a greater impact on nearby property values. Hospitals, religious, cultural and fraternal assembly would generate a good deal of traffic.

Finding 4: The proposed housing development is not expected to negatively impact the adjoining properties greater than other permitted or conditional uses such as a hospital, or railroad.

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

Analysis: The surrounding uses of land are mainly single family homes on lots between about 9,000 and 20,000 square feet. The construction of eight dwelling units on this lot results in approximately one unit per 10,000 square feet. The proposed density is very similar to the existing homes on surrounding lots.

Finding 5: The proposal would construct duplex dwellings at a similar density to the single family homes found in the surrounding area. The proposal is compatible with the 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.

Condition 1: Complete the extension of City water and sewer service prior to occupancy of the first completed dwelling unit.

Finding 6: Existing fire services are adequate to serve the proposed development. The land owner is extending city, water and sewer services and building an access road to the property. Public services will be adequate to serve the proposed development prior to occupancy.

f. Considering harmony in scale, bulk, coverage and density, generation of traffic, the nature and intensity of the proposed use, and other relevant effects, the proposal will not cause undue harmful effect upon desirable neighborhood character.

Analysis: The neighborhood is a well-established with single and two story single family homes, on lots ranging in size from about 9,000 to 20,000 square feet. The density, coverage, residential use and traffic generation of the proposed development are all similar if not the same as the existing neighborhood character. The construction of eight dwelling units will not create an intensity of use, or generate a volume of traffic that would be harmful to the existing neighborhood character.

Finding 7: The proposal is in harmony with the existing desirable character of the neighborhood and will not have an undue harmful effect.

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

Analysis: Obtaining and constructing improvements in accordance with the permits and to the standards required for such development helps to ensure the health, safety and welfare of the community.

Finding 8: City services will be adequate prior to occupancy of the housing units (see Condition 1), and the proposal is not unduly detrimental to the health, safety and 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 9: The proposal will comply with the applicable regulations and conditions specified in this title for such use.

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

Analysis: Goals of the Land Use Chapter of the Homer Comprehensive Plan include

Goal 1: Guide Homer's growth with a focus on increasing the supply and diversity of housing, protect community character, encourage infilling, and help minimize global impacts of public facilities including limiting greenhouse gas emissions.

Goal 5, Maintain high-quality residential neighborhoods; promote housing choice by supporting a variety of dwelling options.

Finding 10: Evidence has not been found that is contrary to the applicable land use goals and objects of the Comprehensive Plan. The proposal complies with Goals 1 and 5 of the Homer Comprehensive Plan by providing infill development, increasing the supply and diversity of housing, while promoting housing choice by contributing to the variety of dwelling options in the community.

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

Analysis: In the CDM under the Site Design section, the outdoor lighting requirements apply to the Urban Residential District.

Finding 11: The only applicable requirements of the CDM are the outdoor lighting provisions. The proposal must comply with these provisions upon completion of construction.

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:

Analysis

Mr. Fisher's proposal includes plans to build two sections of fencing to provide screening and privacy between the dwelling units and neighboring properties. Mr. Fisher also intends to leave existing vegetation around the perimeter and between buildings A and B, to preserve privacy and retain the trees. His desire is to have nice semi private yard areas for each unit.

- 1. Special yards and spaces:** Ample space for snow storage is depicted.
- 2. Fences and walls:** Dumpster shall be concealed on three sides by fencing.
- 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.

Finding 12: No additional special conditions are deemed necessary to ensure the proposal does and will continue to satisfy the applicable review criteria.

PUBLIC WORKS COMMENTS: Public works has been working with Josiah Fisher and Beau Burgess (land owner of the vacant lot to the west) on road and water/sewer improvements. (*Planning comments:* These improvements are outside of HCC title 21 zoning requirements, but do provide information on the infrastructure improvements and the permit process the applicant is adhering to.)

The Calhoun right-of-way will be constructed to driveway standards (driveway within the right of way). The proposed driveway will be 20' wide for emergency vehicle access. Two lots (Josiah/Beau) benefit from improvements on Calhoun St. All adjacent properties have access from Danview Ave or Bayview Ave. Below is the COH driveway Standards:

- a. Access driveway cross-section shall consist of a minimum 12 inch layer atop geotextile fabric;
- b. Existing drainage patterns shall not be altered or disturbed; minimum 18 inch cmp culverts as required;
- c. Minimum driveway width shall be 14 feet from shoulder to shoulder;
- d. Construction shall be in accordance with Homer City Code 11.08 Driveway Construction Permits;

Water and Sewer ADEC approved construction plans have been submitted to the City.

FIRE DEPARTMENT COMMENTS: No fire department issues.

STAFF COMMENTS/RECOMMENDATIONS:

Planning Commission approve CUP **Staff Report PL 15-78** with findings 1-12 and the following conditions.

Condition 1: Complete the extension of City water and sewer service prior to occupancy of the first completed dwelling unit.

Condition 2: Dumpster shall be concealed on three sides by fencing.

Attachments

Application

Public Notice

Aerial Photograph – Laydown on Dec. 2, 2015



City of Homer

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Applicant

Name: Josiah Fisher Telephone No.: 907-299-0626

Address: P.O. Box 1476 Email: josiah and haley@hotmail.com

Property Owner (if different than the applicant):

Name: James C. Hernandez Telephone No.: 235-5926

Address: Box 2489 Email: Henn@acsalaska.net

PROPERTY INFORMATION:

Address: 4242 Calhoun St Lot Size: 1.89 acres KPB Tax ID # 17702002

Legal Description of Property: T 6S R 13W Sec 17 Seward Meridian

For staff use:

Date: 11/4/15 Fee submittal: Amount \$1,000.00

Received by: [Signature] Date application accepted as complete 11/9/15

Planning Commission Public Hearing Date: 12/2/15

RECEIVED

Conditional Use Permit Application Requirements:

NOV - 4 2015

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

CITY OF HOMER
PLANNING/ZONING

Circle Your Zoning District

	RR	UR	RO	CBD	TCD	GBD	GC1	GC2	MC	MI	EEMU	BCWPD
Level 1 Site Plan	x	x	x			x			x			x
Level 1 ROW Access Plan	x	x							x			
Level 1 Site Development Standards	x	x										
Level 1 Lighting			x	x	x	x	x	x	x	x	x	
Level 2 Site Plan			x	x	x		x	x		x	x	
Level 2 ROW Access Plan			x	x	x		x	x		x	x	
Level 2 Site Development Standards			x*	x	x	x	x	x			x	
Level 3 Site Development Standards									x	x		
Level 3 ROW Access Plan						x						
DAP/SWP questionnaire				x	x	x	x	x			x	

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

- Y/☒ Are you building or remodeling a commercial structure, or multifamily building with more than 3 apartments? If yes, Fire Marshal Certification is required. Status: Per Timothy Fisher no review required, see attached doc
- ☒/N Will your development trigger a Development Activity Plan?
Application Status: _____
- Y/☒ Will your development trigger a Storm water Plan?
Application Status: _____
- Y/☒ Does your site contain wetlands? If yes, Army Corps of Engineers Wetlands Permit is required. Application Status: _____
- Y/☒ Is your development in a floodplain? If yes, a Flood Development Permit is required.
- Y/☒ Does your project trigger a Community Design Manual review?
If yes, complete the design review application form. The Community Design Manual is online at: <http://www.ci.homer.ak.us/documentsandforms>
- Y/☒ Do you need a traffic impact analysis?
- Y/☒ Are there any nonconforming uses or structures on the property?
- Y/☒ Have they been formally accepted by the Homer Advisory Planning Commission?
- ☒/N Do you have a state or city driveway permit? Status: 1898
- ☒/N Do you have active City water and sewer permits? Status: 2714

1. Currently, how is the property used? Are there buildings on the property? How many square feet? Uses within the building(s)? Vacant land

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

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

- a. What code citation authorizes each proposed use and structure by conditional use permit?
21.16.0204 21.16.0304 U R
- b. Describe how the proposed uses(s) and structures(s) are compatible with the purpose of the zoning district. medium density residences
- c. How will your proposed project affect adjoining property values? minimal
- d. How is your proposal compatible with existing uses of the surrounding land? fits w/ residential neighborhood.

- e. Are/will public services adequate to serve the proposed uses and structures?

Yes

- f. How will the development affect the harmony in scale, bulk, coverage and density upon the desirable neighborhood character, and will the generation of traffic and the capacity of surrounding streets and roads be negatively affected?

medium density residential use, fit w/ surrounding neighborhood

- g. Will your proposal be detrimental to the health, safety or welfare of the surrounding area or the city as a whole?

No

- h. How does your project relate to the goals of the Comprehensive Plan?

The 2006 Town Center Plan and the 2008 Comprehensive Plan are online at:

<http://www.ci.homer.ak.us/documents/planning>

increased housing

- i. The Planning Commission may require you to make some special improvements. Are you planning on doing any of the following, or do you have suggestions on special improvements you would be willing to make? (circle each answer)

1. ☒ N Special yards and spaces.
2. ☒ N Fences, walls and screening.
3. Y ☒ N Surfacing of parking areas.
4. Y ☒ N Street and road dedications and improvements (or bonds).
5. Y ☒ N Control of points of vehicular ingress & egress.
6. Y ☒ N Special provisions on signs.
7. ☒ N Landscaping.
8. Y ☒ N Maintenance of the grounds, buildings, or structures.
9. Y ☒ N Control of noise, vibration, odors, lighting, heat, glare, water and solid waste pollution, dangerous materials, material and equipment storage, or other similar nuisances.
10. Y ☒ N Time for certain activities.
11. Y ☒ N A time period within which the proposed use shall be developed.
12. Y ☒ N A limit on total duration of use.
13. Y ☒ N Special dimensional requirements such as lot area, setbacks, building height.
14. Y ☒ N Other conditions deemed necessary to protect the interest of the community.

PARKING

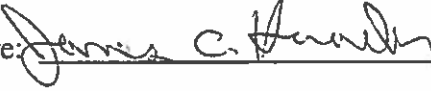
1. How many parking spaces are required for your development? 16
If more than 24 spaces are required see HCC 21.50.030(f)(1)(b). _____
2. How many spaces are shown on your parking plan? 16
3. Are you requesting any reductions? No

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

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

CIRCLE ONE: Owner of record Lessee Contract purchaser

Applicant signature:  Date: 11/4/15

Property Owner's signature:  Date: 11/4/15

[Print](#)[Close](#)

RE: Josiah Fisher duplexes

From: **Fisher, Timothy W (DPS)** (timothy.fisher@alaska.gov)
Sent: Mon 11/02/15 4:10 PM
To: Josiah Fisher (josiahandhaley@hotmail.com)
Cc: Parks, Diana C (DPS) (diana.parks@alaska.gov); Dotti Harness (DHarness@ci.homer.ak.us) (DHarness@ci.homer.ak.us); Bob Painter (RPainter@ci.homer.ak.us)

Thanks Josiah;

I have discussed this with my supervisor and a plan review will not be required, they are greater than 20' apart and less than 4 dwelling units.

Take care and good luck.

Tim
Plans Examiner
www.akburny.com ,
Plan Review Bureau
SOA, DPS, DFLS

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

From: Josiah Fisher [mailto:josiahandhaley@hotmail.com]
Sent: Monday, November 02, 2015 2:38 PM
To: Fisher, Timothy W (DPS)
Subject: Josiah Fisher duplexes

I am applying for a conditional use permit with the city of Homer to build 4 residential duplexes. These will be on year leases for single family. I will be living in one of the units and be renting out the other 7 units. If you have any question my number is (907)299-0626.



DEPARTMENT OF THE ARMY
ALASKA DISTRICT, U.S. ARMY CORPS OF ENGINEERS
REGULATORY DIVISION
44669 STERLING HWY, SUITE B
SOLDOTNA, AK 99669

October 6, 2015

Regulatory Division
POA-2015-213

Mr. Josiah Fisher
PO Box 1476
Homer, AK 99603

Dear Mr. Fisher:

This letter is in response to your September 30, 2015 request for a Department of the Army (DA) approved jurisdictional determination for a parcel of land identified as Kenai Peninsula parcel number 177-020-02. The property is located within Section 17, T. 6 S., R. 13 W., Seward Meridian, USGS map Seldovia C-5; at Latitude 59.6519° N., Longitude 151.540221° W.; in Homer, Alaska. Your project has been assigned number POA-2015-213, Kachemak Bay, which should be referred to in all correspondence with us.

Based on our review of the information you provided and our October 1, 2015 site visit, we have determined the subject property does not contain waters of the United States (U.S.) under Corps jurisdiction. Therefore, a DA permit is not required. A copy of the Approved Jurisdictional Determination form is available at: www.poa.usace.army.mil/Missions/Regulatory/JurisdictionalDeterminations.aspx under the above file number. Please contact us if you decide to alter the method, scope, or location of your proposed activity.

This approved jurisdictional determination is valid for a period of five (5) years from the date of this letter, unless new information supporting a revision is provided to us before the expiration date.

Enclosed is a Notification of Administrative Appeal Options and Process and Request for Appeal form regarding this approved jurisdictional determination (see section labeled "Approved Jurisdictional Determination").

Section 404 of the Clean Water Act requires that a DA permit be obtained for the placement or discharge of dredged and/or fill material into waters of the U.S., including jurisdictional wetlands (33 U.S.C. 1344). The Corps defines wetlands as those areas that are inundated or saturated by surface or groundwater at a frequency and duration

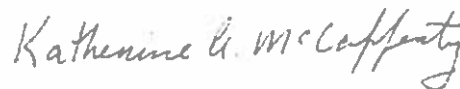
sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Section 10 of the Rivers and Harbors Act of 1899 requires that a DA permit be obtained for structures or work in or affecting navigable waters of the U.S. (33 U.S.C. 403). Section 10 waters are those waters subject to the ebb and flow of the tide shoreward to the mean high water mark, and/or other waters identified by the Alaska District.

Nothing in this letter excuses you from compliance with other Federal, State, or local statutes, ordinances, or regulations.

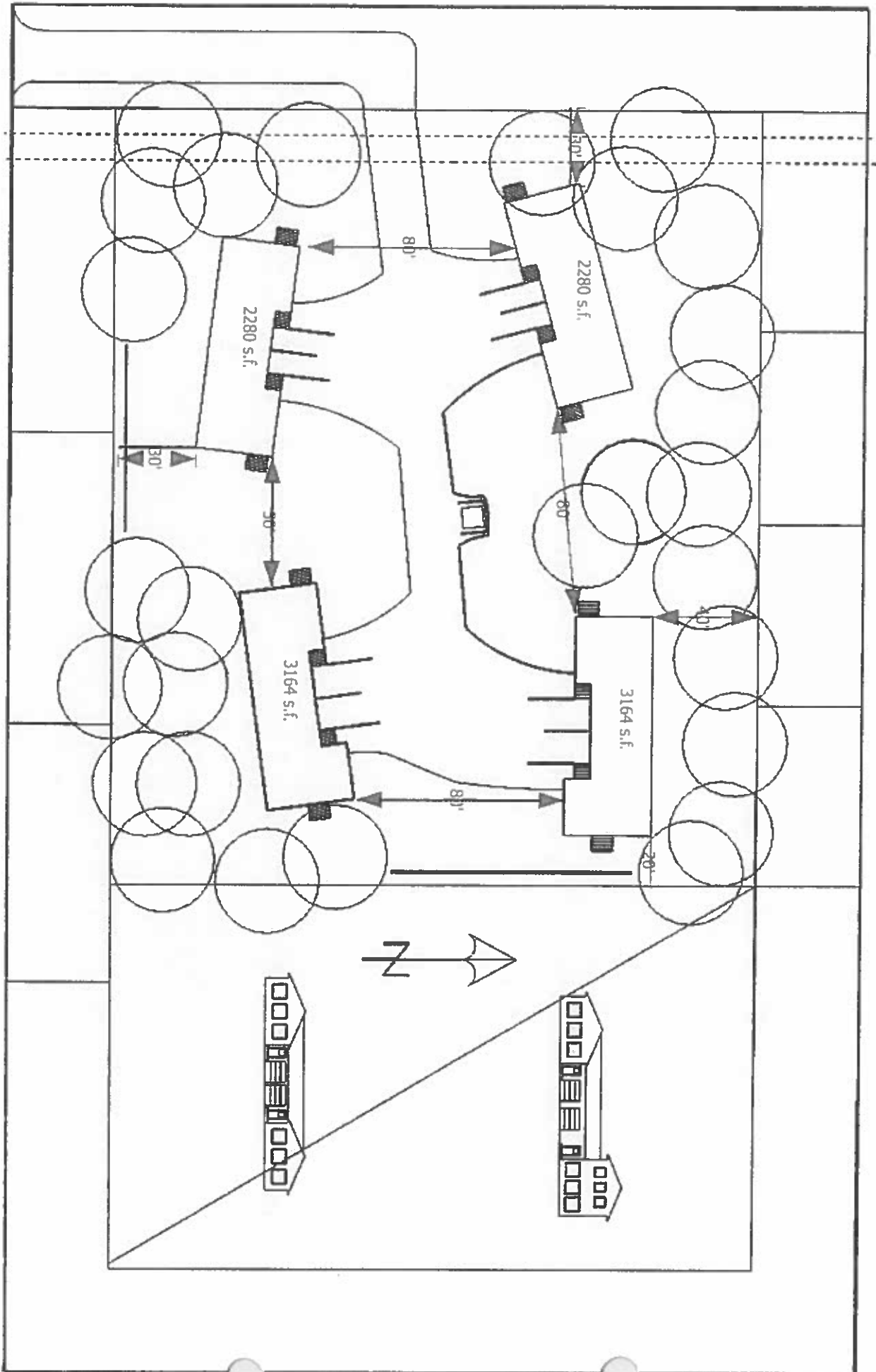
Please contact me via email at Katherine.a.mccafferty2@usace.army.mil, by mail at the address above, or by phone at (907) 753-2692. For more information about the Regulatory Program, please visit our website at <http://www.poa.usace.army.mil/Missions/Regulatory.aspx>.

Sincerely,

A handwritten signature in cursive script that reads "Katherine A. McCafferty".

Katherine A. McCafferty
Project Manager

Enclosures



PUBLIC NOTICE

Public notice is hereby given that the City of Homer will hold a public hearing by the Homer Advisory Planning Commission on Wednesday, December 2, 2015 at 6:30 p.m. at Homer City Hall, 491 East Pioneer Avenue, Homer, Alaska on the following matter:

Request for Conditional Use Permit (CUP) 2015-06 at 4242 Calhoun Street.

T 6S R 13W SEC 17 Seward Meridian HM COMMENCING AT THE SECTION CORNER COMMON TO SEC 17 18 19 & 20 TH S 89 DEG 57 MIN 01 SEC E 660.19 FT TH N 0 DEG 12 MIN 35 SE C W 739.88 FT TO THE TRUE POINT OF BEGINNING TH N 0 DEG 12 MIN 35 SEC W 250 FT T H S 89 DEG 56 MIN 38 SEC E 330.04 FT TH S 0 DEG 12 MIN 35 SEC E 250 FT TH N 89 D EG 56 MIN 38 SEC W 330.4 FEET TO THE TRUE POINT OF BEGINNING EXCLUDING 30 FT ROW ALONG THE WEST LOT LINE OF THE ABOVE PARCEL. KPB 17702002.

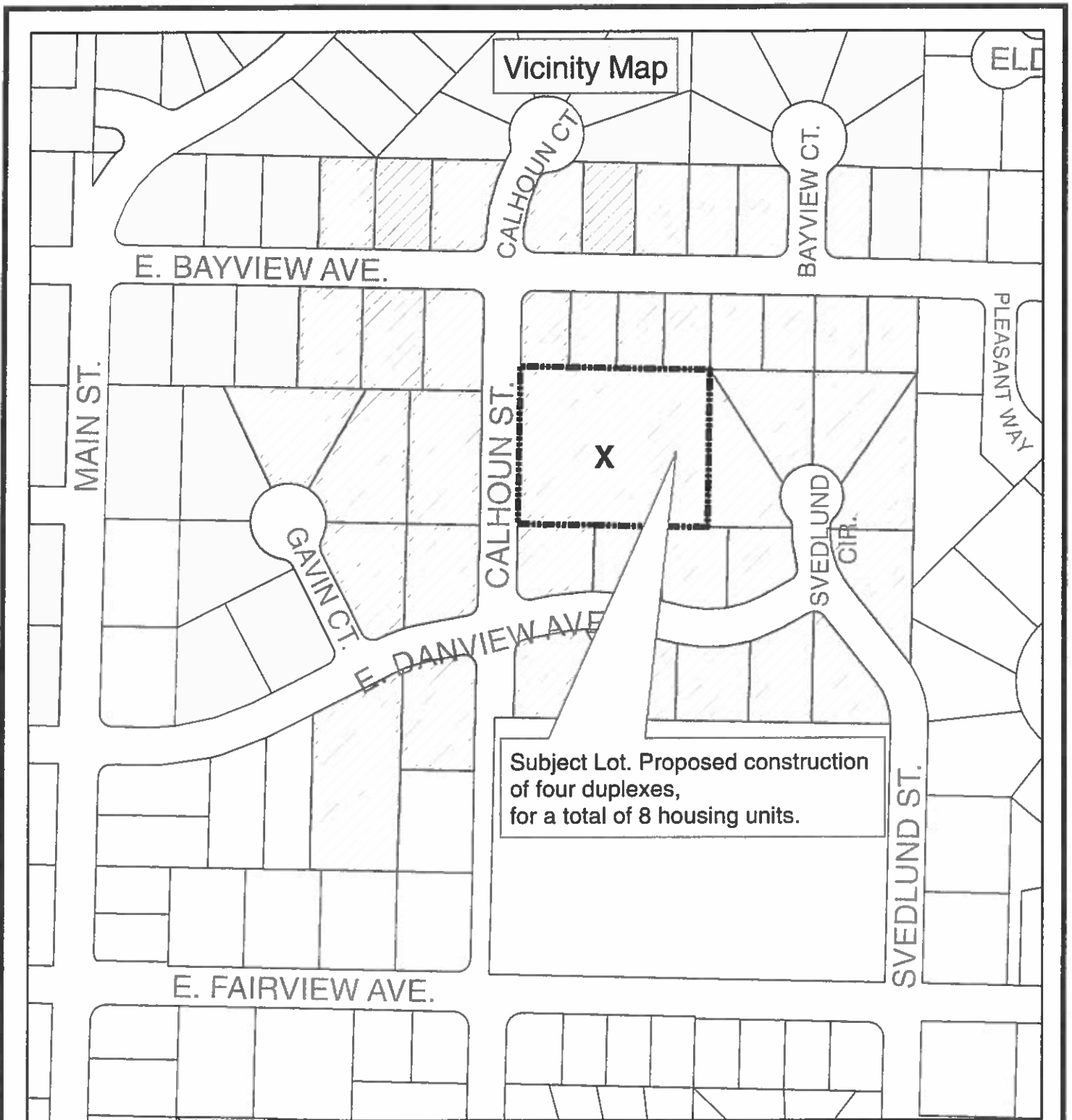
This proposal is to construct four duplexes on a 1.89 acre parcel at 4242 Calhoun Street. A CUP is required per HCC 21.14.030(k) for “more than one building containing a permitted principal use on a lot” in the Urban Residential district.

Anyone wishing to present testimony concerning this matter may do so at the meeting or by submitting a written statement to the Homer Advisory Planning Commission, 491 East Pioneer Avenue, Homer, Alaska 99603, by 4:00 p.m. on the day of the meeting.

The complete proposal is available for review at the City of Homer Planning and Zoning Office located at Homer City Hall. For additional information, please contact Dotti Harness-Foster at the Planning and Zoning Office, 235-3106.

NOTICE TO BE SENT TO PROPERTY OWNERS WITHIN 300 FEET OF PROPERTY.

.....



City of Homer
Planning and Zoning Department

November 9, 2015

Request for CUP 15-06 at 4242 Calhoun St

Marked lots are w/in 300 feet
and property owners notified.

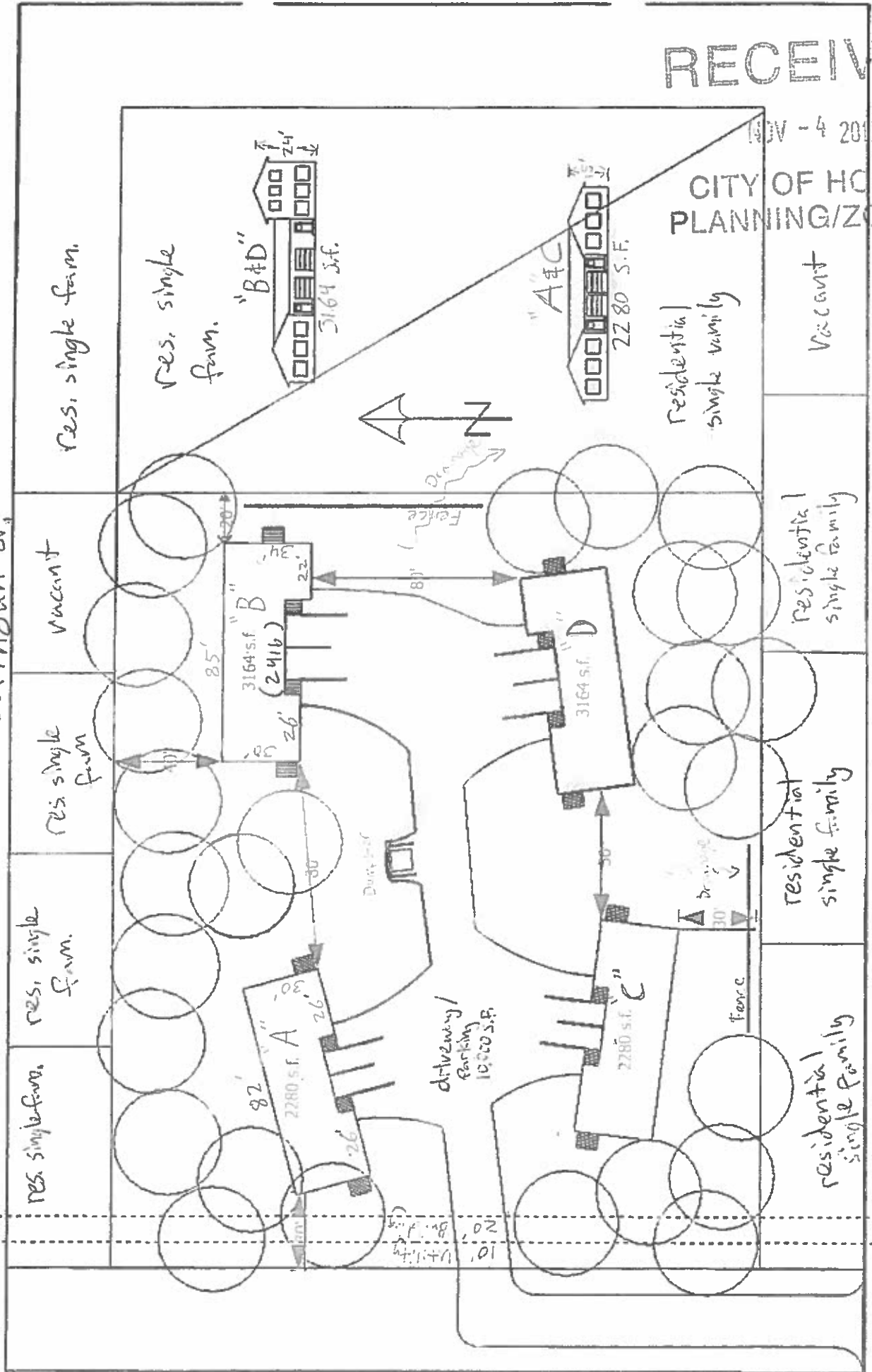
0 150 300 Feet



Disclaimer:
It is expressly understood the City of
Homer, its council, board,
departments, employees and agents are
not responsible for any errors or omissions
contained herein, or deductions, interpretations
or conclusions drawn therefrom.

Josiah Fisher
 P.O. Box 1476 Homer, AK 99603
 907-299-0626

4242 Calhoun St.



RECEIVED

NOV - 4 2015

CITY OF HOMER
PLANNING/ZONING



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

Staff Report 15-79

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
FROM: Julie Engebretsen, Deputy City Planner
DATE: December 2, 2015
SUBJECT: Vacation of a right of way easement along Waddell Way

Requested Action: Recommend approval of the easement vacation

General Information:

Applicants:	City of Homer 491 E Pioneer Ave Homer, AK 99603	Homer Electric Association 3977 Lake St Homer, AK 99603
Location:	Waddell Way, west of Lake Street	
Parcel ID:	17711012	
Zoning Designation:	Central Business District	
Existing Land Use:	Homer Electric Association equipment/storage yard	
Surrounding Land Use:	North: Homer Electric Association operations center South: Vacant, retail, post office East: Commercial, retail, office West: Homer Electric Association, vacant, residential	
Comprehensive Plan:	Goal 1: Guide Homer's growth with a focus on increasing the supply and diversity of housing, protect community character, encourage infilling, and helping minimize global impacts of public facilities including limiting greenhouse gas emissions. Objective A: Continue to accommodate and support commercial, residential and other land uses, consistent with the policies of this plan.	
Public Notice: Notice was sent to 32 property owners of 41 parcels as shown on the KPB tax assessor rolls.		

Analysis: This action vacates a right of way easement. The Homer Advisory Planning Commission has already recommended approval of preliminary plat, which would dedicate 30 feet of right of way

to the south, allowing for the construction of Waddell Way to city standards. This easement is no longer needed by the City.

Relevant KPB Code reference

"20.70.170. Vehicular access. The planning commission shall not approve the vacation of a right-of-way unless an equal or superior right-of-way for vehicular access exists or will be provided in exchange. Where two or more access points are necessary for large vacant or semi-vacant areas of land, the commission shall consider density, use, projected development, and maintain sufficient rights-of-way to serve potential use."

Planning Staff comment: Access is dedicated along Waddell Way and Lake Street. The land owner is working with the City on the final dedication prior to the upgrading of Waddell Way to city road standards.

20.70.180. Other access. Other lawful uses that exist or are feasible for the right-of-way shall be considered when evaluating a vacation request. When such uses exist or could exist within rights-of-way which are not suited for general road use, the commission shall not approve the vacation request, unless it can be demonstrated that equal or superior access is or will be available. The planning commission shall consider whether alternate uses present public safety issues which support approval of the vacation.

Planning Staff comment: Superior access will be granted by the Waddell Park 2016 Replat.

Public Works Comments: No comments – Public Works is an applicant.

Fire Department Comments: There are no fire department issues.

Staff Recommendation:

Planning Commission listen to public testimony. If there are no compelling arguments for keeping the easement, recommend vacation of the right of way easement.

Attachments:

1. Petition
2. Public Notice
3. Aerial Map



Kenai Peninsula Borough Planning Department
144 North Binkley
Soldotna, Alaska 99669-7599
Toll free within the Borough 1-800-478-4441, extension 2200
(907) 714-2200

Petition to Vacate Public Right-of-Way/Easement/Platted Public Area
Public Hearing Required

Upon receipt of complete application with fees and all required attachments, a public hearing before the Planning Commission will be scheduled. The petition with all required information and attachments must be in the Planning Department at least 30 days prior to the preferred hearing date. By State Statute and Borough Code, the public hearing must be scheduled within 60 days of receipt of complete application.

- ☐ \$500 non-refundable fee to help defray costs of advertising public hearing.
- ☐ City Advisory Planning Commission. Copy of minutes at which this item was acted on, along with a copy of City Staff Report.
- ☐ Name of public right-of-way proposed to be vacated is dedicated by the plat of N/A Subdivision, filed as Plat No. _____ in _____ Recording District.
- ☐ Are there associated utility easements to be vacated? ☐ Yes ☒ No
- ☐ Are easements in use by any utility company? If so, which company N/A
- ☒ Easement for public road or right-of-way as set out in (specify type of document) Easement and Right-of-Way as recorded in Book 0165 Page 294 of the Homer Recording District. (Copy of recorded document must be submitted with petition.) See Attachment A, this Petition
- ☐ Submit three copies of plat or map showing area proposed to be vacated. Must not exceed 11x17 inches in size. In the case of public right-of-way, the submittal must include a sketch showing which parcels the vacated area will be attached to. Proposed alternative dedication is to be shown and labeled on the sketch. Vacation to be shown on Final plat (Waddell Park 2016 Replat)
- Has right-of-way been fully or partially constructed? ☐ Yes ☒ No
- Is right-of-way used by vehicles / pedestrians / other? ☐ Yes ☒ No
- Is alternative right-of-way being provided? ☒ Yes ☐ No

The petitioner must provide reasonable justification for the vacation. Reason for vacating:

HEA is granting an equivalent 30' (width) to the South of existing "Waddell Way" ROW & the City is dedicating a full 60' of ROW via the "Waddell Park 2016 Replat" for the purpose of constructing East Grubstake Ave. to connect Lake St. & Heath St.

The petition must be signed (written signature) by owners of the majority of land fronting the right-of-way, easement, or platted public area proposed to be vacated. Each petitioner must include address and legal description of his/her property.

Submitted By:

Name: Carey Meyer, Dir Pub Wks
Address Public Works Dept.
3575 Heath St.
Homer, AK 99603
Phone 907-435-3124

Signature as:

☐ Petitioner ☒ Representative

Petitioners:

Signature Katie Koester
Name Katie Koester, City Manager
Address City of Homer
491 East Pioneer Ave
Homer, AK 99603
Owner of Lot 3-A-1

Signature Bradley P. Janenschke
Name Bradley P. Janenschke
Address Homer Electric Association
3977 Lake St.
Homer, AK 99603
Owner of Lots 1-A-1 and 2-A-1

Signature _____
Name _____
Address _____
Owner of _____

Signature _____
Name _____
Address _____
Owner of _____

RECEIVED

NOV - 6 2015

CITY OF HOMER
PLANNING/ZONING

EASEMENT AND RIGHT-OF-WAY

For Ten Dollars and other good and valuable consideration, receipt of which is hereby acknowledged, the Grantor, HOMER ELECTRIC ASSOCIATION, INC., whose address is 3977 Lake Street, Homer, Alaska 99803, does hereby grant and convey to the Grantees, the STATE OF ALASKA, CITY OF HOMER, and the GENERAL PUBLIC, a grant of easement and right-of-way for purposes of ingress and egress, together with the right to construct, maintain, improve and repair a public street, highway or thoroughfare thereon, across over and upon the following lands, to wit:

A strip of land, 30 feet in width, described as follows:

Commencing for reference at the North East Corner of that property labeled "HOMER ELECT. ASSOCIATION" on plat 54-2021, "Carl Sholin Subdivision" as filed in the District Recorders office at Homer, Alaska;

Thence along the westerly right of way of LAKE STREET, S 08 deg 27 min 44 sec E 196.82 feet to the true point of beginning;

Thence along the arc of a curve to the right, (having a radius of 25.00 feet and a central angle of 57 deg 46 min 04 sec) 25.21 feet;

Thence S 66 deg 13 min 48 sec E 571.00 feet;

Thence S 00 deg 02 min 44 sec W, 32.79 feet, to the southerly boundary of said HOMER ELECT. ASSOCIATION property;

Thence along said boundary, N 66 deg 13 min 48 sec E 546.32 feet, to the westerly right of way of Lake Street;

Thence along said right of way N 80 deg 27 min 44 sec E 49.25 feet, to the point of beginning.

Reserving unto the Grantor the exclusive, unencumbered, and uninterrupted use of the property so long as the Grantor is owner thereof; but upon the conveyance of the property by Grantor, or upon the recording of a written document executed by Grantor waiving its rights hereunder then the Grantor's rights reserved hereunder shall terminate.

Grantee shall indemnify and hold Grantor harmless from and against any costs associated with relocating any existing or future three-phase underground power line, the existing telecommunication line, fencing, storage racks, or other storage facilities which may be upon, over, or under the property.

1/24/86
Date

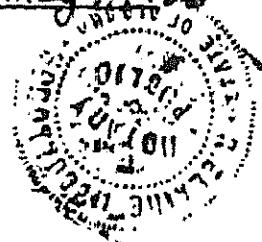
HOMER ELECTRIC ASSOCIATION, INC.

By: [Signature]
Its: [Signature]

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 24th day of January, 1986, by B. Kent Wicks, the General Manager of HOMER ELECTRIC ASSOCIATION, INC., on behalf of the Corporation.

R. Elaine M. Cullough
NOTARY PUBLIC FOR ALASKA
My Commission Expires: May 7, 1986



86-0521

13-

RECORDED
IN PER RECORDING
DISTRICT

FEB 5 4 10 PM '86

REQUESTED BY Ability Survey

ADDRESS Box 378
Homer, Ak. 99603

- 2 -

407001

NOTES

1. NO PERMANENT STRUCTURES SHALL BE CONSTRUCTED OR PLACED WITHIN AN EASEMENT WHICH WOULD INTERFERE WITH THE ABILITY OF A UTILITY TO USE SAID EASEMENT.
2. ALL WASTEWATER DISPOSAL SYSTEMS SHALL COMPLY WITH EXISTING APPLICABLE LAWS AT THE TIME OF CONSTRUCTION.
3. ALL DEVELOPMENT IN THIS SUBDIVISION IS SUBJECT TO THE REQUIREMENTS OF THE CITY OF HOMER'S ZONING DISTRICT.
4. THERE IS A 15' UTILITY EASEMENT FRONTING ON ALL STREET RIGHT OF WAYS, EXTENDING TO 20' WITHIN 5' OF SIDE LOT LINES.
5. THESE LOTS ARE SERVED BY THE CITY OF HOMER SEWER AND WATER.
6. A LOW-VALUE WETLAND PERMIT IS REQUIRED PRIOR TO ANY FILLING OF WETLANDS. A 20' EASEMENT EXISTS ALONG EXISTING DRAINAGE UNTIL SUCH TIME IT IS RELOCATED (#00-20 HRD).
7. THESE LOTS ARE SUBJECT TO THE ZONING LAWS AND REGULATIONS OF THE CITY OF HOMER.
8. NO DIRECT ACCESS TO STATE MAINTAINED RIGHTS-OF-WAY IS PERMITTED UNLESS APPROVED BY THE STATE OF ALASKA DEPARTMENT OF TRANSPORTATION.
9. THE RIGHT OF CONSTRUCT A "SNOWWALK" FROM TRACT 2A ACROSS WADDELL WAY TO TRACT 2A, SUBJECT TO MINIMUM CROSSING AND MAXIMUM BUILDING HEIGHTS, IS HEREBY RESERVED (#87-27 HRD).

LEGEND

- 5/8" x 30" REBAR W/ 1.5" ALCAP (PLAT #2000-20 HRD)
- 5/8" REBAR OF RECORD (PLAT #1987-27 HRD)
- 5/8" x 30" REBAR (PLAT #2005-81 HRD)
- 1/2" REBAR 3686-S 1982 (PLAT #2005-81 HRD)
- 2" ALCAP 3686-S (PLAT #1990-58 HRD)
- 1.5" ALCAP 3815-S 1989 (PLAT #2005-81 HRD)

PLAT APPROVAL

THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF

BY: _____
KEMAI PENINSULA BOROUGH

DATE _____



NOTARY'S ACKNOWLEDGMENT

FOR: _____

ACKNOWLEDGED BEFORE ME THIS _____, 2015.

DAY OF _____

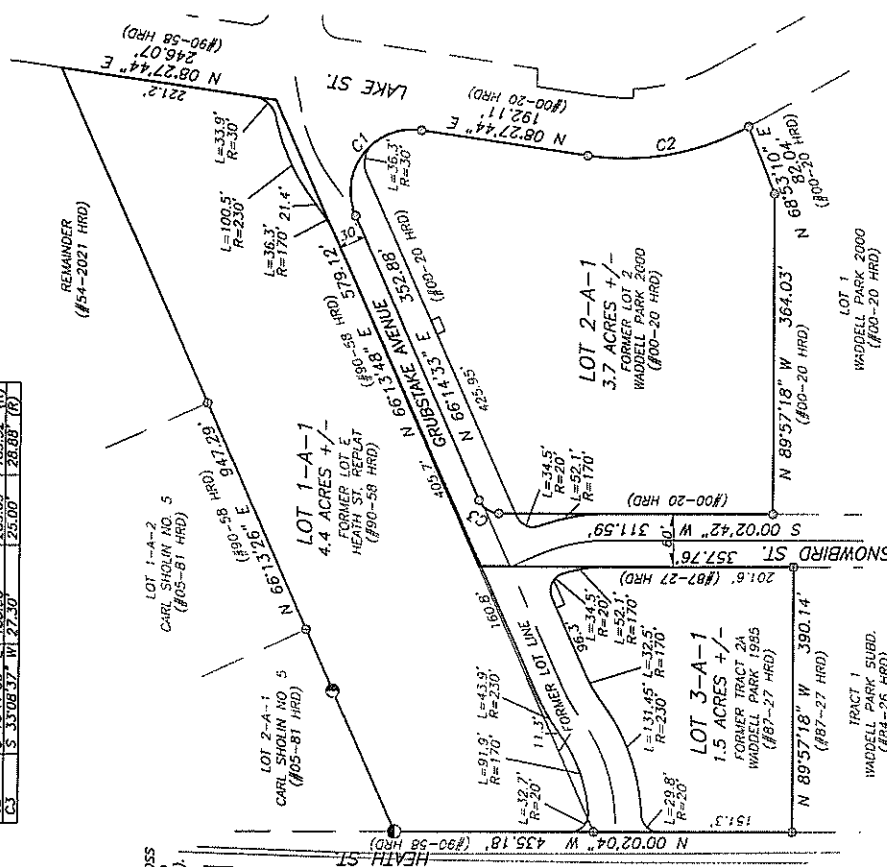
NOTARY PUBLIC FOR ALASKA

MY COMMISSION EXPIRES _____

10. THE FOLLOWING BUILDING SETBACK LIMITS SHALL APPLY UNLESS A LESSER STANDARD IS MOVED BY THE APPROPRIATE PLANNING COMMISSION (#87-27 HRD):
- A) 60' FROM THE NORTHERN BOUNDARY OF TRACT A.
- B) 70' FROM THE CENTERLINES OF LAKE STREET AND THE HOMER BYPASS.
- C) A 170' RADIUS SETBACK FROM THE CENTERLINES OF THE INTERSECTION OF WADDELL WAY AND LAKE STREET.
- D) 60' FROM THE CENTERLINE OF WADDELL WAY.

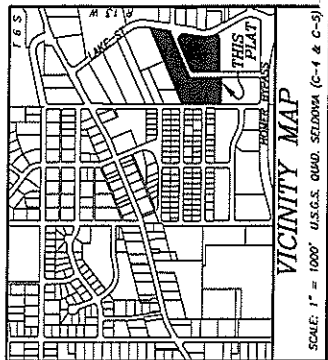
CURVE TABLE

CURVE	CHD.	BRNG.	CHD.	DIST.	RADIUS	LENGTH
C1	S 52°38'51" E	122.58'	70.00'	148.32'	(R)	
C2	S 10°17'55" E	185.95'	289.09'	148.32'	(R)	
C3	S 33°08'37" W	27.30'	25.00'	28.88'	(R)	



WASTEWATER DISPOSAL

PLANS FOR WASTEWATER DISPOSAL, THAT MEET REGULATORY REQUIREMENTS ARE ON FILE AT THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION.



CERTIFICATE OF OWNERSHIP

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREON, THAT WE HEREBY ADOPT THIS PLAT OF SUBDIVISION, AND BY OUR FREE CONSENT DEDICATE TO THE PUBLIC THE PORTION OF THE PUBLIC AREAS TO PUBLIC USE, AND GRANT ALL EASEMENTS TO THE USE SHOWN HEREON.

KATE KOESTER, CITY MANAGER
CITY OF HOMER
491 EAST PIONEER AVENUE
HOMER, AK 99603

SIGNOR
HOMER ELECTRIC ASSOCIATION, INC.
3977 LAKE ST.
HOMER, AK 99603

NOTARY'S ACKNOWLEDGMENT

FOR: _____

ACKNOWLEDGED BEFORE ME THIS _____, 2016.

DAY OF _____

NOTARY PUBLIC FOR ALASKA

MY COMMISSION EXPIRES _____

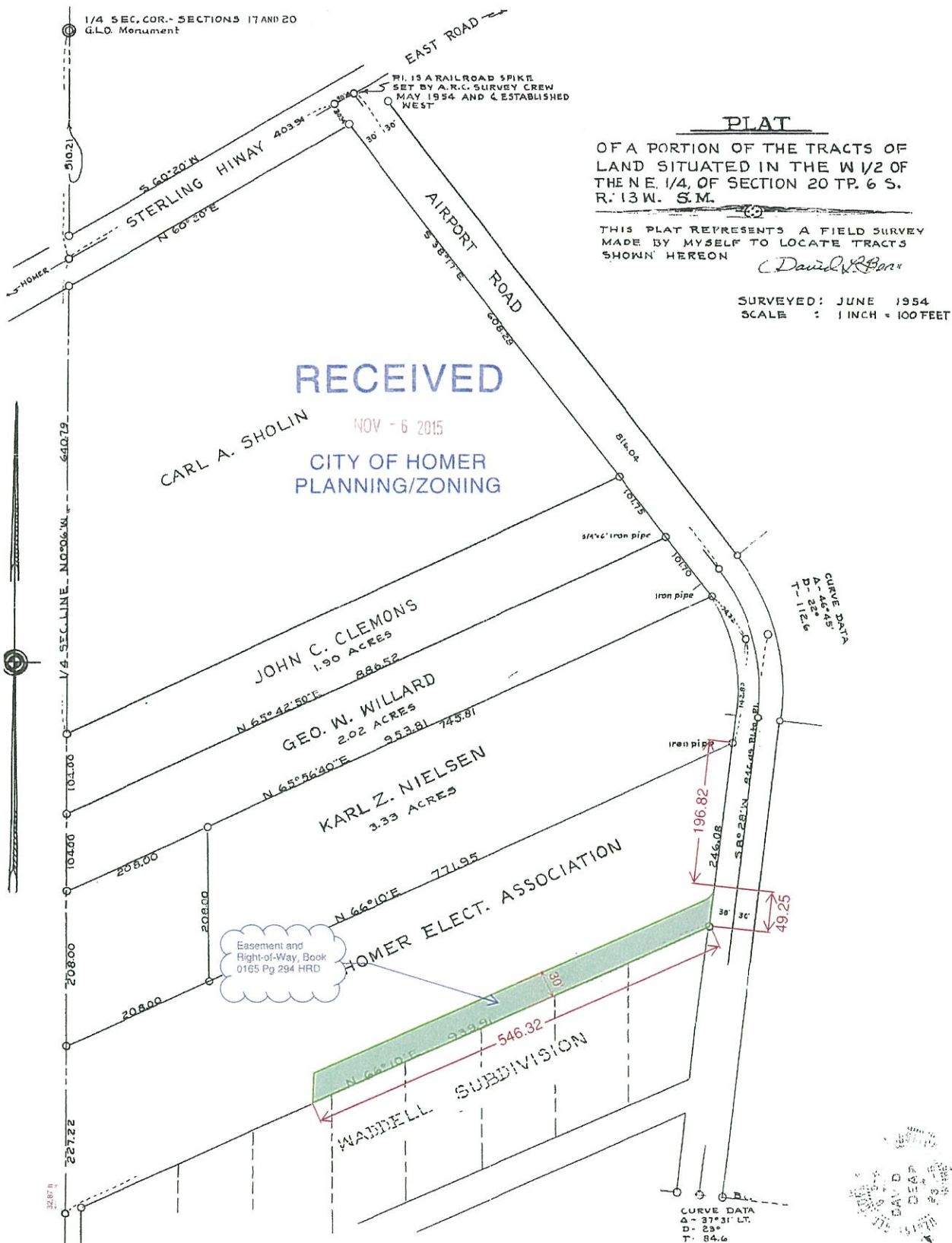
HOMER RECORDING DISTRICT HPR FILE NO. 2015-777

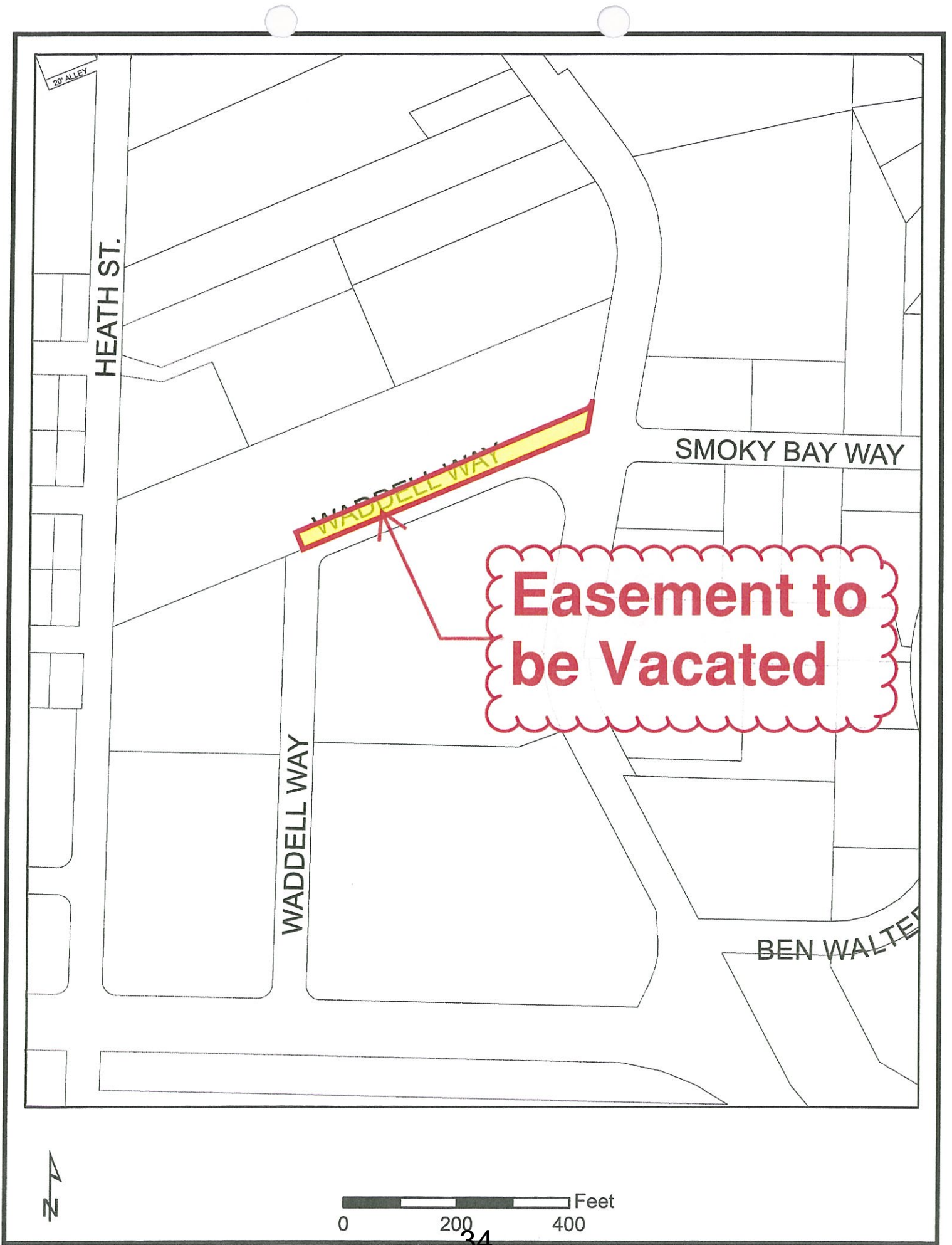
WADDELL PARK 2016 REPLAT
A REPLAT OF LOT E HEATH ST. REPLAT HM 0900058, TRACT 2-A WADDELL PARK SUBD. 1985, REPLAT HM 0870027, AND LOT 2 WADDELL PARK 2000 HM 2000020, LOCATED WITHIN THE NE 1/4 SEC 20, T. 6 S., R. 13 W., S.M., WITHIN THE CITY OF HOMER, THIRD JUDICIAL DISTRICT, ALASKA, CONTAINING 10.439 ACRES

SEABRIGHT SURVEY + DESIGN
KENTON T. BLOOM, P.L.S.
1044 EAST ROAD, SUITE A
HOMER, ALASKA 99603
(907) 235-1247

DRAWN BY: KK CHKD BY: KB JOB #2015-43

DATE: 8/2015 SCALE: 1"=100' SHEET #1 OF 1





**Easement to
be Vacated**

0 200 400 Feet

Dotti Harness

From: Bob Painter
Sent: Friday, November 06, 2015 12:35 PM
To: Dotti Harness
Subject: Re: Waddell Sub - Vacatn of esmt ROW.pdf

There are no fire department issues.

On Nov 6, 2015 11:25 AM, Dotti Harness <DHarness@ci.homer.ak.us> wrote:

Bob,

The Public Works Dept. submitted this petition to vacate a 30 ft easement-ROW.

A replacement 30 ft ROW is being dedicated on the Waddell Park 2016 plat.

If you could comment by Friday, Nov. 13th that would be great!

Dotti

PUBLIC HEARING NOTICE

Public notice is hereby given that the City of Homer will hold a public hearing by the Homer Advisory Planning Commission on Wednesday, December 02, 2015 at 6:30 p.m. at Homer City Hall, 491 East Pioneer Avenue, Homer, Alaska, on the following matter:

A request to vacate the 30 foot wide by 546.32 ft long easement and right-of-way along the south lot line of Lot E Heath Street Replat T6S R13W, Section 20 S.M. which borders Waddell Way.

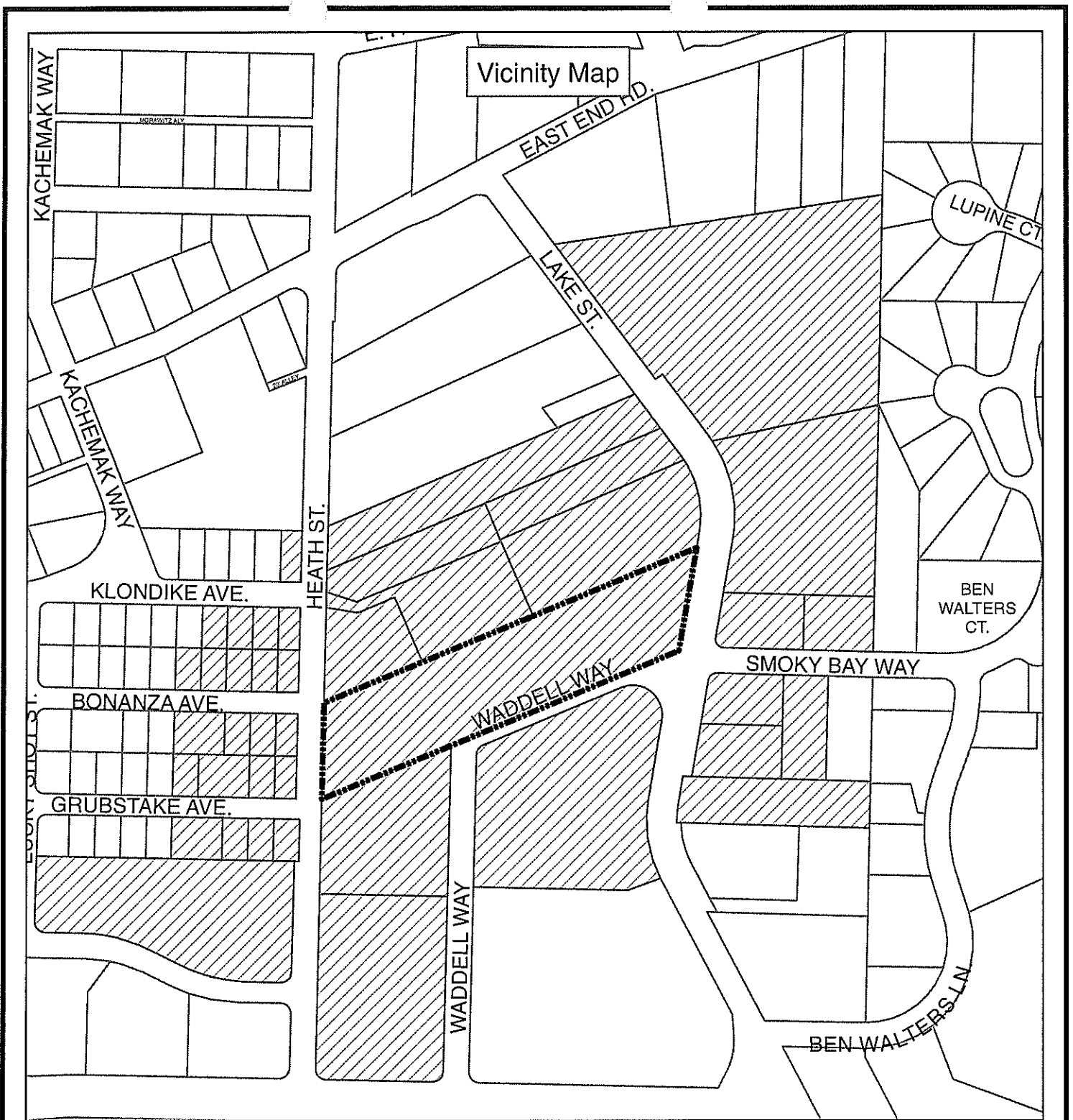
An equivalent 30 foot wide right-of-way will be granted for the purpose of constructing East Grubstake Avenue between 3833 Lake Street and 3768 Waddell Way.

Anyone wishing to present testimony concerning this matter may do so at the meeting or by submitting a written statement to the Homer Advisory Planning Commission, 491 East Pioneer Avenue, Homer, Alaska 99603, by 4:00 p.m. on the day of the meeting.

The complete proposal is available for review at the City of Homer Planning and Zoning Office located at Homer City Hall. For additional information, please contact Rick Abboud at the Planning and Zoning Office, 235-3106.

NOTICE TO BE SENT TO PROPERTY OWNERS WITHIN 300 FEET OF PROPERTY.

.....



City of Homer
Planning and Zoning Department
November 10, 2015

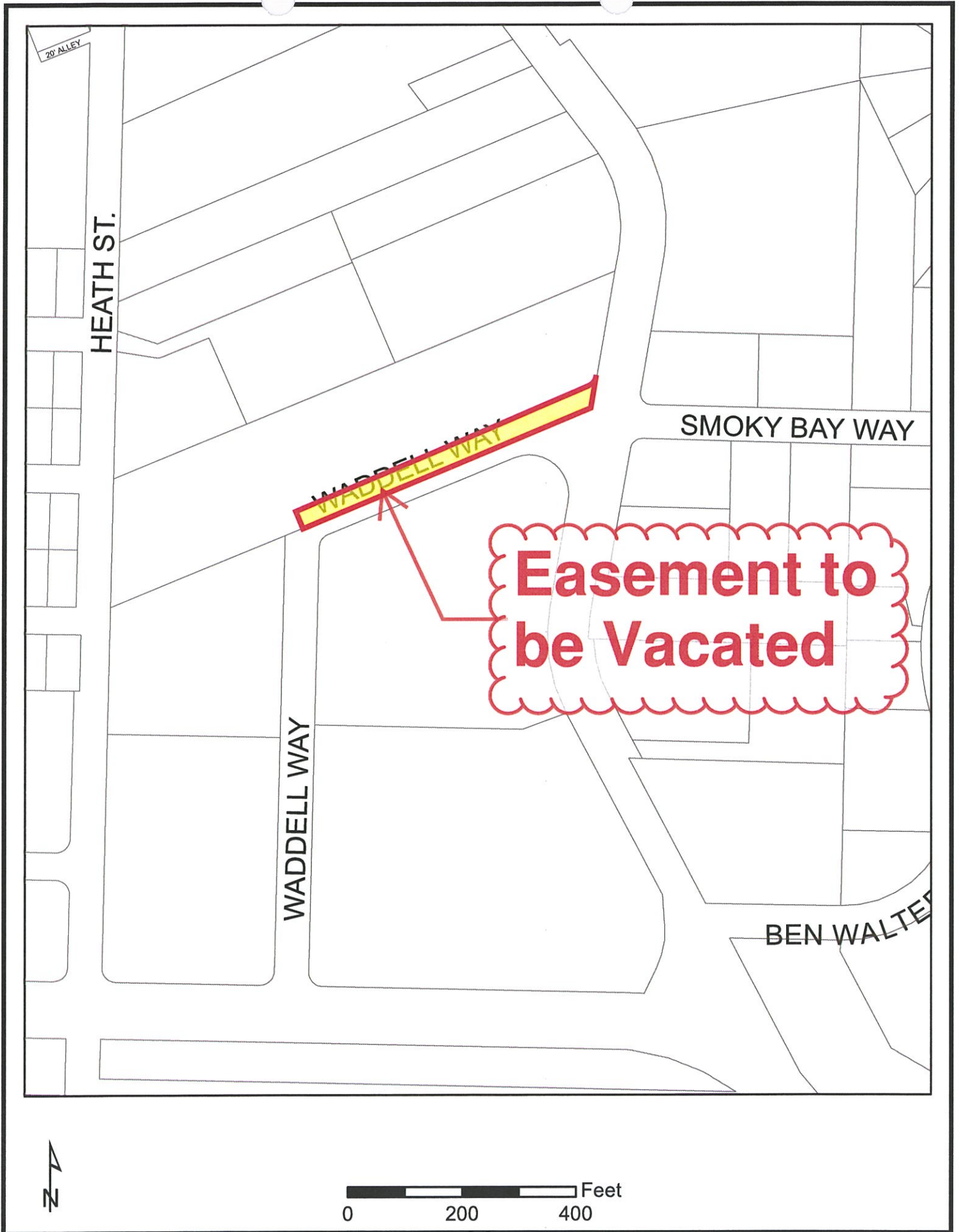
Request to Vacate a Right of Way Easement

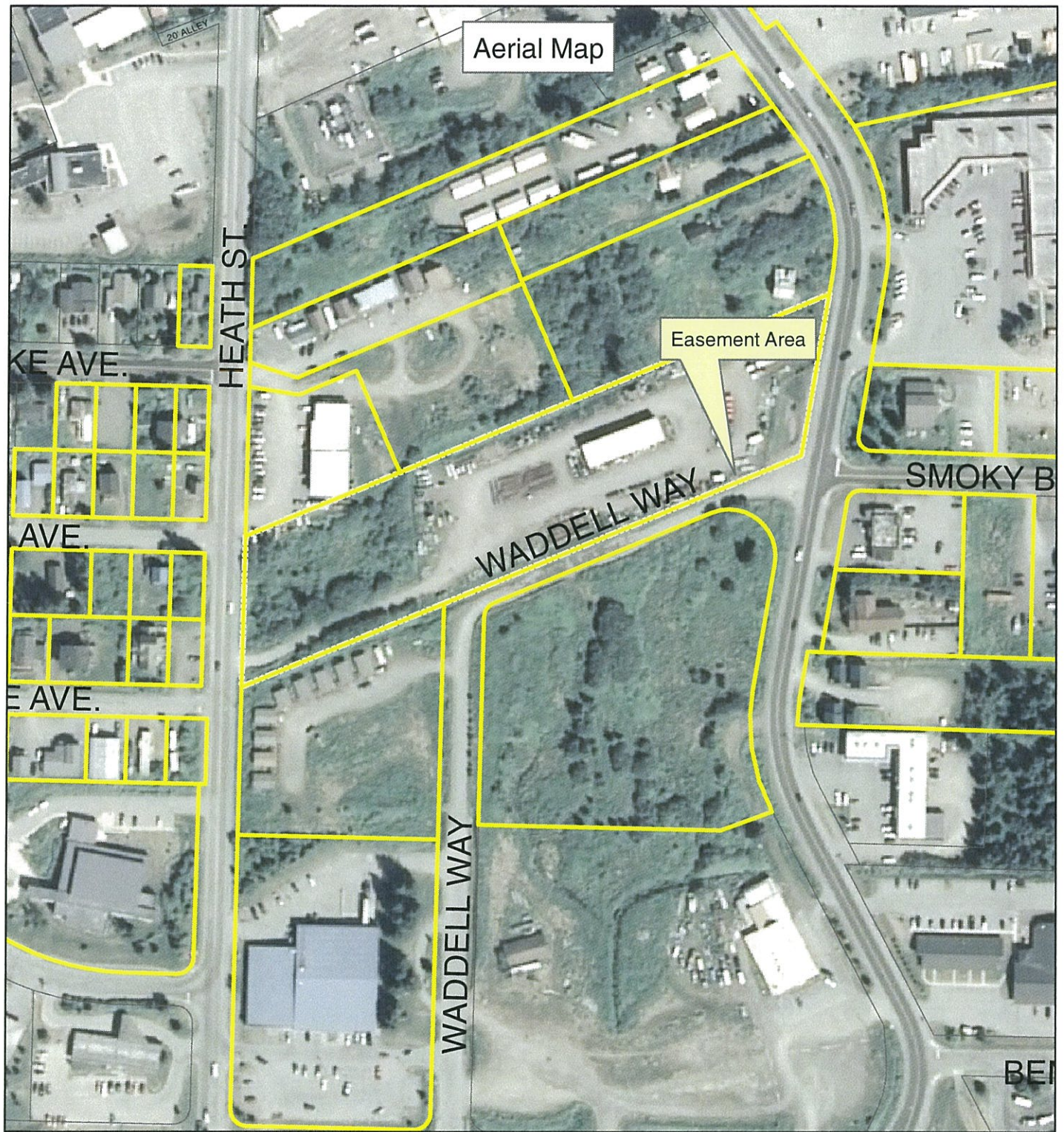
Marked lots are w/in 300 feet
and property owners notified.

0 250 500 Feet



Disclaimer:
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Homer, its council, board,
departments, employees and agents are
not responsible for any errors or omissions
contained herein, or deductions, interpretations
or conclusions drawn therefrom.





City of Homer
Planning and Zoning Department

November 10, 2015

Request to Vacate a Right of Way Easement

Marked lots are w/in 300 feet
and property owners notified.

0 200 400 Feet



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contained herein, or deductions, interpretations
or conclusions drawn therefrom.



City of Homer

www.cityofhomer-ak.gov

Planning

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STAFF REPORT PL 15-80

TO: Homer Advisory Planning Commission
FROM: Rick Abboud AICP, City Planner
MEETING: December 2, 2015
SUBJECT: Zoning for Marijuana, second public hearing

Requested Action: Hear testimony on the draft ordinance regulating commercial marijuana activities by zoning district and make amendments if desired.

GENERAL INFORMATION

This is the second of two scheduled public hearings. The draft ordinance creates zoning regulations for the four types of commercially regulated marijuana activities licensed by the state.

1. Cultivation. There are two sizes of cultivation operations:
Small scale is limited to 500 square feet of cultivation, and
Large scale is anything larger than that.
2. Testing
3. Manufacturing
4. Retail

The city may propose regulations in addition to the state regulations but may not allow anything that is less restrictive than the state. Below is a table of the activities proposed by zoning district. In addition to this, the city has proposed additional buffers:

- 1000 ft from schools (this mirrors the federal drug free zones)
- 200 ft from the library
- 200 ft from Jack Gist, Karen Hornaday, Bayview, and Ben Walters Parks

Update

A few changes were made after the last public hearing. Small scale cultivation is now proposed to be a permitted activity in the East End Mixed Use District and a conditional use for lots exceeding 20,000 square feet in the Rural Residential District.

The state is now proposing allowing a consumption component to a retail facility. This is a bit tough to judge at the moment. While there is a great deal of rules and regulation regarding how the retail component will operate, there is no additional information (so far) regarding any other regulation regarding the operation of the facility with an attached place of consumption. This certainly adds to the complexity of the subject of retail facilities. The model that I have observed in Washington and Colorado was one that I saw as having little negative consequences as far as compared to other retail operations such as liquor or convenience stores. Thoughts and discussion is welcome.

Buffers

At my Planning Conference, Cynthia Franklin was expanding on the choice of the 500 foot buffers, it was revealed that these were based on state law and, as such, had a solid basis for compliance with the Cole Memo. We finally found where this is located in Alaska Statute. The City Attorney informed me that her research showed the federal government does take a stance on the 1000 foot buffer from schools.

While I found no reference to “drug free zone” or “double penalty zone”, I found that misconduct that might be considered a sixth degree offense (possession of a schedule VIA controlled substance (marijuana)), becomes a third degree offense when “on or within 500 feet of school grounds, a recreation or youth center” as described below. This includes an athletic playing field or playground by state definition.

Interestingly, alcohol is only limited inside of a 200 foot buffer of churches, which is more in line with what we had proposed in an earlier version of the proposed ordinance. Regardless, we are only able to propose more restrictive regulations not more permissive than the state.

After review with the City Attorney, I have no recommendations. Below is the statute reference.

AS 11.71.030. Misconduct Involving a Controlled Substance in the Third Degree.

(a) Except as authorized in AS [17.30](#), a person commits the crime of misconduct involving a controlled substance in the third degree if the person

(1) under circumstances not proscribed under AS [11.71.020](#) (a)(2) - (6), manufactures or delivers any amount of a schedule IIA or IIIA controlled substance or possesses any amount of a schedule IIA or IIIA controlled substance with intent to manufacture or deliver;

(2) delivers any amount of a schedule IVA, VA, or VIA controlled substance to a person under 19 years of age who is at least three years younger than the person delivering the substance; or

(3) possesses any amount of a schedule IA or IIA controlled substance

(A) with reckless disregard that the possession occurs

(i) on or within 500 feet of school grounds; or

(ii) at or within 500 feet of a recreation or youth center; or

(B) on a school bus.

AS 11.71.900. Definitions.

(20) "recreation or youth center" means a building, structure, athletic playing field, or playground

(A) run or created by a municipality or the state to provide athletic, recreational, or leisure activities for minors; or

(B) operated by a public or private organization licensed to provide shelter, training, or guidance for minors;

(29) "school grounds" means a building, structure, athletic playing field, playground, parking area, or land contained within the real property boundary line of a public or private preschool, elementary, or secondary school;

AS 04.11.410. Restriction of Location Near Churches and Schools.

(a) A beverage dispensary or package store license may not be issued and the location of an existing license may not be transferred if the licensed premises would be located in a building the public entrance of which is within 200 feet of a school ground or a church building in which religious services are regularly conducted, measured by the shortest pedestrian route from the outer boundaries of the school ground or the public entrance of the church building. However, a license issued before the presence of either cause of restriction within 200 feet of the licensed premises may be renewed or transferred to a person notwithstanding this subsection.

A = Allowed. C = Conditional Use Permit needed.

Table 1. Cannabis Activity by Zoning District

District							
Activity	CBD	GC1	GC2	EEMU	MC	RR	BCWPD
Retail	C	C	C	C	C		
MFG		C	C	C			
Testing	A	A	A	A			
Cultivation							
small	C	C	C	A		C*	C
large	C	C	C	C			

*for lots over 20,000 square feet (not allowed on lots 20,000 square feet or less)

STAFF COMMENTS:

While we are looking at regulating relatively small aspects of the industry, the meat of requirements are found in the proposed regulations of the state. These regulations are quite extensive. There are requirements that apply (Article 7) to all of the activities along with more specific requirements that address each of the 4 individual licensing areas. One really needs to understand the state regulations to get an accurate picture of what these activities may look like when approved. There are 133 pages that compose articles 1-9, which the state uses for regulation. I will attempt to highlight some of these and draw attention to those that need particular consideration for zoning.

All activities are to be secured. This means that cameras and lighting needs to be adequate to identify those inside the facility and anyone within 20 feet of the outside entrances. Commercial grade locks will need to be installed. All personal that work or have ownership interest will need a handlers permit and this permit must be on the person at all times when in the facility.

Many other aspects of the activities are regulated by the state including:

- All waste disposal
- Transportation of the product

- Signage and advertising
- Inventory tracking
- No odor may be detectable off site
- None of the product may be consumed in any licensed facility
- No facilities may reduce or expand without board approval
- No delivery off-site
- No operation between the hours of 5am and 8am

State application procedures require announcement in the newspaper for 3 consecutive weeks and announcements on the radio twice a week for 3 consecutive weeks, as well as on-site and nearby postings.

The state has proposed buffers:

- 500 feet from a school, a recreation or youth center, a building which religious services are regularly conducted, or a correctional facility.

The City's regulations do not address personal use or consumption of marijuana. State regulations still allow for the growing, possession, and gifting as many as six marijuana plants. Only three of the plants can be mature and flowering at any one time. According to the State of Alaska (<https://www.commerce.alaska.gov/web/abc/MarijuanaInitiativeFAQs.aspx>) an unlicensed person may possess up to 4 ounces of marijuana. It is illegal to smoke marijuana in public as defined by the state, no additional restrictions have been suggested.

RECOMMENDATIONS:

Hear testimony and consider amending the ordinance if appropriate. Recommend for adoption to the City Council if not amended or schedule public hearing next meeting if changed or you wish to give the subject more consideration and hear more testimony.

ATTACHMENTS

1. Draft ordinance 11.20.15
2. November 4th map series (3 maps)

CITY OF HOMER
HOMER, ALASKA

Planning Commission

ORDINANCE 15-__

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA, AMENDING HOMER CITY CODE 21.12, RURAL RESIDENTIAL DISTRICT; HOMER CITY CODE 21.18, CENTRAL BUSINESS DISTRICT; HOMER CITY CODE 21.24, GENERAL COMMERCIAL 1; HOMER CITY CODE 21.26, GENERAL COMMERCIAL 2; HOMER CITY CODE 21.27, EAST END MIXED USE; HOMER CITY CODE 21.28, MARINE COMMERCIAL; HOMER CITY CODE 21.40, BRIDGE CREEK WATERSHED PROTECTION DISTRICT TO IDENTIFY THE ZONING DISTRICTS PERMITTING MARIJUANA FACILITIES AND ADOPTING CHAPTER 21.62 ENTITLED "MARIJUANA FACILITIES" REGARDING GENERAL LAND USE REQUIREMENTS FOR MARIJUANA CULTIVATION, MANUFACTURING, RETAIL, AND TESTING FACILITIES

WHEREAS, it is in the City's best interest to draft comprehensive regulations regarding the use of property within the City to cultivate, manufacturer marijuana or to operate a retail store selling marijuana; and

WHEREAS, the City is dedicated to drafting regulations that prevent the distribution of marijuana to minors; prevents revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels; prevents the diversion of marijuana from states where it is legal under state law in some form to other states; prevents state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; prevents violence and the use of firearms in the cultivation and distribution of marijuana; prevents drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use; prevents the growing of marijuana on public lands and the attendant public safety and environmental dangers posted by marijuana production on public land; and prevents marijuana possession or use on federal property.

THE CITY OF HOMER ORDAINS:

Section 1. Homer City Code Chapter 21.12 is amended to read as follows:

Section 21.12.030 Conditional uses and structures.

[**Bold and underlined added.** Deleted language stricken through.]

The following uses may be permitted in the Rural Residential District when authorized by conditional use permit issued in accordance with Chapter 21.71 HCC:

a. Planned unit development, limited to residential uses only;

b. Religious, cultural and fraternal assembly;

c. Cemeteries;

d. Kennels;

e. Commercial greenhouses and tree nurseries offering sale of plants or trees grown on premises;

f. Mobile home parks;

g. Public utility facilities and structures;

h. Pipelines and railroads;

i. 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;

j. Day care facilities; provided, however, that outdoor play areas must be fenced;

k. Group care home;

l. Assisted living home;

m. More than one building containing a permitted principal use on a lot;

n. Indoor recreational facilities;

o. Outdoor recreational facilities;

p. Public school and private school;

q. One small wind energy system having a rated capacity exceeding 10 kilowatts; provided, that it is the only wind energy system of any capacity on the lot.

r. Marijuana cultivation facility as defined in state statute and only up to 500 square feet on lots greater than 20,000 square feet.

Section 2. Homer City Code Chapter 21.18 is amended as follows:

Section 21.18.020 Permitted uses and structures.

The following uses are permitted outright in the Central Business District, except when such use requires a conditional use permit by reason of size, traffic volumes, or other reasons set forth in this chapter:

a. Retail business where the principal activity is the sale of merchandise and incidental services in an enclosed building;

b. Personal service establishments;

c. Professional offices and general business offices;

d. Restaurants, clubs and drinking establishments that provide food or drink for consumption on the premises;

e. Parking lots and parking garages, in accordance with Chapter 21.55 HCC;

f. Hotels and motels;

g. Mortuaries;

h. Single-family, duplex, and multiple-family dwellings, including townhouses, but not including mobile homes;

i. Floatplane tie-up facilities and air charter services;

j. Parks;

k. 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;

l. 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;

m. Mobile homes, provided they conform to the requirements set forth in HCC 21.54.100;

n. Home occupations, provided they conform to the requirements of HCC 21.51.010;

o. Ministorage;

p. Apartment units located in buildings primarily devoted to business or commercial uses;

q. Religious, cultural, and fraternal assembly;

r. Entertainment establishments;

s. Public, private and commercial schools;

t. Museums and libraries;

u. Studios;

v. Plumbing, heating and appliance service shops, only if such use, including the storage of materials, is wholly within an enclosed building;

w. Publishing, printing and bookbinding;

x. 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;

y. 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;

z. Mobile food services;

aa. Itinerant merchants, provided all activities shall be limited to uses permitted outright under this zoning district;

bb. Day care homes and facilities; provided, however, that outdoor play areas must be fenced;

cc. Rooming house, bed and breakfast and hostel;

dd. 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;

ee. Farmers' market;

ff. Dormitory;

gg. Financial institutions;

hh. As an accessory use, one small wind energy system per lot having a rated capacity not exceeding 10 kilowatts;

ii. One detached dwelling unit, excluding mobile homes, as an accessory building to a principal single-family dwelling on a lot.

jj. Marijuana testing facility as defined by state law.

.....
Section 21.18.030 Conditional uses and structures.
.....

The following uses may be permitted in the Central Business District when authorized by conditional use permit issued in accordance with Chapter 21.71 HCC:
.....

a. Planned unit developments, excluding all industrial uses;

b. Indoor recreational facilities and outdoor recreational facilities;

c. Mobile home parks;

d. Auto fueling stations;

e. Public utility facilities and structures;

f. Pipeline and railroads;

g. Greenhouses and garden supplies;

h. Light or custom manufacturing, repair, fabricating, and assembly, provided such use, including storage of materials, is wholly within an enclosed building;

i. Shelter for the homeless, provided any lot used for such shelter does not abut a residential zoning district;

j. More than one building containing a permitted principal use on a lot;

k. Group care homes and assisted living homes;

l. Drive-in car washes, but only on the Sterling Highway from Tract A-1 Webber Subdivision to Heath Street;

m. One small wind energy system having a rated capacity exceeding 10 kilowatts; provided, that it is the only wind energy system of any capacity on the lot;

n. Other uses approved pursuant to HCC 21.04.020

o. Marijuana retail facilities and cultivation facilities as defined by state law.

Section 3. Homer City Code Chapter 21.24 is amended as follows:

Section 21.24.020 Permitted uses and structures.

The following uses are permitted outright in the General Commercial 1 District, except when such use requires a conditional use permit by reason of size, traffic volumes, or other reasons set forth in this chapter.

a. Air charter operations and floatplane tie-up facilities;

b. General business offices and professional offices;

c. Dwelling units located in buildings primarily devoted to business uses;

d. Auto repair;

e. Auto and trailer sales or rental areas;

f. Auto fueling stations and drive-in car washes;

g. Building supply and equipment sales and rentals;

h. Restaurants, including drive-in restaurants, clubs and drinking establishments;

- 192 i. Garden supplies and greenhouses;
- 193 j. Heavy equipment and truck sales, rentals, service and repair;
- 194 k. Hotels and motels;
- 195 l. Lumberyards;
- 196 m. Boat and marine equipment sales, rentals, service and repair;
- 197 n. Mortuaries;
- 198 o. Open air businesses;
- 199 p. Parking lots and parking garages, in accordance with
- 200 Chapter 21.55 HCC;
- 201 q. Manufacturing of electronic equipment, electrical devices, pottery,
- 202 ceramics, musical instruments, toys, novelties, small molded products and
- 203 furniture;
- 204 r. Publishing, printing and bookbinding;
- 205 s. Recreation vehicle sales, rental, service and repair;
- 206 t. Retail businesses;
- 207 u. Trade, skilled or industrial schools;
- 208 v. Wholesale businesses, including storage and distribution services
- 209 incidental to the products to be sold;
- 210 w. Welding and mechanical repair;
- 211 x. Parks and open space;
- 212 y. Appliance sales and service;
- 213 z. Warehousing, commercial storage and mini-storage;
- 214 aa. Banks, savings and loans, credit unions and other financial institutions;

bb. 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;

cc. Dry cleaning, laundry, and self-service laundries;

dd. Taxi operation;

ee. Mobile food services;

ff. Itinerant merchants, provided all activities shall be limited to uses permitted outright under this zoning district;

gg. Recreational vehicle parks, provided they shall conform to the standards in Article II of Chapter 21.54 HCC;

hh. 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;

ii. Rooming house and bed and breakfast;

jj. Dormitory;

kk. As an accessory use, one small wind energy system per lot.

II. Marijuana testing facility as defined by state law.

Section 21.24.030 Conditional uses and structures.

The following uses may be permitted in the General Commercial 1 District when authorized by conditional use permit issued in accordance with Chapter 21.71 HCC:

a. Campgrounds;

b. Crematoriums;

c. Multiple-family dwelling;

- d. Public utility facility or structure;
- e. Mobile home parks;
- f. Planned unit developments;
- g. Townhouses;
- h. Pipelines and railroads;
- i. Shelter for the homeless, provided any lot used for such shelter does not abut an RO, RR, or UR zoning district;
- j. More than one building containing a permitted principal use on a lot;
- k. Day care facilities; provided, however, that outdoor play areas must be fenced;
- l. Other uses approved pursuant to HCC 21.04.020;
- m. Indoor recreational facilities;
- n. Outdoor recreational facilities
- o. Marijuana retail facilities, cultivation facilities, and manufacturing facilities as defined by state law.**

Section 4. Homer City Code Chapter 21.26 is amended as follows:

Section 21.26.020 Permitted uses and structures.

The following uses are permitted outright in the General Commercial 2 District, except when such use requires a conditional use permit by reason of size, traffic volumes, or other reasons set forth in this chapter:

- a. Production, processing, assembly and packaging of fish, shellfish and seafood products;
- b. Construction, assembly and storage of boats and boat equipment;

- 263 c. Manufacture and assembly of pottery and ceramics, musical
264 instruments, toys, novelties, small molded products, electronic instruments
265 and equipment and electrical devices;
- 266 d. Research and development laboratories;
- 267 e. Trade, skills or industrial schools;
- 268 f. Publishing, printing and bookbinding facilities;
- 269 g. Auto, trailer, truck, recreational vehicle and heavy equipment sales,
270 rentals, service and repair, excluding storage of vehicles or equipment that
271 is inoperable or in need of repair;
- 272 h. Storage and distribution services and facilities, including truck
273 terminals, warehouses and storage buildings and yards, contractors'
274 establishments, lumberyards and sales, or similar uses;
- 275 i. Airports and air charter operations;
- 276 j. Underground bulk petroleum storage;
- 277 k. Cold storage facilities;
- 278 l. Parking lots and parking garages, in accordance with
279 Chapter 21.55 HCC;
- 280 m. Mobile commercial structures;
- 281 n. Accessory uses to the uses permitted in the GC2 district that are clearly
282 subordinate to the main use of the lot or building, such as wharves, docks,
283 restaurant or cafeteria facilities for employees; or caretaker
284 or dormitory residence if situated on a portion of the principal lot;
285 provided, that separate permits shall not be issued for the construction of
286 any type of accessory building prior to that of the main building;
- 287 o. Taxi operation;
- 288 p. Mobile food services;

q. Itinerant merchants, provided all activities shall be limited to uses permitted outright under this zoning district;

r. Recreational vehicle parks, provided they shall conform to the standards in Chapter 21.54 HCC;

s. Hotels and motels;

t. Dormitory;

u. As an accessory use, one small wind energy system per lot;

v. Open air business.

w. Marijuana testing facilities as defined by law.

Section 21.26.030 Conditional uses and structures.

The following uses may be permitted in the General Commercial 2 District when authorized by conditional use permit issued in accordance with Chapter 21.71 HCC:

a. Mobile home parks;

b. Construction camps;

c. Extractive enterprises, including the mining, quarrying and crushing of gravel, sand and other earth products and batch plants for asphalt or concrete;

d. Bulk petroleum product storage above ground;

e. Planned unit developments, excluding residential uses;

f. Campgrounds;

g. Junk yard;

h. Kennels;

- i. Public utility facilities and structures;
- j. Pipelines and railroads;
- k. Impound yards;
- l. Shelter for the homeless, provided any lot used for such shelter does not abut an urban, rural or office residential zoning district;
- m. More than one building containing a permitted principal use on a lot;
- n. Day care facilities; provided, however, that outdoor play areas must be fenced;
- o. Group care homes and assisted living homes;
- p. Other uses approved pursuant to HCC 21.04.020;
- q. Indoor recreational facilities;
- r. Outdoor recreational facilities.
- s. Marijuana retail facilities, cultivation facilities, and manufacturing facilities as defined by state law.**

Section 5. Homer City Code Chapter 21.27 is amended to read as follows:

Section 21.27.020 Permitted uses and structures.

The following uses are permitted outright in the Marine Commercial District, except when such use requires a conditional use permit by reason of size, traffic volumes, or other reasons set forth in this chapter:

- a. Offices for tourism-related charter and tour businesses, such as fishing, flightseeing, day excursions and boat charters and tours;
- b. Marine equipment sales, rentals, service, repair and storage;
- c. Retail stores limited to the sale of seafood products, sporting goods, curios, and arts and crafts;
- d. Business offices for water-dependent and water-related activities such as fish brokers, off-shore oil and gas service companies, and stevedores;

e. 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 main structure;

f. Mobile food services;

g. Itinerant merchants, provided all activities shall be limited to uses permitted outright under this zoning district;

h. Recreational vehicle parks, provided they shall conform to the standards in Chapter 21.54 HCC;

i. Restaurants;

j. Cold storage facilities;

k. Campgrounds;

l. Manufacturing, processing, cooking, and packing of seafood products;

m. Parks;

n. Boat launching or moorage facilities, marinas;

o. 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;

p. Lodging as an accessory use, limited to no more than 50 percent of the floor area of a building;

q. As an accessory use, one small wind energy system per lot.

r. Marijuana testing facilities as defined by state law.

s. Marijuana cultivation facilities up to 500 square feet as defined by state law.

Section 21.27.030 Conditional uses and structures.

The following conditional uses may be permitted in the East End Mixed Use District when authorized by conditional use permit issued in accordance with Chapter 21.71 HCC:

a. Construction camps;

b. Extractive enterprises, including crushing of gravel, sand and other earth products and batch plants for asphalt or concrete;

c. Auto fueling stations;

d. Bulk petroleum product storage;

e. Planned unit developments;

f. Junk yard;

g. Kennels;

h. Public utility facilities and structures;

i. Impound yards;

j. Indoor recreational facilities;

k. Outdoor recreational facilities;

l. Other uses approved pursuant to HCC 21.04.020.

m. Marijuana testing facilities as defined by state law

n. Cultivation facilities up to 500 square feet as defined by state law.

Section 6. Homer City Code Chapter 21.28 is amended to read as follows:

Section 21.28.030 Conditional uses and structures

a. Drinking establishments;

b. Public utility facilities and structures;

c. Hotels and motels;

d. Lodging;

e. More than one building containing a permitted principal use on a lot;

f. Planned unit developments, limited to water-dependent and water-related uses, with no dwelling units except as permitted by HCC

21.28.020(o);

g. Indoor recreational facilities;

h. Outdoor recreational facilities;

i. 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.

j. Retail marijuana facilities as defined by state law.

Section 8. Homer City Code Chapter 21.40 is amended to read as follows.

Section 21.40.060 Conditional uses and structures.

The following uses are permitted in the BCWP district if authorized by a conditional use permit granted in accordance with Chapter 21.71 HCC and subject to the other requirements of this chapter:

a. Cemeteries;

b. Public utility facilities and structures;

c. Timber harvesting operations, timber growing, and forest crops, provided they conform to HCC 21.40.100;

d. Agricultural activity and stables, if they conform to HCC 21.40.090, but not including farming of swine;

e. Other uses similar to uses permitted 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;

f. 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;

g. More than one building containing a permitted principal use on a lot.

h. Marijuana cultivation up to 500 square feet as defined by law.

Section 9. Chapter 21.62 is hereby enacted as follows:

Chapter 21.62

Marijuana Cultivation, Manufacturing, and Retail Facilities

Sections:

21.62.010 Scope.

21.62.020 Intent

21.62.030 Definitions

21.62.040 Pre-application conference.

21.62.050 Costs

21.62.060 Safety and Security Plan

21.62.070 Buffers.

21.62.080 General restrictions on all marijuana facilities.

21.62.010 Scope

a. This chapter applies to the operation of all marijuana cultivation, manufacturing, testing, and retail facilities within the city boundaries.

b. This chapter in no way protects marijuana facilities from enforcement of federal law nor is it intended to sanction conduct or operations prohibited by law. All persons engaged in the marijuana industry within the city operate at their own risk and have no legal recourse against the City in the event that city laws are preempted, negated or otherwise found unenforceable based upon federal law prohibiting the sale, distribution, consumption or possession of marijuana.

21.62.020 Intent

a. This chapter is intended to impose regulations that prevent:

- 1. The distribution of marijuana to minors;**
- 2. Revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;**
- 3. The diversion of marijuana from states where it is legal under state law in some form to other states where it is unlawful;**
- 4. State-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;**
- 5. Violence and the use of firearms in the cultivation and distribution of marijuana;**
- 6. Drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;**

- 480 7. The growing of marijuana on public lands and the attendant public safety
481 and environmental dangers posted my marijuana production on public land;
482 and
483 8. Marijuana possession or use on federal property.
484

485 **21.62.030 Definitions [Reserved.]**

486
487 **21.62.040 Pre-application Conference.**

488
489 **21.57.050 Costs.**

490
491 The cost of all permits, studies and investigation required under this chapter
492 shall be borne by the applicant.
493

494 When Title 21 requires a conditional use permit for a marijuana facility, the
495 applicant must meet with the City Planner to discuss the conditional use
496 permit process and any issues that may affect the proposed conditional use.
497 This meeting is to provide for an exchange of general and preliminary
498 information only and no statement made in such meeting by either the
499 applicant or the City Planner shall be regarded as binding or authoritative
500 for the purposes of this title.
501

502 **21.62.060 Safety and Security Plan**

503
504 A conditional use permit for a marijuana facility required by this title shall
505 include an analysis of the ways in which the intent and purpose of this
506 chapter have been met and the safety concerns identified in Sections
507 21.62.010 and 21.62.020 will be addressed.
508

509 **21.62.070 Buffers**

- 510
511 a) The Commission may require buffers, including berms, fences, trees, and
512 shrubs, to minimize impacts to adjacent property. A landscaped buffer or
513 combination of landscaping and berms of no less than ten feet in width will
514 be required where the property with a marijuana facility adjoins districts in
515 which marijuana facilities are prohibited or permitted only as a conditional
516 use.
517

- 518 b) The following buffer zones shall be applied to all marijuana facilities in all
519 districts:
520

- | | | |
|-----|-----------------------------|-------------------------|
| 521 | 1. <u>Schools</u> | <u>1000 square feet</u> |
| 522 | 2. <u>Churches</u> | <u>500 square feet</u> |
| 523 | 3. <u>Jail</u> | <u>500 square feet</u> |
| 524 | 4. <u>Youth/rec. center</u> | <u>500 square feet</u> |
| 525 | 5. <u>Library</u> | <u>200 square feet</u> |
| 526 | | |

- c) Marijuana facilities abutting the Jack Gist Municipal Park, Hornaday Municipal Park, Bayview Municipal Park, Ben Walters Municipal Park, or Jeffrey Municipal Park must have 200 feet or more buffers measured from the boundary of the park.

21.62.80 General restrictions applied to all marijuana facilities.

- a) All marijuana facilities in all districts shall comply with Section 21.59.030 of this title.
- b) An application for a conditional use permit under this chapter shall not be approved if the location of the facility violates the regulatory intent in Section 21.62.020.

Section 8. This ordinance shall take effect upon its adoption by the Homer City Council.

Section 9. This ordinance is of a permanent and general character and shall be included in the City code.

ENACTED BY THE CITY COUNCIL OF THE CITY OF HOMER, ALASKA, this
____ day of _____ 2015.

CITY OF HOMER

BETH WYTHER, MAYOR

ATTEST:

JO JOHNSON, CMC, CITY CLERK

AYES:

NOES:

ABSTAIN:

ABSENT:

First Reading:

Public Reading:

Second Reading:

Effective Date:

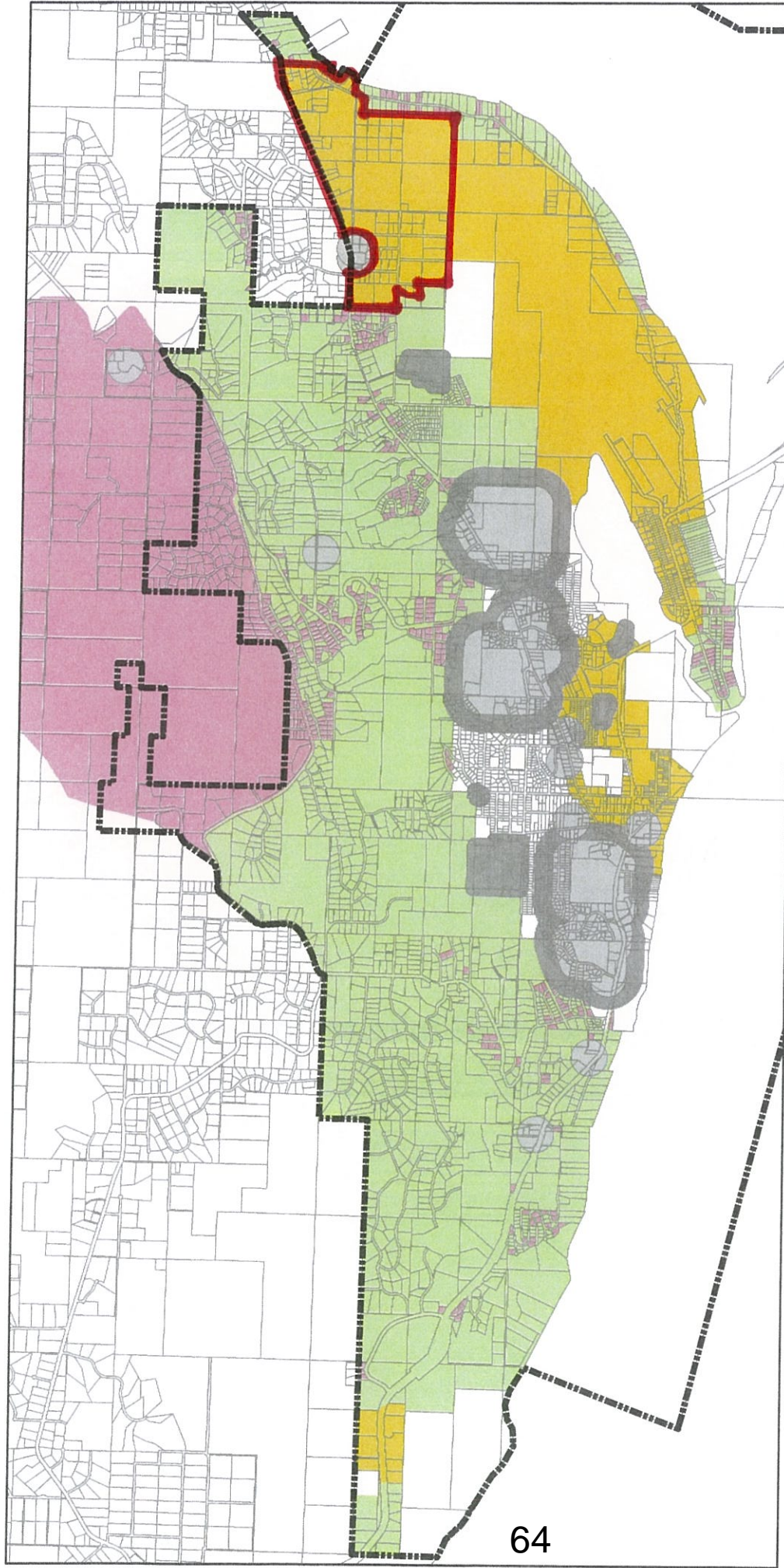
Reviewed and approved as to form:

Kate Koester, City Manager

City Attorney

Date: _____

Date: _____



Legend



City Limits



State Buffers



Additional City Buffers



Small cultivation, permitted outright

Commercial Cannabis Cultivation



Small cultivation only, by CUP.



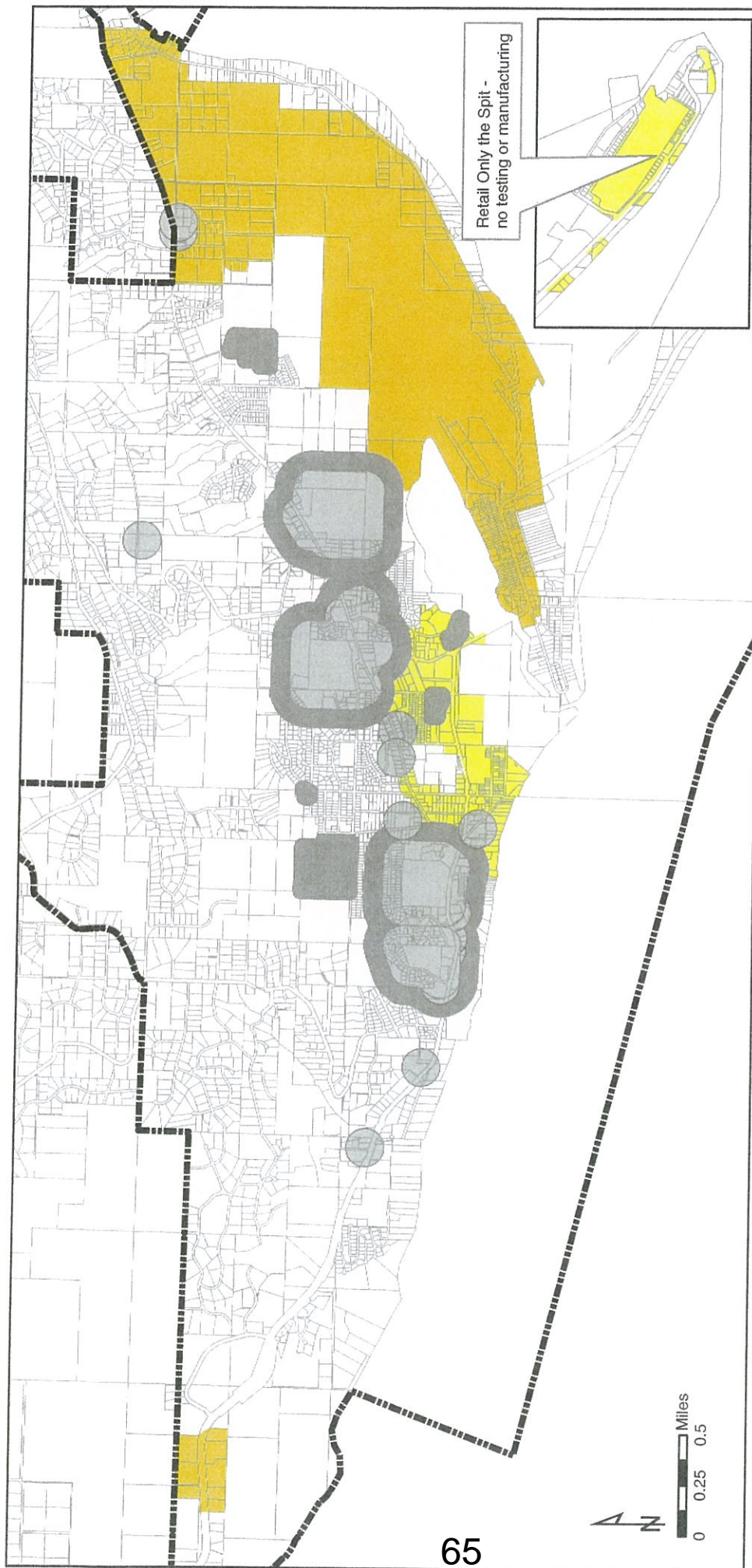
Small cultivation only, CUP



Large and Small, CUP

Proposed state regulations call for buffers to be measured between the public entrance of the cannabis business, and the public entrances of churches and jails. Distances for schools and youth/rec centers are measured from the boundaries to the front door of the cannabis business. All distances are measured by the shortest pedestrian route.

11/4/2015 Cannabis Retail and Manufacturing Map.
 Testing is allowed outright as a land use in the green area,
 and in downtown Homer.



65

Legend

City Limits

State Buffers

Additional City Buffers

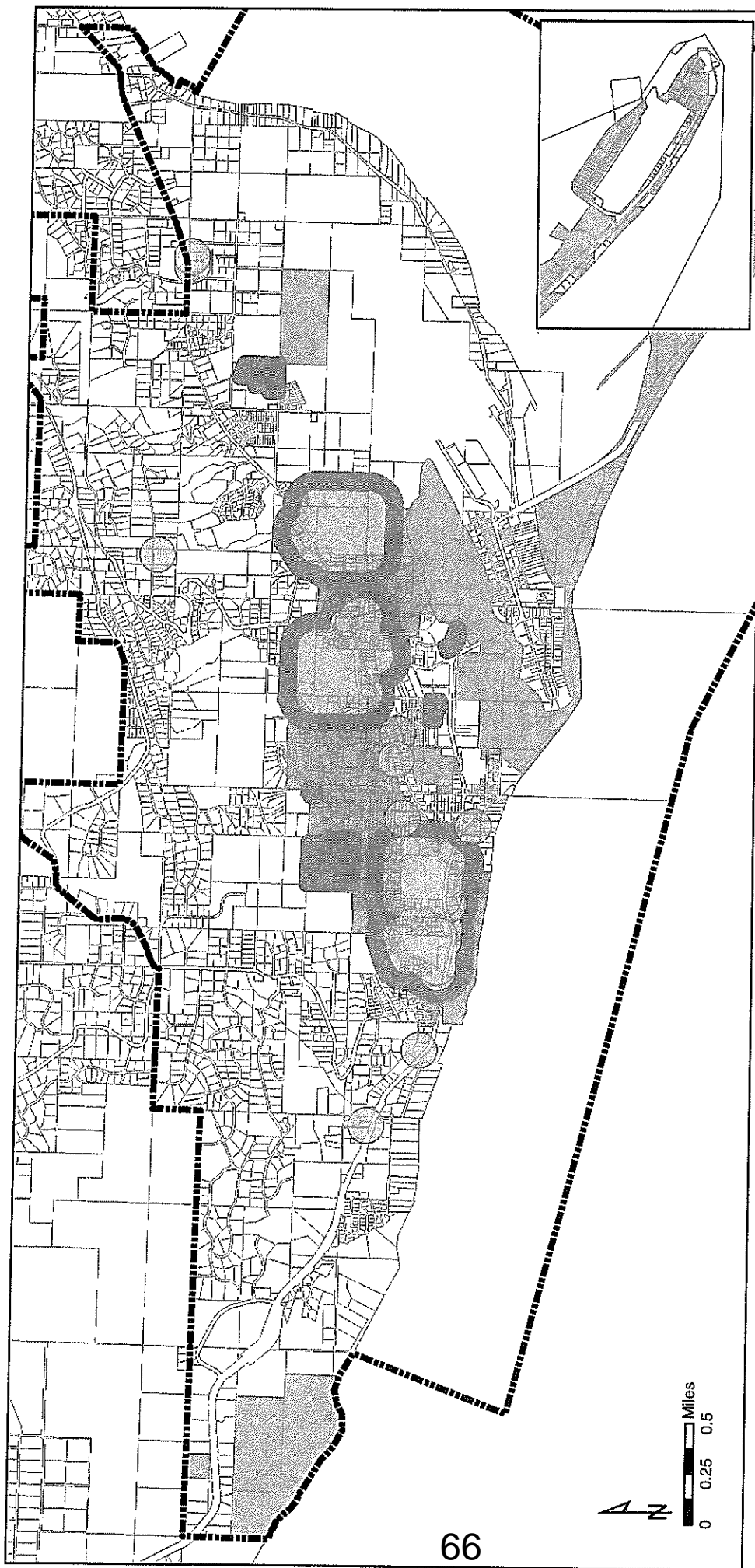
Conditionally Permitted Cannabis Activities

Retail, Mfg.

Retail, (No Mfg).

Proposed state regulations call for buffers to be measured between the public entrance of the cannabis business, and the public entrances of churches and jails. Distances for schools and youth/rec centers are measured from the boundaries to the front door of the cannabis business. All distances are measured by the shortest pedestrian route.

11/4/2015 Commercial Cannabis not allowed



Legend

City Limits

State Buffers

Additional City Buffers

Commercial Cannabis Activities

None Allowed



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

STAFF REPORT PL 15-82

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
FROM: Dotti Harness-Foster, Planning Technician
MEETING: December 2, 2015
SUBJECT: CUP 15-07 a request for a reduced setback at 1242 Ocean Drive.

SYNOPSIS: The applicant is applying for a Conditional Use Permit (CUP) for "More than one building containing a permitted principal use on a lot" and a "Planned Unit Development" to reduce the setback from Ocean Drive.

Applicants: Guy Chow, 1242 Ocean Drive, Homer, AK 99603
Location: 1242 Ocean Drive
Parcel ID: 17917217, BAY VIEW SUB LOT 33 and the west ½ of Lot 32.
Zoning: General Commercial 1 (GC1)
Existing Land Use: Storage of building supplies and kitchen equipment.
Surrounding Land Use: North: Commercial/Warehouse
South: Retail – Engine Repair
East: Office
West: Pre-school

Comprehensive Plan: Ch 4, Obj. B: Promote a pattern of growth characterized by a concentrated mixed use center, and a surrounding ring of moderate-to-high density residential and mixed use areas with lower densities in outlying areas. Ch 4, pg 4-4.

GC-1/Residential – allow residential uses, encourage water dependent uses along Beluga Lake, and encourage small commercial enterprises on Lakeshore Drive. Maintain the neighborhood character of mixed commercial and residential use, retain mature healthy evergreen trees when practical and plant trees in landscaped areas. Ch 4, pg 4-5.

Wetland Status: No designated wetland
Flood Plain Status: Zone D, Flood hazards undetermined.
BCWPD: Not within the Bridge Creek Watershed Protection District
Utilities: City water and sewer are available, but not connected.
Public Notice: Notice was sent to 25 property owners of 38 parcels as shown on the KPB tax assessor rolls.

Background: A 1984 survey shows one building, the old “Quickly Mart” with no deck or accessible ramp. Sometime after 1985 the fuel pumps, the canopy and the covered deck was built. Based on this timeline, the structures do not qualify for a nonconforming structure. By June 13, 2012 the Department of Environmental conservation had “Closed the Underground Storage Tank” ADEC #1964.

Current conditions: The application states that the main building is being used to store equipment, though staff has not been inside. There are three small buildings (on skids), plus two RV’s and several vehicles on site. In the past, the storage buildings and RVs have been used as dwellings. A seasonal outdoor market vendor and the Stageline shuttle service base their operation onsite. The site is served by water or sewer, but the water and sewer are not activated.

Canopy: The City did not permit the construction of the canopy, nor the 460 sf structure under the canopy, in fact, violation notices have been issued. Now the structure under the canopy has doors and windows and is in the 20 ft building setback and extends over the east property line. The applicant intends to raise the height of the canopy by two feet for a total height of 22 ft to provide sufficient height for a two-story structure under the canopy.

The structure under the canopy extends over the common lot line which is a violation of Homer’s Zoning Code. The applicant is working with a surveyor to remove the common lot line. Only after the common lot line is removed and Fire Marshal Certification is obtained can the City issue a Zoning Permit for the completion of the structure under the canopy.

In the GC1 district, a Planned Unit Development (PUD) is a type of CUP which allows for “A better or more appropriate design can be achieved by not applying the provisions of the zoning district;” HCC 21.52.060(d). This staff report will address the standards for a commercial PUD per HCC 21.52.060.

Storm water: The proposed improvements do not increase the amount of impervious surface on the lot. Storm water plans are based on the additional amount of impervious introduced and this proposal does not trigger any requirements.

Parking: There is sufficient parking on-site for the proposed uses: retail, storage and a commercial kitchen.

Buffer/landscaping/fencing: Code requires a minimum of a 3 foot buffer along the side and rear lot lines, HCC 21.50.030(f)(1)(a)(i). Over the years adjacent property owners to the east (Lot 34 Bay View Sub), and to the north (Lot 53 Bay View Sub) have installed wooden fences along portions of the common lot line.

There is a small patch of grass along the driveway that leads to the north side of the lot, but it does not provide a visual buffer. Staff recommends installation of evergreen trees along the east lot line, plus two to three tree plantings in the existing grass patch. This is supported in code and by the Comprehensive Plan: “...when practical and plant trees in landscaped areas.” Ch 4, pg 4-5. See site plan.



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

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

Finding 1: Homer City Code authorizes “Planned unit developments,” HCC 21.24.030(f) and “more than one building containing a permitted principal use on a lot;” HCC 21.24.030(j).

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

Purpose: The purpose of the GC1 is to provide sites for businesses that require direct motor vehicle access that may require larger land area, and to provide business locations in proximity to arterials and transportation centers. It is also intended to minimize congestion and adverse effects on adjacent residential districts and on the appearance of the community.

Analysis: The primary purpose of the GC1 district is business use. The proposed uses: retail, storage and a commercial kitchen are permitted uses in the GC1 district per HCC 21.24.020.

Occupying sheds and RVs are not compatible with the purpose of the GC1 district. The GC1 district limits dwelling to “dwelling units located in buildings primarily developed to business uses.” HCC 21.24.020(c). The Conditions of this CUP address the purpose and the “adverse effects on adjacent residential districts and the appearance of the community.”

Finding 2: The structure under the canopy provides an additional business location with frontage on Ocean Drive

Finding 3: Multiple buildings on the site are compatible with the purpose of the GC1 district.

Finding 4: Locating a building toward the front lot line leaves more room for parking in the rear of the lot.

Condition 1: Dwelling units located in the primary building must meet code requirements for the GC1 district with active sanitation connection and Fire Marshal approval.

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.

Analysis: The applicant intends to open a convenience store, gift store and to install a commercial kitchen; all are allowed uses in the GC1 district.

The occupancy of sheds and RVs has adjoining property owners questioning the negative impact to their property values. The primary purpose of the GC1 district is business use and limits “Dwelling units located in buildings primarily developed to business uses.” See Conditions.

Finding 5: More than one building on the property plus a structure under the canopy does not negatively affect adjoining property values any more than other permitted or conditional permitted uses such as welding, mechanical, auto and boat repair and sales.

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

Analysis: The proposed uses: convenience store, commercial kitchen and storage are compatible with existing uses such as auto repair, garden supplies, car washes, car rental, and boat and marine equipment sales.

Finding 6: The proposed uses as convenience store, commercial kitchen and storage are compatible with the existing uses along Ocean Drive.

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

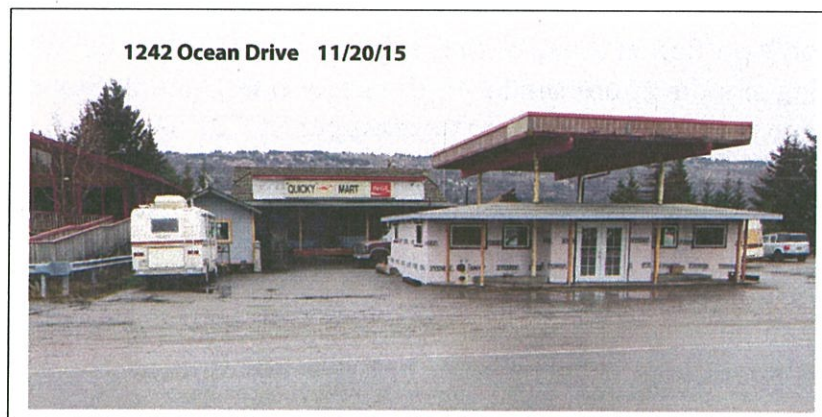
Finding 7: Public services and facilities are adequate to serve the proposed use. A paved road along with city water and sewer service the site, but neither water nor sewer is activated.

Condition 2: Activate the water and sewer connection to the main building by Dec. 31, 2015 per HCC 14.040.020 Connection Required.

f. Considering harmony in scale, bulk, coverage and density, generation of traffic, the nature and intensity of the proposed use, and other relevant effects, the proposal will not cause undue harmful effect upon desirable neighborhood character.

Analysis: Two-story buildings are in harmony in scale, bulk, coverage and density in the GC1 district. Traffic will be that of retail with a commercial kitchen.

Finding 8: The scale, bulk and density of this project is in harmony with the GC1 district.



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

Analysis: The site has had a variety of uses and tends to attract inhabitants who live onsite in sheds and RVs. Water and sewer service has not been activated for years, so health and sanitation conditions need to be improved. HCC 14.04.020(b) requires that dwellings and commercial building be connected to public sewer. See Conditions.

Finding 9: If water and sewer were activated, the proposal would not be unduly detrimental to the health, safety or welfare of the surrounding area and 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.

Analysis: The CUP/PUD process and permitting requirements provide a review of the applicable regulation adherence to these permits gains compliance.

Finding 10: The project requires approve by the State Fire Marshal Office, activation of the water and sewer connection, and compliance with the terms and conditions of this CUP.

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

Analysis: Ch. 4, Objective B: Support development of a variety of well-defined commercial/business districts for a range of commercial purposes.

Finding 11: With compliance of federal, state and local standards, plus the conditions of this CUP; this proposal furthers the goals and objectives of the Comprehensive Plan.

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

Analysis: The only portion of the CDM that applies is the Outdoor lighting section, pg 37-38. The CDM Lighting standards are similar to the Level One Lighting Standards which require outdoor lighting to reduce glare and light trespass per HCC 21.59.030.

Finding 12: Compliance with the Level One Lighting Standards is required per HCC 21.59.030.

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.** NA
- 2. Fences, walls and screening.** Screen dumpster on three sides. See Conditions.
- 3. Surfacing of vehicular ways and parking areas.** The parking area along Ocean Drive is paved.
- 4. Street and road dedications and improvements (or bonds).** NA
- 5. Control of points of vehicular ingress and egress.** NA - existing.
- 6. Special restrictions on signs.** Signage onsite requires review and a permit for compliance.
- 7. Landscaping.**
- 8. Maintenance of the grounds, buildings, or structures.**
- 9. Control of noise, vibration, odors, lighting or other similar nuisances.** NA
- 10. Limitation of time for certain activities.** NA
- 11. A time period within which the proposed use shall be developed.**
 - Activate the water and sewer connection to the main building by Dec. 31, 2015 per HCC 14.040.020 Connection Required.
 - All buildings on skids to meet the setback requirements by March 31, 2016.
 - The visual buffers described in the PUD section of the staff report to be installed by August 31, 2017 per HCC 21.50.030 (f)(1)(a)(i).
- 12. A limit on total duration of use or on the term of the permit, or both.** NA
- 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 3. The dumpster or trash containers to be enclosed with a three-sided, 6 ft high wood, stone or brick enclosure.

b. A planned unit development that includes commercial, noncommercial or industrial uses shall comply with the following requirements and conditions:

- 1. The PUD site shall have direct access to an arterial or collector street.**

Finding 13: The site has direct access to Ocean Drive an arterial.

- 2. Utilities, roads and other essential services must be constructed, installed and available for the immediate use of occupants of the PUD.**

Finding 14: Activate the water and sewer connection to the main building by Dec. 31, 2015 per HCC 14.040.020 Connection Required.

3. The PUD shall be developed with a unified architectural treatment in exterior building materials, colors and design features.

Finding 15: The exterior of both buildings to have a unified architectural appearance that demonstrates continuity amongst the buildings.

Condition 4: The exterior siding and roofing to be completed by Dec. 31, 2016. The exterior of both buildings to have a unified architectural appearance that demonstrates continuity amongst the buildings.

c. If topographical or other barriers do not provide adequate privacy for uses adjacent to the PUD, the Commission may impose conditions to provide adequate privacy, including without limitation one or both of following requirements:

1. Structures located on the perimeter of the planned development must be set back a distance sufficient to protect the privacy of adjacent uses;

Analysis: The small buildings on skids do not appear to meet the side and rear setback requirement of 5 feet. The main building (which includes the covered deck) is setback 1.8 feet for the west lot line, which could hinder Fire Marshal approval. Two code issues pertain to this reduced setback:

- HCC 21.05.020(d) states that “Covered porches, covered decks and covered entrances are included in a measurement involving a building.”
- HCC 21.24.040 (b)(2). Buildings shall be set back five feet from all other lot boundary lines unless adequate firewalls are provided and adequate access to the rear of the building is otherwise provided (e.g., alleyways) as defined by the State Fire Code and enforced by the State Fire Marshal;”

Finding 16: Fire Marshal approval of the main building is required before the Planning Commission may grant an exception to the side setback for the deck.

Condition 5: Fire Marshal approval of the main building is required for granting a reduced side setback of the deck.

Condition 6: All buildings on skids to meet the setback requirements by March 31, 2016.

2. Structures on the perimeter must be permanently screened by a fence, wall or planting or other measures sufficient to protect the privacy of adjacent uses.

Analysis: To protect their privacy, adjacent property owners to the east (Lot 34 Bay View Sub) and to the north (Lot 53 Bay View Sub) have installed a wooden fences along portions of the common lot line.

Homer City Code requires buffers per HCC 21.50.030 (f) (1) (a) (i): "A buffer of three feet minimum width along all lot lines where setbacks permit; except where a single use is contiguous across common lot lines, such as, but not limited to, shared driveways and parking areas. Whenever such contiguous uses cease the required buffers shall be installed."

To protect the privacy along the east lot line, staff recommends evergreen plantings. The buffer to be approximate 70 ft long from the NE corner of the West ½ of Lot 32 traveling southward. The initial planting size of the evergreens to have a minimum trunk size of 1 inch diameter within 6 inches of normal ground level, at a distance of not more than 8 ft apart. This is supported in code and by the Comprehensive Plan which state that the GC1/Residential area to "Maintain the neighborhood character of mixed commercial and residential use, retain mature healthy evergreen trees when practical and plant trees in landscaped areas." Ch 4, pg 4-5.

Finding 17: Maintain neighborhood character and privacy of adjacent users by planting a 70 foot long buffer of evergreen trees from NE corner of the West ½ of Lot 32 traveling southward and include plantings within the lawn area. See site plan.

Condition 7. Install a 70 ft evergreen buffer from NE corner of the West ½ of Lot 32 traveling southward and include planting within the lawn area. The evergreens trees to be installed by August 31, 2016. Initial plantings to have a trunk size of at least one inch, within 6 inches of ground level and to be spaced not more than 8 feet apart.

d. Dimensional Requirements. Setbacks and distances between buildings within the development shall be at least equivalent to that required by the zoning district in which the PUD is located unless the applicant demonstrates that:

1. A better or more appropriate design can be achieved by not applying the provisions of the zoning district; and

Analysis: Locating a structure near the front setback line enhances the pedestrian environment. This allows the parking and service areas to be behind the buildings and away from the street.

Finding 18: Allowing the existing structure under the canopy to have a reduced building setback enhances the pedestrian environment along Ocean Drive. Gaining Fire Marshal approval for deck in the setback meets provision of zoning district with an approved PUD.

2. Adherence to the dimensional requirements of the zoning district is not required in order to protect health, safety and welfare of the occupants of the development and the surrounding area.

Finding 19: The health safety and welfare of the occupants of the development and the surrounding area are not affected by a reduced setback from Ocean Drive.



PUBLIC WORKS COMMENTS: Records indicate there is water and sewer onsite, although the account is not activated.

FIRE CHIEF PAINTER COMMENTS: This project has been in violation since it started. The applicant applied for Fire Marshal review and then stalled and delayed. I am not in favor of permitting after the fact projects. There are no fire department issues with the setback, but the application is not valid as a Fire Marshal certificate is required.

Staff Recommendation: Approve CUP 15-07 with Findings 1-19 and Conditions 1-7.

Note to Commission: If public testimony and concerns arise that are not addressed in this staff report the Commission has several options. The Commission has 45 days from the close of the public hearing to make a decision. The Commission may approve with the given Findings and Conditions, amend the Findings and Conditions, or disapprove the application. Reasons for the decision need to be clarified.

Condition 1: Dwelling units located in the primary building must meet code requirements for the GC1 district with active sanitation connection and Fire Marshal approval.

Condition 2: Activate the water and sewer connection to the main building by Dec. 31, 2015 per HCC 14.040.020 Connection Required.

Condition 3. The dumpster or trash containers to be enclosed with a three-sided, 6 ft high wood, stone or brick enclosure.

Condition 4: The exterior siding and roofing to be completed by Dec. 31, 2016. The exterior of both buildings to have a unified architecturally appearance that demonstrates continuity amongst the buildings.

Condition 5: Fire Marshal approval of the main building is required for granting a reduced side setback of the deck.

Condition 6: All buildings on skids to meet the setback requirements by March 31, 2016.

Condition 7. Install a 70 ft evergreen buffer from NE corner of the West ½ of Lot 32 traveling southward and include planting within the lawn area. The evergreens trees to be installed by August 31, 2016. Initial plantings to have a trunk size of at least one inch, within 6 inches of ground level and to be spaced not more than 8 feet apart.

ATTACHMENTS

1. Site plan
2. CUP Application
3. Public notice
4. **Aerial photo as a laydown on Dec. 2, 2016**



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

Applicant

Name: Guy A Chow Telephone No.: 299-4125 c
Address: 1742 OCEAN DR Email: Guychowalaska@gmail.com

Property Owner (if different than the applicant):

Name: SAME Telephone No.: _____
Address: _____ Email: _____

PROPERTY INFORMATION:

Address: 1742 OCEAN DR Lot Size: 0.24 acres KPB Tax ID # 179 17217
Legal Description of Property: Lot 33 Bay View Sub

For staff use:
Date: 11/10/15 Fee submittal: Amount \$500 13-1306
Received by: dhf Date application accepted as complete _____
Planning Commission Public Hearing Date: _____

Conditional Use Permit Application Requirements:

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

Circle Your Zoning District

	RR	UR	RO	CBD	TCD	GBD	GC1	GC2	MC	MI	EEMU	BCWPD
Level 1 Site Plan	x	x	x			x			x			x
Level 1 ROW Access Plan	x	x							x			
Level 1 Site Development Standards	x	x										
Level 1 Lighting			x	x	x	x	x	x	x	x	x	
Level 2 Site Plan			x	x	x		x	x		x	x	
Level 2 ROW Access Plan			x	x	x		x	x		x	x	
Level 2 Site Development Standards			x*	x	x	x	x	x			x	
Level 3 Site Development Standards									x	x		
Level 3 ROW Access Plan						x						
DAP/SWP questionnaire				x	x	x	x	x			x	

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

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

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

THE PROPERTY IS NOT BEING USED COMMERCIALY
IN THE BUILDING THERE ARE BUILDING SUPPLIES
AND KITCHEN EQUIPMENT. THE STAGELINE IS BASED HERE
THERE IS VEHICLE STORAGE

2. What is the proposed use of the property? How do you intend to develop the property? EXCEED

(Attach additional sheet if needed. Provide as much information as possible).

CONVENIENCE STORE IN THE NEW STRUCTURE = POSSIBLE GIFT STORE
AND RENTAL SPACE AND EVENTUALLY A COMMERCIAL KITCHEN
IN THE EXISTING STRUCTURE. AFTER THE C STORE HAS BEEN DEVELOPED

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

- a. What code citation authorizes each proposed use and structure by conditional use permit?

HCC 21.24.030 (F) PLANNED UNIT DEVELOPMENT

- b. Describe how the proposed uses(s) and structures(s) are compatible with the purpose of the zoning district. RETAIL

- c. How will your proposed project affect adjoining property values? AS THE C-STORE IS PROPERLY DEVELOPED. THE SURROUNDING PROPERTIES VALUES WILL INCREASE

- d. How is your proposal compatible with existing uses of the surrounding land? IT IS VERY COMPATIBLE WITH SURROUNDING PROPERTIES

- e. Are/will public services adequate to serve the proposed uses and structures?

yes

- f. How will the development affect the harmony in scale, bulk, coverage and density upon the desirable neighborhood character, and will the generation of traffic and the capacity of surrounding streets and roads be negatively affected?

THE DEVELOPMENT OF THIS PROJECT WILL HARMONIZE THE NEIGHBORHOOD
CURRENTLY THERE IS A BIG EMPTY HOLE IN THE MIDDLE OF OCEAN DRIVE
THIS PROJECT IS INFIELD DEVELOPMENT

- g. Will your proposal be detrimental to the health, safety or welfare of the surrounding area or the city as a whole?

No

- h. How does your project relate to the goals of the Comprehensive Plan?
The 2006 Town Center Plan and the 2008 Comprehensive Plan are online at:
<http://www.ci.homer.ak.us/documents/planning>

N/A

- i. The Planning Commission may require you to make some special improvements. Are you planning on doing any of the following, or do you have suggestions on special improvements you would be willing to make? (**circle each answer**)

1. ☒ Y ☐ N Special yards and spaces.
2. ☒ Y ☐ N Fences, walls and screening.
3. ☒ Y ☐ N Surfacing of parking areas.
4. ☒ Y ☐ N Street and road dedications and improvements (or bonds).
5. ☒ Y ☐ N Control of points of vehicular ingress & egress.
6. ☒ Y ☐ N Special provisions on signs.
7. ☒ Y ☐ N Landscaping.
8. ☒ Y ☐ N Maintenance of the grounds, buildings, or structures.
9. ☒ Y ☐ N Control of noise, vibration, odors, lighting, heat, glare, water and solid waste pollution, dangerous materials, material and equipment storage, or other similar nuisances.
10. ☒ Y ☐ N Time for certain activities.
11. ☒ Y ☐ N A time period within which the proposed use shall be developed.
12. ☒ Y ☐ N A limit on total duration of use.
13. ☒ Y ☐ N Special dimensional requirements such as lot area, setbacks, building height.
14. ☒ Y ☐ N Other conditions deemed necessary to protect the interest of the community.

PARKING

1. How many parking spaces are required for your development? 9

If more than 24 spaces are required see HCC 21.50.030(f)(1)(b). no

2. How many spaces are shown on your parking plan? 11

3. Are you requesting any reductions? no

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

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

CIRCLE ONE: Owner of record Lessee Contract purchaser

Applicant signature: Guy A. Chew Date: 11-10-15

Property Owner's signature: _____ Date: _____

PUBLIC HEARING NOTICE

Public notice is hereby given that the City of Homer will hold a public hearing by the Homer Advisory Planning Commission on Wednesday, December 2, 2015 at 6:30 p.m. at Homer City Hall, 491 East Pioneer Avenue, Homer, Alaska on the following matters:

A request for a Conditional Use Permit (CUP) 2015-07 located at 1242 Ocean Drive, T 6S R 13W SEC 21 Seward Meridian HM 0000839 BAY VIEW SUB LOT 33 and the west half of Lot 32 for:

- 1. A Planned Unit Development to reduce the building setback along Ocean Drive, per HCC 21.24.030(f).**
- 2. "More than one building containing a permitted principal use on a lot." Per HCC 21.24.030(j).**

Anyone wishing to present testimony concerning these matters may do so at the meeting or by submitting a written statement to the Homer Advisory Planning Commission, 491 East Pioneer Avenue, Homer, Alaska 99603, by 4:00 p.m. on the day of the meeting.

The complete proposal is available for review at the City of Homer Planning and Zoning Office located at Homer City Hall. For additional information, please contact the Planning and Zoning Office, 235-3106.

NOTICE TO BE SENT TO PROPERTY OWNERS WITHIN 300 FEET OF PROPERTY.

Vicinity Map

Beluga Lake

1242 Ocean Drive (former Qwikie Mart)
Proposal to expand the building along Ocean Drive,
by the old gas station canopy.

LAKE SHORE DR.

OCEAN DR.

EAST

DOUGLAS PL.

BAY



City of Homer
Planning and Zoning Department

November 12, 2015

Request for Conditional Use Permit 15-07

Marked Lots are w/in 300 feet
and property owners notified.

0 150 300 Feet



Disclaimer:
It is expressly understood the City of
Homer, its council, board,
departments, employees and agents are
not responsible for any errors or omissions
contained herein, or deductions, interpretations
or conclusions drawn therefrom.



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

Staff Report 15-81

TO: Homer Advisory Planning Commission
FROM: Rick Abboud, City Planner
DATE: December 2, 2015
SUBJECT: Tsunami View No.2

Requested Action: Preliminary Plat approval to divide one larger lot into three smaller lots

Note to land owner: This plat may be part of a Special Assessment District. HCC 17.04.100
Subdivision after levy of assessments may apply.

General Information:

Applicants:	Gary and Stacey Nelson 152 Dehel Ave. Homer, AK 99603
Location:	North and West of Bayview Park (where Main St. turns into Mountain View Dr.)
Parcel ID:	17504016
Size of Existing Lot(s):	9.5 Acres
Size of Proposed Lots(s):	3.8, .864, and 4.611
Zoning Designation:	Rural Residential District
Existing Land Use:	Residential
Surrounding Land Use:	North: vacant South: residential East: residential West: vacant
Comprehensive Plan:	Promote a pattern of growth characterized by a concentrated mixed use center, and a surrounding ring of moderate-to-high density residential and mixed use areas with lower densities in outlying areas.
Wetland Status:	The 2005 wetland mapping shows no wetland areas.
Flood Plain Status:	Zone D, flood hazards undetermined.
BCWPD:	Not within the Bridge Creek Watershed Protection District.
Utilities:	City water and sewer are available

Public Notice:	Notice was sent to 75 property owners of 79 parcels as shown on the KPB tax assessor rolls.
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Analysis: This subdivision is within the Rural Residential District. This plat proposes to create three smaller lots from one large lot.

Note to land owner: This plat may be part of a Special Assessment District. HCC 17.04.100 Levy of assessments after subdivision may apply.

Homer City Code 22.10.051 Easements and rights-of-way

- A. The subdivider shall dedicate in each lot of a new subdivision a 15-foot-wide utility easement immediately adjacent to the entire length of the boundary between the lot and each existing or proposed street right-of-way.

Staff Response: Condition 1. The applicant shall depict a 15 ft. utility easement adjacent to the rights-of-way.

- B. The subdivider shall dedicate in each lot of a new subdivision any water and/or sewer easements that are needed for future water and sewer mains shown on the official Water/Sewer Master Plan approved by the Council.

Staff Response: Public Works is requesting easements to access water and sewer as described in comments.

- C. The subdivider shall dedicate easements or rights-of-way for sidewalks, bicycle paths or other non-motorized transportation facilities in areas identified as public access corridors in the Homer Non-Motorized Transportation and Trail Plan, other plans adopted by the City Council, or as required by the Kenai Peninsula Borough Code.

Staff Response: None noted. The plat meets these requirements.

Preliminary Approval, per KPB code 20.25.070 Form and contents required. The commission will consider a plat for preliminary approval if it contains the following information at the time it is presented and is drawn to a scale of sufficient size to be clearly legible.

- A. Within the Title Block:
1. Names of the subdivision which shall not be the same as an existing city, town, tract or subdivision of land in the borough, of which a plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion;
 2. Legal description, location, date, and total area in acres of the proposed subdivision; and
 3. Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor;

Staff Response: The plat meets these requirements.

- B. North point;

Staff Response: The plat meets these requirements.

- C. The location, width and name of existing or platted streets and public ways, railroad rights-of-way and other important features such as section lines or political subdivisions or municipal corporation boundaries abutting the subdivision;

Staff Response: The plat meets these requirements.

- D. A vicinity map, drawn to scale showing location of proposed subdivision, north arrow if different from plat orientation, township and range, section lines, roads, political boundaries and prominent natural and manmade features, such as shorelines or streams;

Staff Response: The vicinity map would be improved by displaying political boundaries.

- E. All parcels of land including those intended for private ownership and those to be dedicated for public use or reserved in the deeds for the use of all property owners in the proposed subdivision, together with the purposes, conditions or limitation of reservations that could affect the subdivision;

Staff Response: The plat meets these requirements.

- F. The names and widths of public streets and alleys and easements, existing and proposed, within the subdivision; [Additional City of Homer HAPC policy: Drainage easements are normally thirty feet in width centered on the drainage. Final width of the easement will depend on the ability to access the drainage with heavy equipment. An alphabetical list of street names is available from City Hall.]

Staff Response: City of Homer is requesting easement described by Public Works comments.

- G. Status of adjacent lands, including names of subdivisions, lot lines, lock numbers, lot numbers, rights-of-way; or an indication that the adjacent land is not subdivided;

Staff Response: The plat meets these requirements.

- H. Approximate location of areas subject to inundation, flooding or storm water overflow, the line of ordinary high water, wetlands when adjacent to lakes or non-tidal streams, and the appropriate study which identifies a floodplain, if applicable;

Staff Response: The plat meets these requirements.

- I. Approximate locations of areas subject to tidal inundation and the mean high water line;

Staff Response: None. The plat meets these requirements.

- J. Block and lot numbering per KPB 20.60.140, approximate dimensions and total numbers of proposed lots;

Staff Response: The plat meets these requirements.

- K. Within the limits of incorporated cities, the approximate location of known existing municipal wastewater and water mains, and other utilities within the subdivision and immediately abutting thereto or a statement from the city indicating which services are currently in place and available to each lot in the subdivision;

Staff Response: The plat meets these requirements.

- L. Contours at suitable intervals when any roads are to be dedicated unless the planning director or commission finds evidence that road grades will not exceed 6 percent on arterial streets, and 10 percent on other streets;

Staff Response: Public access to dedication is not anticipated, see Public Works comments below.

- M. Approximate locations of slopes over 20 percent in grade and if contours are shown, the areas of the contours that exceed 20 percent grade shall be clearly labeled as such;

Staff Response: The plat meets these requirements.

- N. Apparent encroachments, with statement indicating how the encroachments will be resolved prior to final plat approval; and

Staff Response: The plat meets these requirements.

- O. If the subdivision will be finalized in phases, all dedications for through streets as required by KPB 20.30.030 must be included in the first phase.

Staff Response: N/A.

Public Works Comments:

PW Comments for the above referenced plat:

Public Works has no objection to vacating the existing water line easement running diagonal across proposed Lots 1 and 2 (per Bk. 37, Pg. 266)

Dedicate a 15' utility easement fronting all new and existing right-of-ways.

The surveyor is asking for an exception to road construction in dedicated right-of-ways.

Public Works has no objection to granting an exception to road construction (per Homer City Code 22.10.050 subdivision improvement requirements) within new ROW dedications, based on these findings:

The Hohe Street road improvements cannot be constructed to meet COH road design criteria (slope on Hohe Street, North of Bayview Ave is 18% grade. Per Homer City Code 11.04.058 local residential roads cannot exceed 12% grade).

The Main Street ROW dedication is for the benefit of the existing waterline and no future public access is anticipated.

Public Works requests a public access easement across Lot 1 to encompass the existing driveway (access) to the city's water tank (102 Dehel Ave). A triangular shaped easement with 50 feet of frontage on the City water tank property and 30 foot of frontage on the newly dedicated portion of Main Street will be sufficient.

PW would like to know of access plans for the three lots and see documentation of a Shared Driveway Agreement.

SEWER

Homer City Code 13.24.040(f) and 13.28.030(f) require that no sewer or water service be provided to a lot that does not have a mainline directly adjacent to it, except with the permission of the PW Director where no other main line will be constructed to serve the lots.

Lots 2 and 3 are considered to have sewer main line frontage off the end of the cul-de-sac on Hohe street. Currently, a single sewer service stub connected to the sewer main on Hohe St. provides service to the existing structures on proposed Lots 1 and 3.

It would seem to be unreasonable, based on the above referenced code, to extend a main line on Dehel Ave. for the service of Lot 1, when all other surrounding properties have a suitable connection and the main would only benefit the proposed Lot 1.

PW will grant an exception for Lot 1 sewer main frontage and allow a sewer service line across lot 2, to provide sewer service for Lot 1. However, each Lot (1, 2 & 3) will need to have a separate connection to the main, and either a panhandle (of Lot 1) or sewer easement (across Lot 2) will need to be in place to allow the owner of Lot 1 to access and maintain the sewer service line.

WATER

Homer City Code 13.24.040(f) and 13.28.030(f) require that no sewer or water service be provided to a lot that does not have a mainline directly adjacent to it, except with the permission of the PW Director where no other main line will be constructed to serve the lots.

Lot 1 has water main frontage, Lots 2 and 3 do not. An existing 2" HDPE water service line currently serves all three Lots. Lots 2 and 3 along with Lot 2 of Tsunami View Sub would benefit from a water main line extension from Bayview Ave up to the end of the dedicated Cul-de-sac on Hohe St.

Extend a ~~3"~~ 4" 2" water main from the intersection of Bayview Avenue and Hohe St. to provide service for Lots 2 and 3. Lots 2 and 3 may need a lift station to provide enough pressure. Lot 3 may continue to receive water service from the existing 2" water service crossing Lot 1, conditioned on the creation of:

- 1) An utility easement, shown on the plat, for the purpose of access along the driveway from Dehel Avenue across Lots 1 and 3, for the purpose of accessing the existing water shut off valves to Lots 1 and 3.
- 2) A plat note be added or a document be recorded that states that the ownership and maintenance of the above referenced existing water shut off valves serving Lots 1 and 3 are the responsibility of the owners of Lot 1 and 3, respectively.
- 3) The existing water service valving be modified to allow these existing valves to shut off water to Lots 1 and 3 independently

Reference the agreement for the stairwell leading to the outflow building on the property.

An "installation Agreement" will be required. The agreement will cover water and sewer improvements/modifications described above.

Fire Department Comments: I am very concerned about Fire Department access. I'm not sure we could get to this property, depending on the slope and driveway grade.

Staff Recommendation:

Planning Commission recommend approval of the preliminary plat with the following comments:

1. Dedicate a 15' utility easement fronting all new and existing right-of-ways.
2. Dedicate a public access easement across Lot 1 to encompass the existing driveway to the city's water tank; a triangular shaped easement with 50 feet of frontage on the land locked property and 30 foot of frontage on the newly dedicated portion of Main Street.
3. Produce access plan and driveway agreement among the three proposed lots.
4. Provide Public Works with sewer easements for service if an exception to code is desired.
5. An "installation agreement" regarding water and sewer service is required.
6. A utility easement along the driveway from Dehel Avenue across lots 1 and 2, for the purpose of accessing existing water shut off valves to Lots 1 and 2.
7. A plat note that states ownership and maintenance of water shut off valves serving Lots 1 and 3 are the responsibility of the respective lot owners.

Attachments:

1. Preliminary Plat
2. Surveyor's Letter
3. Public Notice
4. **Aerial photo will be a laydown at the Dec. 2, 2015 meeting**

ABILITY SURVEYS

SURVEYING HOMER SINCE 1975

LAND SURVEYING - CONSTRUCTION SURVEYING - DESIGN SURVEYING
152 DEHEL AVE., HOMER, AK. 99603 PH. 907-235-8440 FAX. 235-8440

15/04/2015

City of Homer Planning Dept.
491 E. Pioneer Ave.
Homer, AK 99603

Re: Preliminary Plat submittal of **TSUNAMI VIEW NO. 2 (SUBDIVISION)**.

Enclosed herewith are 1 reduced to 11 X 17 copy of the preliminary plat and 1 full sized 24"X 36" copy, and a check # **3431** in the amount of \$300 for the City of Homer filing fee.

The proposed subdivision is located between the Hospital and the large City Water Tank (easterly of Hospital).

The existing Parcel is serviced by city water and sewer.

I believe the area is zoned as "Rural Residential".

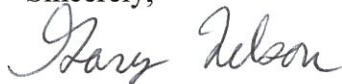
If possible I would like the City of Homer to extinguish the waterline easement per Book 37, page 286 if the city is not using it (and I don't believe they are), or at least for any portions not being used.

I do ask for exemption to road construction within new right-of-way dedications (HCC 22.10.050, subdivision improvement requirements), because adjacent roadways are not constructed to city standards, and City street lights are unwanted and unnecessary city expense for the location. Also for the dead-end nature of the dedications and limited lots to service.

I am not aware of other necessary code exemptions at this time but reserve a right to ask for it if one is found to be necessary.

Thank you for your assistance and consideration in this endeavor. Please don't hesitate to call for any reason.

Sincerely,



Gary Nelson, PLS

RECEIVED

NOV - 4 2015

**CITY OF HOMER
PLANNING/ZONING**

NOTICE OF SUBDIVISION

Public notice is hereby given that a preliminary plat has been received proposing to subdivide or replat property. You are being sent this notice because you are an affected property owner within 500 feet of a proposed subdivision and are invited to comment.

Proposed subdivision under consideration is described as follows:

Tsunami View No. 2

The location of the proposed subdivision affecting you is provided on the attached map. A preliminary plat showing the proposed subdivision may be viewed at the City of Homer Planning and Zoning Office. Subdivision reviews are conducted in accordance with the City of Homer Subdivision Ordinance and the Kenai Peninsula Borough Subdivision Ordinance. A copy of the Ordinance is available from the Planning and Zoning Office. **Comments should be guided by the requirements of those Ordinances.**

A public meeting will be held by the Homer Advisory Planning Commission on Wednesday, December 02, 2015 at 6:30 p.m. at Homer City Hall, Cowles Council Chambers, 491 East Pioneer Avenue, Homer, Alaska.

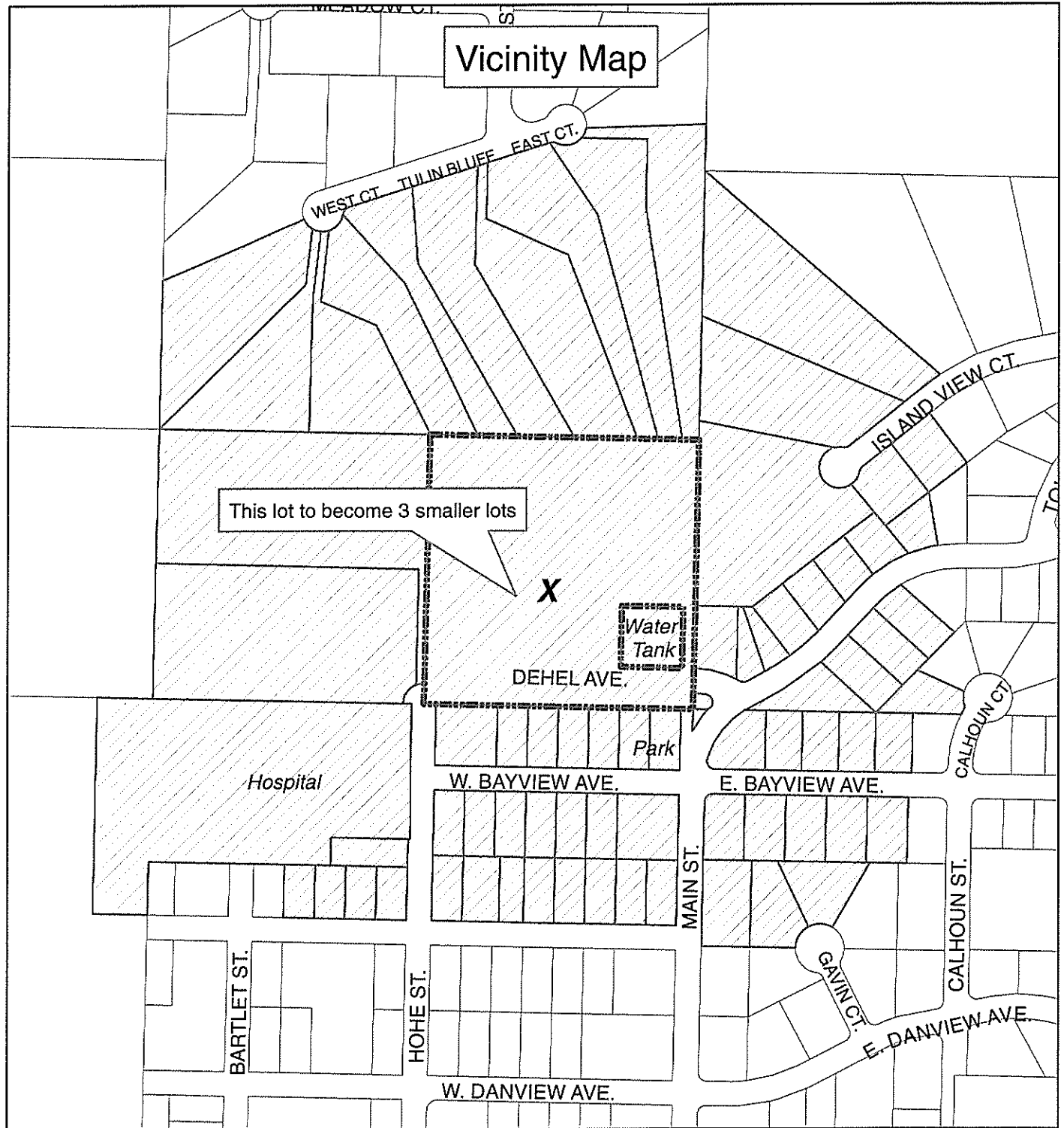
Anyone wishing to present testimony concerning these matters may do so at the meeting or by submitting a written statement to the Homer Advisory Planning Commission, 491 East Pioneer Avenue, Homer, Alaska 99603, by 4:00 p.m. on the day of the meeting.

The complete proposal is available for review at the City of Homer Planning and Zoning Office located at Homer City Hall. For additional information, please contact Rick Abboud in the Planning and Zoning Office, 235-3106.

NOTICE TO BE SENT TO PROPERTY OWNERS WITHIN 500 FEET OF PROPERTY.

.....

VICINITY MAP ON REVERSE



City of Homer
Planning and Zoning Department

November 9, 2015

Tsunami View No. 2 Preliminary Plat

Lots w/in 500 feet are marked
and property owners notified.

0 250 500
Feet



Disclaimer:
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RECEIVED

HCV - 4 2015

CITY OF HOMER
PLANNING/ZONING
CERTIFICATE OF OWNERSHIP

We hereby certify that we are the owners of the property described herein and that we hereby adopt this plan of subdivision, and by our adoption, we warrant that the same is a legal subdivision and that the same is in accordance with all applicable laws and ordinances of the City of Homer, Alaska.

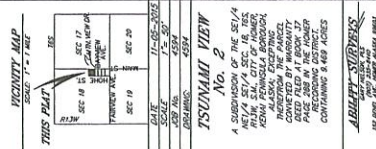
NOTARY'S ACKNOWLEDGEMENT
For City of Homer
Notary Public for California
Homer, AK 99603

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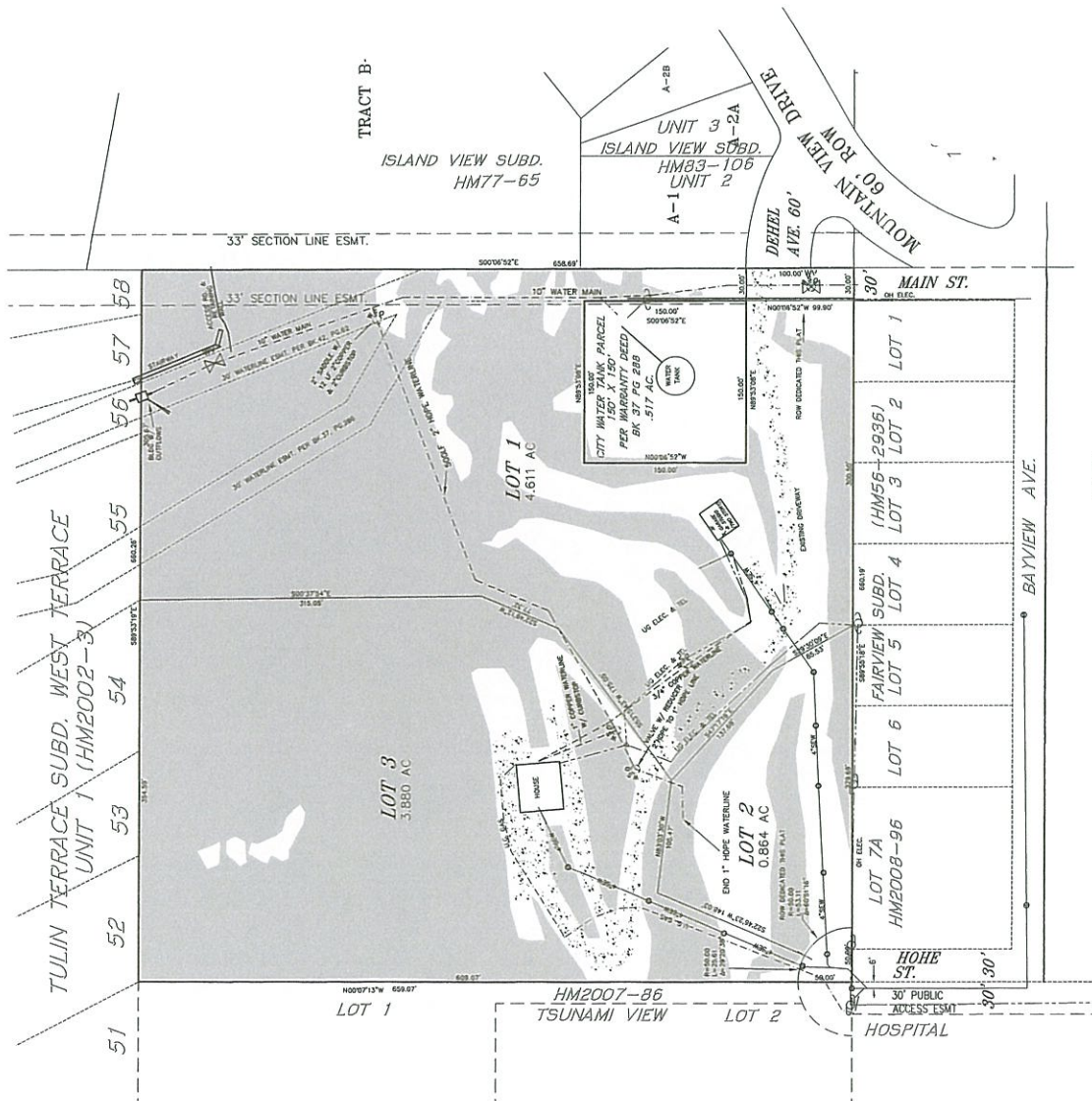
NOTARY'S ACKNOWLEDGEMENT
For City of Homer
Notary Public for California
Homer, AK 99603

LEGEND
○ CLEAN OUT FOR SEWER LINE
○ WATER SHUT OFF VALVE
○ POWER POLE



PLAT APPROVAL
This plat was approved by the Homer Planning Board on the meeting of _____
at _____
HOMER, ALASKA
BY _____
Authorizing Official

APR FILE No. 2015-



- NOTES**
1. THE SUBDIVISION SHOWN HEREON SHALL BE CONSIDERED AS PLACED WITHIN AN EXISTING MAP WHICH WOULD INTERFERE WITH THE ABILITY OF A UNIT TO USE THE EASEMENT.
 2. DEVELOPMENT ON THESE LOTS IS SUBJECT TO HOMER CITY CODE.
 3. GREY SHADING INDICATES SLOPES 20 PERCENT AND STEEPER.



City of Homer

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Planning

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Homer, Alaska 99603

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(p) 907-235-3106

(f) 907-235-3118

Staff Report PL 15-83

TO: Homer Advisory Planning Commission
FROM: Rick Abboud, City Planner
DATE: December 2, 2015
SUBJECT: Tower Considerations

Introduction

As our ordinance has evolved, I found myself more concerned with the city's ability to ensure the ordinance goals of safety and minimizing visual intrusiveness. In order to have a meaningful ordinance, we will need to verify the technical claims being made in the application and consider the requirement of inspections.

Analysis

An ordinance that ensures safety and requires towers that are the least visual intrusive requires the review of industry experts. If we take applications at face value and do not verify the claims, we may be doing the city a great disservice when it comes to regulating an industry that has only shown the propensity to create more and more foot prints as technology evolves.

I have included an update of the current ordinance with a few changes along with an industry model ordinance. The model ordinance is very precise and needs industry experts to review applications. If this ordinance is adopted, I will propose that a deposit be made by the applicant in order to fund the expert review. This way it will not cost the city and will limit the amount of time that the recently downsized planning staff will need to spend processing the application. Also included are informational items we have received from the consultant including the ordinance goals, examples of tower failure, and manipulated data.

My first read of the ordinance accounted for an hour of my life. I do have questions for the contractor and the model ordinance will certainly need to be tailored to meet the needs of Homer. This is the standard for hundreds of communities. It is quite a step for Homer, which does not even have a building code or inspector. While we learn more, I believe it would be best to at least scan the model ordinance and try to identify things you really like, really dislike, or have questions about. There are many things that have come up in our commission conversations that are addressed in the model ordinance. There are also many things that deal with the type of standards the city has yet to propose.

Staff Recommendation

Review model ordinance with an eye for things you like, dislike, or question and bring your thoughts to the table. I plan to go into further detail at subsequent meetings.

Attachments

1. Tower regulations Draft 5 markup 11.24.15
2. Model Ordinance
3. Ordinance Goals
4. Tower Failures
5. Manipulated Propagation Map

1 CITY OF HOMER
2 ORDINANCE 15-xx

3
4 Planning Commission

5
6 AN ORDINANCE OF THE HOMER CITY COUNCIL AMENDING
7 HOMER CITY CODE 21.03.040, DEFINITIONS USED IN ZONING
8 CODE, HOMER CITY CODE 21.05.030, MEASURING HEIGHTS,
9 AND HOMER CITY CODE 21.70.010, ZONING PERMIT
10 REQUIRED; REPEALING HOMER CITY CODE CHAPTER 21.58,
11 SMALL WIND ENERGY SYSTEMS; AND ENACTING HOMER
12 CITY CODE CHAPTER 21.58, TOWERS AND RELATED
13 STRUCTURES.

14
15 THE CITY OF HOMER ORDAINS:

16
17 Section 1. Homer City Code Chapter 21.03.040, Definitions used in zoning code, is
18 amended by adding the following definitions:

19
20 "Collocation" means the placement or installation of wireless communications
21 equipment on an existing wireless communications support structure or in an existing
22 equipment compound.

23
24 "Equipment compound" means the area occupied by a wireless communications
25 support structure and within which wireless communications equipment is located.

26
27 "Tower, amateur radio" means a fixed vertical structure used exclusively to support an
28 antenna used by an amateur radio operator licensed by the Federal Communications
29 Commission, plus its accompanying base plates, anchors, guy cables and hardware.

30
31 "Tower, communications" means a fixed vertical structure built for the primary purpose
32 of supporting wireless communications equipment, plus its accompanying base plates,
33 anchors, guy cables and hardware.

34
35 "Wireless communications equipment" means the set of equipment and network
36 components used in the provision of wireless communications services, including without
37 limitation antennas, transmitters, receivers, base stations, equipment shelters, cabinets,
38 emergency generators, power supply cables, and coaxial and fiber optic cables, but excluding
39 any wireless communications support structure.

40
41 "Wireless communications services" means transmitting and receiving information by
42 electromagnetic radiation, by an operator (other than an amateur radio operator) licensed by
43 the Federal Communications Commission.

44
[**Bold and underlined added.** Deleted language stricken through.]

“Wireless communications support structure” means a structure that is designed to support, or is capable of supporting, wireless communications equipment, including a communications tower, utility pole, or building.

Section 2. Subsection (b) of HCC 21.05.030 is amended to read as follows:

b. When measuring height of a building, the following are excluded from the measurement:

1. Steeples ~~steeple~~s, spires, belfries, cupolas and domes if not used for human occupancy, chimneys, ventilators, weather vanes, skylights, water tanks, bulkheads, monuments, flagpoles, wind energy systems, television and radio antennas, other similar features, and necessary mechanical appurtenances usually carried above roof level.

2. Wireless communications equipment that does not extend more than 10 feet above the height of the building.

Section 3. Subsection (d) of Homer City Code 21.05.030 is amended to read as follows:

d. When determining the height of a nonbuilding structure, such as a sign, ~~or fence,~~ amateur radio tower, communications tower or wireless communications support structure, the height shall be calculated as the distance from the base of the structure at normal grade to the top of the highest part of the structure, excluding lightning rods. For this calculation, normal grade shall be construed to be the lower of (1) existing grade prior to construction or (2) the newly established grade after construction, exclusive of any fill, berm, mound, or excavation made for the purpose of locating or supporting the structure. In cases in which the normal grade cannot reasonably be determined, structure height shall be calculated on the assumption that the elevation of the normal grade at the base of the structure is equal to the elevation of the nearest point of the crown of a public street or the grade of the land at the principal entrance to the main building on the lot, whichever is lower.

Section 4. Homer City Code Chapter 21.58, Small Wind Energy Systems, is repealed.

Section 5. Homer City Code Chapter 21.58, Towers and Related Structures, is enacted to read as follows:

CHAPTER 21.58

TOWERS AND RELATED STRUCTURES

Article I. Communications Towers and Wireless Communications Equipment

21.58.010 Purpose.

[**Bold and underlined added.** Deleted language stricken through.]

The purpose of this article is to provide standards and procedures for communications towers and for wireless communications equipment.

21.58.020 Exemption from regulation.

a. Each of the following communications towers is a permitted principal or accessory use or structure in each zoning district and is exempt from the provisions of this article:

1. A communications tower that is placed temporarily to support wireless communications equipment that is provided in response to a state of emergency declared by a federal, state, or local government authority and is removed within 12 months after the termination of the state of emergency.

2. A communications tower that is placed temporarily to support wireless communications equipment that is provided for media coverage of a special event, and that is placed no more than 30 days before the special event and removed no more than 15 days after the end of the special event.

3. A communications tower with a height not exceeding 35 feet.

4. An amateur radio tower, to the extent that it is exempt from regulation under AS 29.35.141.

b. The collocation, removal, replacement or installation of wireless communications equipment is a permitted principal or accessory use or structure in each zoning district and is not subject to approval under this title if it meets all of the following requirements:

1. The collocation, removal or replacement is in an existing wireless communications support structure or existing equipment compound that is in compliance with the requirements of this title in effect at the time of its construction and with the terms and conditions of any previous final approval under this title.

2. The collocation, removal or replacement will not do any of the following:

A. Increase the overall height of the wireless communications support structure by more than 20 feet or 10% of its original height, whichever is greater.

B. Increase the width of the wireless communications support structure by more than the minimum necessary to permit the collocation, removal or replacement.

2,500 square feet.

3. The collocation, removal or replacement complies with the terms and conditions of any previous final approval of the wireless communications support structure or equipment compound under this title.

4. The installation is on an existing building that is in compliance with the requirements of this title and with the terms and conditions of any previous final approval under this title, and the wireless communications equipment does not extend more than 10 feet above the height of the building.

21.58.030 Permission for communications towers.

a. Except as provided in subsection (b) of this section, a communications tower is permitted as a principal or accessory use or structure in each zoning district.

[Bold and underlined added. Deleted language stricken through.]

b. A communications tower that exceeds the following maximum height for the zoning district in which the communications tower is located is permitted only when authorized by conditional use permit issued in accordance with Chapter 21.71.

<u>District</u>	<u>Maximum Height (feet)</u>
CBD	60
TC	60
GBD	60
GC1 (Beluga Lake)	120
RO	85
UR	60
RR	85
CONS	60
GC2	120
EEMU	120
MI	120
MC	120
OSR	60
BCWPD	120

21.58.040 Application requirements. An application for a zoning permit or conditional use permit for a communications tower that is subject to regulation under this article shall include the following information, in addition to information required by other provisions of this title:

a. A level two site plan that shows the location of the communications tower.

b. A written narrative explaining why placing wireless communications equipment at the proposed location is necessary to the applicant's wireless communications services coverage, including confirmation that there is no available site for collocation of the wireless communications equipment within a radius of 1,000 feet from the proposed location in consideration of the proposed technology, why an existing structure may not be used, an evaluation of ~~at least three~~ alternate communications tower locations that the applicant considered, and an explanation why the proposed location is the best alternative.

c. A demonstration that the height of the communications tower is the minimum required for the effective operation of the wireless communications equipment plus the present and future collocations that it supports.

d. A map showing the locations of the applicant's existing communications towers that serve customers in the city and of all current and currently proposed communications towers that the applicant proposes to construct to serve customers in the city.

e. A ~~description~~ a detailed list of major components of the wireless communications equipment that the communications tower will support, and accessory structures such as equipment cabinets and generators.

f. An analysis of the potential visual impacts of the communications tower at distances of 500 feet and 1,500 feet from the proposed location, through the use of photo simulations of the communications tower and the wireless communications equipment that it will support.

[**Bold and underlined added.** Deleted language stricken through.]

The analysis shall include, to the extent practicable, the visual impact along two lines extending from the shore of Kachemak Bay through the communications tower site that are separated by an angle of at least 90 degrees, and show the relationship of the communications tower to structures, trees, topography, and other intervening visual barriers. The analysis will include recommendations to mitigate adverse visual impacts of the communications tower on other properties.

g. A certificate from an engineer licensed in Alaska that the communications tower, and all antennas and other wireless communications equipment located on it, meet industry standards for their construction, **including ANSI 222 G or most recent version** ~~without limitation the ability to withstand anticipated wind and seismic loads.~~

h. Evidence that all wireless communications equipment supported by the communications tower meets applicable Federal Communications Commission requirements.

i. A determination of no hazard to air navigation for the communications tower issued by the Federal Aviation Administration.

h. For a conditional use permit, minutes of each public meeting held under Section 21.58.060(a), and copies of all public comments received under Section 21.58.060(b)(5).

21.58.050 Communications tower standards.

a. The distance from a communications tower to the closest property line of a lot that contains a dwelling unit, dormitory, hotel, motel, bar, restaurant, school, day care facility, church, retail establishment or place of public assembly may not be less than 1.1 times its total height.

b. The height of the communications tower shall not be greater than the minimum height required for the effective operation of the wireless communications equipment and collocations that it will support upon its initial construction, plus 10 feet for each additional unoccupied collocation site on the communications tower.

c. The communications tower and any related equipment compound are painted or coated in a color that blends with the surrounding environment, except to the extent that obstruction marking is required by the Federal Aviation Administration, and the fence or wall that surrounds the equipment compound at the base of the communications tower, combined with any landscaping adjacent to its exterior, shall obscure the equipment compound to view from its exterior.

d. All guy wires, cables and other accessory support structures for a communications tower shall be on the same lot as the tower, but may be located within required setback areas, and shall be properly jacketed to ensure visibility in accordance with applicable safety standards.

e. The equipment compound for a communications tower shall conform to the minimum setback requirements of the zoning district in which it is located.

f. Not less than two off-street parking spaces conforming to the requirements of this title shall be provided on the lot where a communications tower is located for use in the operation and maintenance of the communications tower and the wireless communications equipment that it supports.

[Bold and underlined added. Deleted language stricken through.]

h. The equipment compound at the base of a communications tower shall be surrounded by a fence or wall not less than six feet in height with a secured gate. The lowest part of a climbing apparatus that provides access to equipment on a communications tower shall be at least 12 feet above the ground, and the tower shall have no handholds or footholds below the climbing apparatus.

h. Except for switch type lighting, no artificial lighting shall be mounted on a communications tower, and a communications tower shall not be illuminated with artificial lighting, except when required by the Federal Aviation Administration.

i. Signs. No sign, flag or pennant may be attached to a communications tower except that the following shall be posted in a location that is visible from the ground outside the equipment compound:

1. A sign identifying the party responsible for the operation and maintenance of the communications tower, with a 24-hour emergency contact telephone number.

2. Any antenna structure registration number required by the Federal Communications Commission.

3. Warnings of dangers associated with the communications tower or equipment that is located on the communications tower.

21.58.060 Public notification of communications tower application.

a. The applicant for a conditional use permit for a communications tower shall hold at least one meeting informing the public of the application that conforms to the following requirements.

1. The meeting shall be held at city hall, or at a public facility that is nearer to the location of the proposed communications tower and capable of seating a minimum of 20 people.

2. The meeting shall be held on a day that is not a city holiday at least 15 days before the applicant submits its application to the city.

3. The meeting shall be scheduled to last a minimum of two hours and shall not start before 5:00 p.m. or after 7:00 p.m.

b. The applicant shall notify each record owner of property within 1200 feet of the parcel that is the site of the proposed communications tower by first class mail at least 15 days before the meeting of the following:

1. The legal description, street address and a map of the vicinity, of the parcel that is the site of the proposed communications tower;

2. A description of the proposed communications tower, including its height, design, and lighting, the proposed access to the site and the services proposed to be provided by the tower;

3. The date, time, and location of the meeting;

4. A contact name, telephone number, and address of the applicant; and

5. A form on which to submit written comments, with a comment submittal deadline and instructions.

[Bold and underlined added. Deleted language stricken through.]

257 21.58.070 Action on communications tower application.

258 a. The reviewing authority shall approve a communications tower only if the applicant
259 demonstrates that it meets the following criteria:

260 1. The communications tower conforms to the requirements in Section
261 21.58.050, and the other applicable standards in this title.

262 2. The coverage for the applicant's wireless communications services customers
263 that the communications tower will provide cannot be provided by collocation on an
264 existing wireless communications support structure.

265 3. Of the available alternate sites, the selected site provides necessary coverage
266 for the applicant's wireless communications services customers with the least visual
267 impact on other properties.

268 b. No action may be taken on a communications tower application on the basis of the
269 environmental effects of radio frequency emissions to the extent that the wireless
270 communications equipment that will be located on the tower complies with Federal
271 Communications Commission regulations concerning such emissions.

272 c. The reviewing authority shall act on a communications tower application within a
273 reasonable period of time after the application has been filed with the city taking into account
274 the nature and scope of the application, but within no more than 150 days after the application
275 is filed. The 150-day period excludes (i) any time that begins when the reviewing authority
276 gives written notice to the applicant within 30 days of receipt of the application that the
277 application is incomplete, clearly and specifically delineating all missing documents or
278 information, until the applicant makes a supplemental submission in response to the notice of
279 incompleteness; and (ii) any time that begins when the reviewing authority has given written
280 notice to the applicant within 10 days of receipt of such a supplemental submission that the
281 supplemental submission did not provide the information identified in the original notice
282 delineating missing information until the applicant makes another supplemental submission.

283 d. An action denying a communications tower application shall be in writing and
284 supported by substantial evidence contained in a written record.

285 21.58.080 Communications tower removal requirements.

286 The owner and the lessee of the property that is the site of a communications tower are
287 jointly and severally responsible for its removal:

288 a. If corrective action is not taken within six months after notice that the City Engineer
289 has found the communications tower, or equipment on the communications tower, to be
290 unsafe or not in compliance with applicable law.

291 b. Within 90 days after all wireless communications equipment on a communications
292 tower has not been operational for a period of at least 12 consecutive months.

293
294
295 Article II. Small Wind Energy Systems

296
297 21.58.110 Purpose and application. The purpose of this article is to establish minimum
298 health and safety standards for small wind energy systems. It applies to small wind energy
299 systems in all districts where they are allowed as permitted or conditional uses.

[**Bold and underlined added.** Deleted language stricken through.]

- 300
301 21.58.120 Installation requirements.
302 a. The wind turbine of a small wind energy system may be mounted on a building or a
303 wind energy system tower.
304 b. The surfaces of all small wind energy system components that are visible when the
305 small wind energy system is in operation shall be painted a nonreflective, neutral color.
306 c. A zoning permit application for a small wind energy system shall include the
307 following information:
308 1. A level one site plan that shows the location of the small wind energy system.
309 2. Specifications for the small wind energy system including manufacturer make
310 and model, an illustration or picture of the turbine unit, maximum rated power output,
311 blade diameter, total height, tower color and, if proposed, the location of ladders
312 and/or climbing pegs.
313 3. Tower foundation blueprints or drawings.
314 4. Noise decibel data prepared by the wind turbine manufacturer or qualified
315 engineer indicating noise decibel level at the property line nearest to the location of the
316 small wind energy system.
317 5. Evidence of compliance with, or exemption from, Federal Aviation
318 Administration requirements.
319 6. Evidence that the small wind energy system complies with current
320 Underwriters Laboratories standards for local utility connections.
321 d. Dimensional Requirements.
322 1. A small wind energy system may be installed only on a lot having an area not
323 less than one acre.
324 2. The distance from a small wind energy system to the closest property line
325 may not be less than 1.1 times its total height.
326 3. All guy wires, cables and other accessory support structures for a small wind
327 energy system must be on the same lot as the small wind energy system, but may be
328 located within required setback areas, and shall be properly jacketed to ensure visible
329 safety standards.
330
331 21.58.130 Operation standards.
332 a. Electrical Standards.
333 1. A small wind energy system shall comply with the National Electric Code.
334 2. All electric transmission wires connected to a small wind energy system must
335 be underground, or within the building on which the small wind energy system is
336 mounted.
337 3. A small wind energy system shall not interfere with television, microwave,
338 navigational or radio reception.
339 b. Noise and vibration from a small wind energy system shall not exceed the levels
340 permitted in HCC 21.59.010(b) and (c), except during short-term events such as utility outages
341 and severe wind storms.
342 c. Tower Safety.

[**Bold and underlined added.** Deleted language stricken through.]

1. The lowest part of a climbing apparatus that provides access to a wind turbine shall be at least 12 feet above the ground, and the wind energy system tower or building on which the wind turbine is mounted shall have no handholds or footholds below the climbing apparatus.

2. The lowest point through which a wind turbine blade rotates must be at least 20 feet above the ground.

d. Lighting. Except for switch type lighting, no artificial lighting shall be mounted on a small wind energy system, and a small wind energy system shall not be illuminated with artificial lighting, except when required by the Federal Aviation Administration and approved by conditional use permit.

e. Signs. No sign, flag or pennant may be attached to a small wind energy system except for the following:

1. A sign identifying the manufacturer or installer of the small wind energy system.

2. Signs warning of dangers associated with the small wind energy system.

f. Removal. The owner and the lessee of the property that is the site of a small wind energy system are jointly and severally responsible for its removal:

1. If corrective action is not taken within six months after notice that the City Engineer has found the small wind energy system to be unsafe or not in compliance with applicable law.

2. Within 90 days after the small wind energy system has not been operational for a period of at least 12 consecutive months.

Section 6. Subsection (c) of Homer City Code 21.70.010 is amended to read as follows:

c. The following are exempt from the requirement to obtain a zoning permit, but not from compliance with applicable requirements of the Homer Zoning Code, such as, but not limited to, the development activity plan or stormwater protection plan:

1. Any change to an existing building that does not increase the height, or exterior dimension of any floor, of the building, and any change to an existing structure that does not increase the height, or footprint area, of the structure.

2. Erection or construction of a one-story detached accessory building used as a tool and storage shed, playhouse, or other accessory use, provided the building area does not exceed 200 square feet; and further provided, that there is already a main building on the same lot.

3. Erection or construction of a communications tower with a height not exceeding 35 feet, or an amateur radio tower.

~~4~~3. Fences or walls used as fences, unless otherwise regulated by the Homer City Code.

~~5~~4. Removal of any building or structure.

~~6~~5. Termination of any type of use.

[Bold and underlined added. Deleted language stricken through.]

Section 7. This Ordinance is of a permanent and general character and shall be included in the City Code.

ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this ____ day of _____ 2015.

CITY OF HOMER

MARY E. WYTHE, MAYOR

ATTEST:

JO JOHNSON, MMC, CITY CLERK

AYES:

NOES:

ABSTAIN:

ABSENT:

First Reading:

Public Hearing:

Second Reading:

Effective Date:

Reviewed and approved as to form:

Mary K. Koester, City Manager

Thomas F. Klinkner, City Attorney

Date: _____

Date: _____

[Bold and underlined added. Deleted language stricken through.]

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Wireless Telecommunications Facilities or Complexes

Section 1. Purpose and Legislative Intent

1. The Telecommunications Act of 1996 affirmed the City of Homer's authority concerning the placement, construction and Modification of Wireless Telecommunications Facilities or Complexes. This Ordinance provides for the safe and efficient integration of Wireless Facilities or Complexes Necessary for the provision of advanced wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless services to the public, government agencies and first responders, with the intention of furthering the public safety and general welfare.
2. The City of Homer (City) finds that Wireless Telecommunications Facilities (Facilities) and Complexes may pose significant concerns to the health, safety, public welfare, character and environment of the City and its inhabitants. The City also recognizes that facilitating the development of wireless service technology can be an economic development asset to the City and of significant benefit to the City and its residents. In order to assure that the placement, construction or Modification of a Facility or Complex is consistent with the City's land use policies, the City is adopting a single, comprehensive, Wireless Telecommunications Facility or Complex application and permitting process. The intent of this Section is to minimize the physical impact of Wireless Telecommunications Facilities on the community, protect the character of the community to the extent reasonably possible, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the City.

Section 2. Severability

1. If any word, phrase, sentence, part, section, subsection, or other portion of this Section or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed Application thereof, shall be severable, and the remaining provisions of this Section, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.
2. Any Conditional Use Permit issued pursuant to this Section shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the City.

Section 3. Definitions

For purposes of this Section, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

1. **"Accessory Facility or Structure"** means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities or Complexes, including but not limited to utility or transmission equipment storage sheds or cabinets.
2. **"Amend", "Amendment" and "Amended"** as regards an Application or request to permit mean and shall relate to any change, addition, correction, deletion, replacement or substitution, other than typographical changes of no effect.
3. **"Applicant"** means any Wireless service provider submitting an Application for a Conditional Use Permit for Wireless Telecommunications Facilities.

4. **“Application”** means all Necessary and required documentation that an Applicant submits in order to receive a Conditional Use Permit or an Administrative Approval or a Building Permit for Wireless Telecommunications Facilities.
5. **“Antenna”** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.
6. **“Board” or “Council”** means the City Council of the City of Homer.
7. **“Certificate of Completion” or “COC”** means a required document issued by the City that confirms that all work represented in the application i) was properly permitted; ii) was done in compliance with and fulfilled all conditions of all permits, including any final completion deadline; iii) was fully constructed as approved and permitted; and iv) a final inspection was requested, conducted and the Facility or Complex passed the final inspection.
8. **“Co-location”** means the use of an approved structure to support Antenna for the provision of wireless services.
9. **“Commercial Impracticability” or “Commercially Impracticable”** means the inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone and for a single site, shall not deem a situation to be “commercially impracticable” and shall not render an act or the terms of an agreement “commercially impracticable”.
10. **“Completed Application”** means an Application that contains all necessary and required information and/or data necessary to enable an informed decision to be made with respect to an Application.
11. **“Complex”** means the entire site or Facility, including all structures and equipment located at the site.
12. **“DAS” or “Distributive Access System”** means a technology using antenna combining technology allowing for multiple carriers or Wireless Service Providers to use the same set of antennas, cabling or fiber optics.
13. **“Eligible Facility”** means an existing wireless tower or base station that involves collocation of new transmission equipment or the replacement of transmission equipment that does not constitute a Substantial modification. An Eligible Facility Application shall be acted upon Administratively and shall not require a Conditional Use Permit, but shall require Staff Administrative Approval.
14. **“FAA”** means the Federal Aviation Administration, or its duly designated and authorized successor agency.
15. **“Facility”** means a set of wireless transmitting and/or receiving equipment, including any associated electronics and electronics shelter or cabinet and generator.
16. **“FCC”** means the Federal Communications Commission, or its duly designated and authorized successor agency.
17. **“Height”** means, when referring to a Tower or wireless support structure, the distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an Antenna or lightening protection device.
18. **“In-Kind Replacement”** means replacing a component(s) that is malfunctioning with a properly functioning component of the same weight and dimensions and that does not enable an increase in revenue for the service provider or increase the compensation paid to the owner or manager of the support structure or change the type of service or allow a new service to be provided.

19. **“Maintenance”** means plumbing, electrical, carpentry or mechanical work that may or may not require a building permit, but that does not constitute a Modification to the WTF.
20. **“Modification”** or **“Modify”** means, the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless Facility or Complex with identical components, including but not limited to antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or change-out of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to an existing support structure or Tower as a co-location is a Modification, unless the height, profile or size of the compound is increased, in which case it is not a Modification. Modification also means anything that changes the structural loading on the support structure attached to.
21. **“Necessary”** or **“Necessity”** or **“Need”** means what is technologically required for the equipment to function as designed by the manufacturer and that anything less will result in prohibiting the provision of service as intended and described in the narrative of the Application. Necessary or Need does not mean what may be desired, preferred or the most cost-efficient approach and is not related to an Applicant’s specific chosen design standards. Any situation involving a choice between or among alternatives or options is not a Need or a Necessity.
22. **“NIER”** means Non-Ionizing Electromagnetic Radiation.
23. **“Person”** means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
24. **“Personal Wireless Facility”** See definition for ‘Wireless Telecommunications Facilities’.
25. **“Personal Wireless Services”** or **“PWS”** or **“Personal Telecommunications Service”** or **“PTS”** shall have the same meaning as defined and used in the 1996 Telecommunications Act.
24. **“Repairs and Maintenance”** means the replacement or repair of any components of a wireless Facility or Complex where the replacement is identical to the component being replaced, or for any matters that involve the normal repair and maintenance of a wireless Facility or Complex without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless Facility or Complex that will impose new visible burdens of the Facility or Complex as originally permitted. Any work that changes the services provided to or from the Facility, or the equipment, is not Repairs or Maintenance.
25. **“Conditional Use Permit”** means the official document or permit by which an Applicant is allowed to file for a building permit to construct and use a Facility or Complex as granted or issued by the City.
26. **“Stealth”** or **“Stealth Siting Technique”** means a design or treatment that minimizes adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean building the least visually and physically intrusive facility and Complex that is not technologically or commercially impracticable under the facts and circumstances. Stealth technique includes such techniques as i) DAS or its functional equivalent; or ii) camouflage where the Tower is disguised to make it less visually obtrusive and not recognizable to the average person as a Wireless Facility or Complex.
27. **“State”** means the State of Alaska.
28. **“Structural Capability”** or **“Structural Capacity”** or **“Structural Integrity”** means, notwithstanding anything to the contrary in any other standard, code, regulation or law, up to and not exceeding a literal 100% of the designed loading and stress capability of the support structure.

29. **“Substantial Modification”** means a change or Modification that
- a. increases the existing vertical height of the structure by the greater of (a) more than ten percent (10%) or (b) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet; or
 - b. except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance; or
 - c. increases the square footage of the existing equipment compound by more than 2,500 square feet.
30. **“Telecommunications”** means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
31. **“Telecommunications Site”** See definition for Wireless Telecommunications Facilities.
32. **“Telecommunications Structure”** means a structure used primarily to support equipment used to provide wireless communications.
33. **“Temporary”** means not permanent in relation to all aspects and components of this Section, something intended to, and that does, exist for fewer than ninety (90) days.
34. **“City”** means the City of Homer, Alaska.
35. **“Tower”** means any structure designed primarily to support an antenna(s) and/or other equipment for receiving and/or transmitting a wireless signal and is taller than forty feet (40').
36. **“Wireless Telecommunications Facility or Facilities (WTF or WTFs)”, “Facility”, “Site”, “Complex”, “Telecommunications Site” and “Personal Wireless Facility Site”** all mean a specific location at which a structure that is designed or intended to be used to house, support or accommodate Antennas or other transmitting or receiving equipment is located. This includes without limit, Towers and support structures of all types and kinds, including but not limited to buildings, church steeples, silos, water Towers, signs or other any other structure that is used or is proposed to be used as a support structure for Antennas or the functional equivalent of such. It expressly includes all related facilities and equipment such as cabling, radios and other electronic equipment, equipment shelters and enclosures, cabinets and other structures associated with the Complex used to provide, though not limited to, radio, television, cellular, SMR, paging, 911, Personal Communications Services (PCS), commercial satellite services, microwave services, Internet access service and any commercial wireless telecommunication service whether or not licensed by the FCC.

Section 4. General Policies and Procedures for Applications under this Section

In order to ensure that the location, placement, construction and Modification of a Facility or the components of a Complex do not endanger or jeopardize the City's health, safety, public welfare, environmental features, the nature and character of the community or neighborhood and other aspects of the quality of life specifically listed elsewhere in this Section, the City hereby adopts an overall policy and related procedures with respect to the submittal, review, approval and issuance of permits or Administrative Approval granted authority for Wireless Facilities for the express purpose of achieving the following outcomes:

1. Requiring a Conditional Use Permit for any new Complex, Facility or any Substantial Modification of a Facility or Complex or for a Co-located Facility;

2. Requiring Administrative Approval and a properly issued Building Permit for any co-location or Modification of a Facility or Complex that is not a Substantial Modification or Substantial Co-location.
3. Implementing an Application process and requirements;
4. Establishing procedures for examining an Application and issuing a Conditional Use Permit or Administrative Approval that are fair and consistent;
5. Promoting, and requiring wherever possible, the sharing and/or co-location of support structures among service providers;
6. Requiring, promoting and encouraging, wherever possible, the placement, height and quantity of attachments to a Facility or Complex in such a manner as to minimize the physical and visual impact on the community, including but not limited to the use of stealth siting techniques.
7. Requiring that the Facility and Complex shall be the least visually intrusive among those options available in the City given the facts and circumstances.
8. The City Council is the officially designated agency or body of the City to whom applications for a Conditional Use Permit for a Facility or Complex must be made, and that is authorized to make decisions with respect to granting or not granting or revoking Conditional Use Permits applied for under this Section. The City Council may at its discretion delegate or designate the City Planning Board or other official agencies or officials of the City or outside consultants to accept, review, analyze, evaluate and make recommendations to the Board with respect to the granting or not granting or revoking Conditional Use Permits for Wireless Telecommunications Facilities. However, the Board shall possess the sole right to grant all Conditional Use Permits.
9. The City Council hereby designates the City Manager or the City Manager's designee as the authority for requests for anything other than a Substantial Modification or Conditional Use Permit, i.e. for all Administrative Approvals.
10. There shall be a pre-application meeting for all intended applications prior to the submission of an application. The pre-application meeting may be held either on site, or telephonically as deemed appropriate by the City or its designee. The purpose of the pre-application meeting will be to address i) issues that will help to expedite the review and permitting process; and ii) certain issues or concerns the City or the Applicant may have. Costs of the City's consultant to prepare for and attend the pre-application meeting will be borne by the applicant and paid for out of a fee set forth in the City's Schedule of Fees, which shall have been paid to the City prior to any site visit or pre-application meeting.
11. If there has not been a prior site visit for the requested Facility or Complex within the previous six (6) months a site visit shall be conducted.
12. An Applicant shall submit to the City the number of completed Applications determined to be needed at the pre-application meeting. If Board action is required, applications will not be transmitted to the Board for consideration until the application is deemed Complete.
13. If the proposed site is within one (1) mile of another jurisdiction, written notification of the Application shall be provided to the legislative body of all such adjacent jurisdictions as applicable and/or requested.
14. The owner(s) of the support structure to which antennas or related equipment are to be attached must be an official Applicant of Record, unless the owner is the City, in which case, to prevent a conflict of interest, the City shall not be a party to the Application.
15. All Applicants shall closely follow the instructions for preparing an Application. Not following the instructions without permission to deviate from such shall result in the application being deemed

incomplete and a tolling of the time allowed for action on an Application until a Complete Application is received.

16. The Applicant shall be notified in writing of any deficiencies within forty-five days of the submission of an Application as regards any deficiencies related to the completeness of the Application. Remediation of deficiencies in an Application shall be deemed an amendment of the Application that was received.
17. The City may deny applications not meeting the requirements stated herein or which are otherwise not Complete after proper notice and a reasonable opportunity to make the Application Complete has been afforded. Applications will be deemed abandoned if left incomplete for more than ninety (90) days after the date of notice of incompleteness.
18. No work of any kind on or at a Facility or Complex shall be started until the Application is reviewed and approved and the Conditional Use Permit or Administrative Approval, as applicable, has been issued, and a Building Permit has been issued in accordance with the City's Land Development Ordinance.
19. Any and all representations made by the Applicant or that are made in support of the Application shall be deemed to be on the record, whether written or verbal, and shall be deemed to have been relied upon in good faith by the City. Any verbal representation shall be treated as if it were made in writing.
20. Other than to remediate non-compliant situations related to matters of safety or the conditions of a permit, no permits for work at a Facility or Complex shall be issued where the Facility or Complex is not in full compliance with all applicable local, State and federal laws, rules, regulations and orders. A Facility or Complex not in full compliance with this Section shall be required to be brought into full compliance before any Permit of any kind will be issued.
21. An Application shall be signed on behalf of the Applicant(s) by a person vested with the authority to bind and commit the Applicant attesting to the truthfulness, completeness and accuracy of the information presented
22. The Applicant must provide documentation to substantiate that it has the right to proceed as proposed on the site or at the Complex in the form of an executed copy of the lease with the landowner or landlord or a signed letter of agency granting authorization. If the applicant owns the Site or Complex, a copy of the ownership record is required.
23. Applications shall include written commitment statements to the effect that:
 - a. the applicant's Facility or Complex shall at all times and without exception be maintained in a safe manner, and in compliance with all conditions of all permits, as well as all applicable and permissible local codes, ordinances, and regulations and all applicable City, State and Federal Laws, rules, and regulations, unless specifically granted relief by the Board in writing; and
 - b. the construction of the Facility or Complex is legally permissible, including, but not limited to the fact that the Applicant is licensed to do business in the State.
24. Where a certification is called for in this Section, such certification shall bear the signature and seal of a Professional Engineer licensed in the State.
25. A support structure and any and all accessory or associated structures shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and to harmonize with the natural surroundings. This shall include the utilization of stealth or camouflage or concealment technique as may be required by the City.
26. All utilities at a Complex or site shall be installed underground and in compliance with all Laws, ordinances, rules and regulations of the City, including specifically, but not limited to applicable electrical codes.

27. At a Facility or Complex needing vehicular access, an access road, parking and turn around space for emergency vehicles shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion. If the current access road or turn around space is deemed in disrepair or in need of remedial work to make it serviceable and safe and in compliance with any applicable regulations as determined at a site visit, the Application shall contain a commitment to remedy or restore the road or turn around space so that it is serviceable and safe and in compliance with applicable regulations.
28. All work at a Facility or Complex shall be done in strict compliance with all current applicable technical, safety and safety-related codes adopted by the City, State, or United States, including but not limited to the most recent edition of the TIA ANSI Code, National Electric Safety Code, the National Electrical Code, the Occupational and Safety and Health Administration (OSHA) regulations, recommended practices of the National Association of Tower Erectors and accepted and responsible workmanlike industry practices. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.
29. A holder of a Conditional Use Permit or Administrative Approval granted authority granted under this Section shall obtain, at its own expense, all permits and licenses required by applicable law, ordinance, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the City or other governmental entity or agency having jurisdiction over the applicant.
30. Unless such is proven to be technologically impracticable, the City requires the co-location of new antenna arrays on existing structures, as opposed to the construction of a new Complex or support structure or increasing the height, footprint or profile of a Facility or Complex beyond the conditions of the approved Conditional Use Permit for an existing Facility or Complex. In instances not qualifying as an Eligible Facility, the Applicant shall submit a comprehensive report inventorying all existing structures more than fifty feet (50') in height within one-half (1/2) mile of the location of any proposed new Facility or Complex.
31. An Applicant intending to co-locate on or at an existing Facility or Complex shall be required to document the intent of the existing owner to permit its use by the Applicant.
32. Co-located equipment shall consist only of the minimum Antenna array technologically needed to provide service primarily and essentially within the City, to the extent practicable, unless good cause is shown in the form of clear and convincing evidence.
33. DAS systems that are owned or operated by a commercial carrier and are part of a commercial wireless system, or are used for commercial purposes, are expressly included in the context of this Section, regardless of the location or whether the Facility or any of its components is located inside or outside a structure or building.
34. The existence of a lease or an option to lease shall not be deemed justification for not complying with the siting priorities set forth in this Section, as well as other applicable land use and zoning regulations. An Applicant may not by-pass sites of higher priority solely because the site proposed is under lease or an option to lease exists. If a site other than the number 1 priority is proposed, the applicant must explain to the reasonable satisfaction of the City why co-location is technically or commercially impracticable. Build-to-Suit agreements between carriers and a proposed Tower owner shall not be a valid basis for any claim of exemption, exception or waiver from compliance with this Section.
35. Any technical information must be provided in such a manner, form and with such content that it is able to be verified by a third party using the information used and provided by the applicant.

36. All costs associated with the preparation and submission of an Application and/or necessitated by the requirements for obtaining and maintaining any and all City permits shall be borne by the Applicant or Permittee.

Section 5. Responsible Party(s)

With the exception of the City, itself, the owner(s) of a Facility or Complex, any support structure used to accommodate wireless Facilities, and of the land upon which a Facility support structure or Complex is located, shall at all times be jointly and individually responsible for: (1) the physical and safe condition of the Facility or Complex, support structure and all components on the site related to the Facility or Complex; (2) assuring that all activities of owners, users, or lessees occurring on the site, and all components on the site related to the Facility or Complex, are at all times in compliance with all applicable laws, ordinances, rules, regulations, orders, and permits related to the Facility or Complex; and (3) assuring the proper permitting as required by this Article and other City regulations by all lessees and users of the Facility or Complex, including but not limited to any upgrades and/or Modifications of equipment. Said owner(s) shall regularly and diligently monitor activities at the site to assure that the Facility or Complex is operated in compliance with this Ordinance, other City regulations, and any Conditional Use Permit.

Section 6. Fees

All fees and charges, including but not limited to Application fees, Expert Assistance fees, Inspection fees and Permit fees, shall be as set forth in the City's Schedule of Fees and Charges.

Section 7. Existing Facilities and Complexes

- A. Any legally permitted Facility, Tower or other support structure or Complex that exists on the effective date of this Section of the City's codes shall be allowed to continue as it presently exists, provided that i) all work was properly permitted; ii) the Facility or Complex is in compliance with all applicable local, State and federal laws, rules regulations, orders and permit conditions; iii) the Site is in compliance with the latest version of TIA ANSI 222 as regards the physical condition of the Site; and iv) a Certificate of Completion (COC) was issued for the most recent work performed;
- B. Any work not properly previously permitted prior to the adoption of this Section must be properly permitted within ninety (90) days of the effective date of this Section or prior to any Modification on or at the site or Facility.
- C. Any new Co-location and/or Modification of a Facility, Tower or other support structure or Complex or a Carrier's equipment located on the Tower or Facility, must be permitted under this Section and will require the entire Facility or Complex and any new Co-location or Modification to comply with all applicable laws, rules and regulations, including obtaining a valid COC.

Section 8. Certificate of Completion

- A. No work shall be allowed to be done at or on any Facility or Complex, excepting normal repair and maintenance work as defined in this Section, for which the owner cannot produce the COC for the most recent work, until a final inspection has been conducted and a COC has been issued. The owner of the Facility, Tower or other support structure or Complex shall pay for the actual cost of the required final inspection prior to the inspection being conducted. If the Facility or Complex does not pass the initial final inspection, the owner shall be required to pay for any subsequent inspection prior to the inspection being conducted. A passing final inspection is required prior to the issuance of a COC.
- B. If no COC can be produced for previously done work, at the discretion of either the Planning Director or the Building Director, fines and other penalties as allowed by law maybe imposed until the Facility or Complex is compliant and the required COC has been issued.

Section 9. Exclusions

The following shall be exempt from this Section:

- A. Any facilities expressly exempt from the City's zoning, land use, siting, building and permitting authority.
- B. Any reception or transmission devices expressly exempted under the Telecommunications Act of 1996.
- C. A Facility used exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial Telecommunications that is less than 100' above ground level.
- D. Facilities used exclusively for providing wireless service(s) or technologies where i) there is no charge for the use of the wireless service; ii) the Facility or Complex does not require a new Tower or increase the height or profile of the structure being attached to; and iii) the service is not intended to be useable more than one-hundred feet (100') from the Antenna(s).

Section 10. Application Requirements for a New Tower or Support Structure or For a Substantial Modification or Co-location

- A. All Applicants for a Conditional Use Permit for a new Wireless Facility or Complex, including for a new Tower or other support structure or that constitutes a Substantial Modification, shall comply with the requirements set forth in this Section. In addition to the required information set forth in this Section, all applications for the construction or installation of new Facility or Complex shall contain the information hereinafter set forth prior to the issuance of a Building Permit. Any technical information must be provided in such a manner, form and with such content that it is able to be verified by a third party using the information used and provided by the applicant.

Ownership and Management

- 1. The Name, address and phone number of the person preparing the Application;
- 2. The Name, address, and phone number of the property owner and the Applicant, including the legal name of the Applicant. If the owner of the structure is different than the applicant, the name and all Necessary contact information shall be provided;
- 3. The Postal address and tax map parcel number of the property;
- 4. A copy of the FCC license applicable for the intended use(s) of the Wireless Telecommunications Facilities, including all FCC licensed frequency bands;
- 5. The Applicant shall disclose in writing any agreement in existence that would limit or preclude the ability of the Applicant to share any new Telecommunication Tower that it constructs or has constructed for it;

Zoning and Planning

- 6. The Zoning District or designation in which the property is situated;
- 7. The size of the property footprint on which the structure to be built or attached is located, stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;
- 8. The location, size and height of all existing and proposed structures, enclosures and cabinets on the property on which the structure is located and that are related to the subject of the Application;
- 9. A site plan to scale, not a hand drawn sketch, showing the footprint of the Support Structure and the type, location and dimensions of access drives, proposed landscaping and buffers in compliance with Article 11 of the City's Land Development Ordinance, including but not limited to fencing and any other requirements of site plans;
- 10. Elevation drawings showing the profile or the vertical rendition of the Tower or support structure at the Facility or Complex and identifying all existing and proposed attachments, including the height above the existing grade of each attachment and the owner or operator of each, as well as all lighting;
- 11. The type and design of the Tower or support structure, the number of antenna arrays

proposed to be accommodated and the basis for the calculations of the Tower's or support structure's capacity to accommodate the required number of antenna arrays for which the structure must be designed;

12. Disclosure in writing of any agreement in existence prior to the submission of the Application that would limit or preclude the ability of the Applicant to share any new Telecommunication Tower that it constructs.
13. A certified statement of i) the total cost of construction for the work associated with the Application; and ii) the total cost of all equipment of the Applicant at the Facility. To verify the accuracy of the information, the City reserves the right to require copies of applicable invoices or other clear and convincing corroborating evidence.

Safety

14. the age of the Tower or support structure and Complex stated in years, including the date of the grant of the original permit;
15. a description of the type of Tower, e.g. guyed, self-supporting lattice or monopole, or other type of support structure;
16. for a tower, the make, model, type and manufacturer of the Tower and the structural design analysis and report, including the calculations, certified by a Professional Engineer licensed in the State and proving the Tower or support Structure's capability to safely accommodate the Facilities of the Applicant without change or Modification .
17. if a Substantial Co-location, change or Modification of a Facility or Complex is needed, a detailed narrative explaining what changes are needed and why they are needed;
18. a Complete, unredacted copy of the foundation design and report for the Tower or other structure, including a geotechnical sub-surface soils investigation report and foundation design for the Facility;
19. if Substantially Modifying or Co-locating on an existing Tower or other support structure, a Complete, unredacted and certified TIA ANSI 222 Report regarding the physical condition of the Complex and all of its components done within the previous six (6) months. If such report has not been done within the previous six (6) months, one shall be done and submitted as part of the Application. No Building Permit shall be issued for any Wireless Facility or related equipment where the structure being attached to is in need of remediation to comply with the requirements of this subsection and other adopted standards of the City regarding the physical condition and/or safety, unless and until all remediation work that is deemed needed has been completed, or a schedule for the remediation work has been approved by the City Planning Department or Inspections and Permits Department;
20. In an instance involving a Tower with only a single array of antennas, or for the first antenna array to be attached to a Tower where the array will be thirty-three feet (33') or more above ground level and not within 100 feet of areas to which the public has or could reasonably have or gain access to, in lieu of a full RF emissions study, if deemed appropriate by the City, signed documentation in the form of the FCC's "Checklist to Determine whether a Facility may be Categorically Excluded" may in certain cases be allowed to be used and shall be provided to verify that the Facility and Complex with the proposed installation will be in full compliance with the current FCC's RF Emissions regulations;
21. In certain instances the City may deem it appropriate to have a post-construction on-site RF survey of the Facility or Complex done after the construction or Modification and activation of the Facility or Complex, such to be done under the direction of the City or its designee, and an un-redacted copy of the survey results provided, along with all calculations, prior to issuance of a Certificate of Compliance. Such study shall reflect the cumulative effects, readings or levels of all active RF equipment at the Site;
22. If not submitted in a previous application, a signed statement that the Applicant will expeditiously remedy any physical or RF interference with other telecommunications or wireless devices or services.

- B. A written copy of an analysis completed by a qualified individual or organization to determine if the proposed Wireless Telecommunications Facility or Complex-is in compliance with Federal Aviation Administration Regulation Part 77, and if it requires lighting, including any Facility or

Complex where the application proposes to increase the height of the existing Tower or support structure.

- C. New Towers and other new support structures shall be prohibited in Residential Districts, Historic Districts and areas officially deemed to be visual or scenic sensitive areas, unless the Applicant provides clear and convincing technical evidence from a carrier demonstrating that i) a new Tower as proposed is technically Necessary; ii) that the intended area cannot be served from outside the District or visually sensitive area; iii) that no existing or previously approved Facility or Complex can reasonably be used to accommodate equipment needed to provide the intended service; and iv) that not to permit a new Tower would preclude eliminating or would create a significant gap in service.
- D. All Applications for a proposed Facility or Complex applicable to this Section shall contain clear and convincing evidence that the Facility or Complex is sited and designed so as to create the least visual intrusiveness reasonably possible given the facts and circumstances involved. To achieve this goal the City expressly reserves the right to require the use of Stealth or Camouflage siting techniques such as, but not limited to, DAS (Distributive Antenna System) or a functional equivalent as regards size, and such shall be subject to approval by the Board.
- E. If proposing a new Tower or support structure, or a Substantial Co-location or Modification of an existing structure, the Applicant shall be required to submit clear and convincing evidence that there is no alternative solution within one-half (1/2) mile of the proposed site that would be less visually intrusive and that not to permit the proposed new Tower or support structure, or a Substantial Co-location or Modification would result in the prohibition of service or the perpetuation of a significant gap in service.
- F. In order to better inform the public, in the case of a new Tower, the applicant shall hold a "balloon test" prior to the initial public hearing on the application. The Applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a ten (10) foot in length brightly colored balloon with horizontal stabilizers at the maximum height of the proposed new Tower. The use of spherical balloons shall not be permitted.
- G. At least fourteen (14) days prior to the conduct of the balloon test, a sign shall be erected so as to be clearly visible from the road nearest the proposed site and shall be removed no later than fourteen (14) days after the conduct of the balloon test. The sign shall be at least four feet (4') by eight feet (8') in size and shall be readable from the road by a person with 20/20 vision.
 - 1. Such sign shall be placed off, but as near to, the public right-of-way as is possible.
 - 2. Such sign shall contain the times and date(s) of the balloon test and contact information.
 - 3. The dates, (including a second date, in case of poor visibility or wind in excess of 15 mph on the initial date) times and location of this balloon test shall be advertised by the Applicant seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in the City and as agreed to by the City. The Applicant shall inform the City in writing, of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least four (4) consecutive hours between 10:00 am and 2:00 p.m. on the dates chosen. The primary date shall be on a week-end, but the second date, in case of poor visibility on the initial date, may be on a week day. A report with pictures from various locations of the balloon shall be provided with the application.
 - 4. The Applicant shall notify all property owners and residents located within one-thousand five hundred feet (1,500) of the nearest property line of the subject property of the proposed construction of the Tower and Facility or Complex and of the date(s) and time(s) of the balloon test. Such notice shall be provided at least fourteen (14) days prior to the conduct of the balloon test and shall be delivered by first-class mail. The City Planner shall be provided an attested copy of the list of addresses to which notification is provided. The Wireless Telecommunications Facility or Complex shall be structurally

designed to accommodate at least four (4) Antenna Arrays, with each array to be flush mounted or as close to flush-mounted as is reasonable possible.

H. The Applicant shall provide certified documentation in the form of a structural analysis and report, including all calculations, showing that the Facility or Complex will be constructed to meet all local, state and federal structural requirements for loads, including wind and ice loads and including, but not limited to all applicable ANSI (American National Standards Institute) TIA 222 guidelines. In the event of a conflict the more stringent shall apply.

I. The Applicant shall furnish a Visual Impact Assessment, which may be required to include:

1. a computer generated "Zone of Visibility Map" at a minimum of one mile radius from the proposed structure shall be provided to illustrate locations from which the proposed installation may be seen, with and without foliage; and
2. To-scale pictorial representations (photo simulations) of "before and after" views from key viewpoints inside of the City as may be appropriate and required, including but not limited to state highways and other major roads, state and local parks, other public lands, historic districts, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided concerning the appropriate key viewpoints at the pre-application meeting. In addition to photographic simulations to scale showing the visual impact, the applicant shall provide a map showing the locations of where the pictures were taken and the distance(s) of each location from the proposed structure;

J. The Applicant shall provide a written description and a visual rendering demonstrating how it shall effectively screen from view the bottom fifteen feet (15') of the Facility or Complex and all related equipment and structures associated with the Facility or Complex.

K. A Building Permit shall not be issued for the construction of a new Tower or other support structure until there is an Application for or by a specific carrier that documents that the Facility or Complex is Necessary for that carrier to serve the community and that co-location on an existing Structure is not feasible.

L. Co-location on an existing structure is not reasonably feasible if such is technically or Commercially Impracticable or the owner of the Structure is unwilling to enter into a contract for such use at fair market value. Sufficient documentation in the form of clear and convincing evidence to support such claims shall be submitted with an Application for the first carrier in order to determine whether co-location on existing structures is reasonably feasible and to document the need for a specific stated height, and that less height will serve to prohibit or have the effect of prohibiting the provision of service.

Section 11. Expedited Application Process for Substantial Modifications and Substantial Co-locations.

An Applicant for a Substantial Modification or Substantial Co-location, but expressly not for a new Tower or other new support structure, may request a special expedited application process in which the Application shall be acted upon within forty-five (45) days of the receipt of a Complete Application. To be granted such status and treatment, in addition to all other required fees, the Applicant shall pay to the City a special Expedited Treatment Fee of \$5,000 for and prior to the grant of such status and treatment.

Section 12. Requirements for Eligible Facility Co-locations or Modifications

A. For the co-location, modification or upgrade of a wireless facility that qualifies as an Eligible Facilities request under applicable law, the following information shall be required to be contained in an application. Any technical information must be provided in such a manner, form and with

such content that it is able to be verified by a third party using the information used and provided by the applicant.

Safety

- 1) the age of the Tower or other support structure in years, including the date of the grant of the original permit;
- 2) a description of the type of Tower, e.g. guyed, self-supporting lattice or monopole, or a description of another other type of support structure;
- 3) a narrative description and explanation of the specific objective(s) of the new equipment, expressly including the purpose of such (e.g. coverage and/or capacity), technical requirements, frequencies to be used and the identified boundaries of the specific geographic area of intended coverage;
- 4) technical documentation that shows by clear and convincing technical evidence that the Need for the requested height is Necessary to provide the type and coverage of the service primarily and essentially within the City using generally accepted industry methods.
- 5) certified documentation in the form of a structural analysis and report, including all supporting calculations, showing that the Facility, as it exists, will meet all local, state and federal structural requirements for loads, including wind and ice loads and including, but not limited to, the Alaska Building Code and all applicable ANSI (American National Standards Institute) TIA 222 guidelines. In the event of a conflict, the more stringent shall apply.
- 6) a copy of i) the installed foundation design, including a geotechnical sub-surface soils investigation report and ii) foundation design recommendation for the Tower or other structure;
- 7) a certified, unredacted report and supporting documentation, including photographs, regarding the physical situation and physical condition of all equipment and facilities at the site in the form of a report based on an on-site inspection done pursuant to and in compliance with the latest version of TIA/ANSI 222. The inspection shall be done by a qualified individual experienced in performing such inspections and the report shall be signed by an individual with authority to order any needed remediation or resolution of issues.
- 8) a copy of the FCC licenses for each frequency band applicable for the intended use of the Wireless Telecommunications transmission and/or receive equipment;
- 9) a list of all frequencies, to be used at the Facility;
- 10) the maximum transmission power capability at which each type of radio is designed to operate;
- 11) the number, type and model of the Antenna(s) proposed, along with a copy of the manufacturer's specification sheet(s), i.e. cut sheet(s), for the antennas;
- 12) certification from the owner of the Facility certifying that the Facility and all attachments thereto are currently in compliance with the conditions of the approved Conditional Use Permit or Administrative Approval and setting forth any non-compliant situation.

Ownership and Management

- 13) the Name, address and phone number of the person preparing the Application;
- 14) the Name, address, and phone number of the property owner and the Applicant, including the legal name of the Applicant. If the owner of the structure is different than the applicant, the name and all Necessary contact information shall be provided;
- 15) the Postal address and tax map parcel number of the property;
- 16) a copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facilities.

Construction

- 17) The total cost of construction and the value of all new and/or replacement components and equipment.

B. In certain instances the City may deem it appropriate to have an on-site RF survey of the facility performed after the construction or Modification and activation of the Facility, such to be done under the direction of the City or its designee, and an un-redacted copy of the survey results provided, along with all calculations, prior to issuance of a Certificate of Compliance. Such study shall reflect the cumulative effects, readings or levels of all active RF equipment at the Site;

C. Attachments to Existing Structures Other Than Towers

- 1) Attachments to Buildings: To preserve and protect the nature and character of the area and create the least visually intrusive impact reasonably possible under the facts and circumstances, any attachment to a building or other structure with a facade, the antennas shall be mounted on the facade without increasing the height of the building or other structure, unless it can be proven that such will prohibit or have the effect of prohibiting the provision of service, and all such attachments and exposed cabling shall use camouflage or stealth techniques to match as closely as possible the color and texture of the structure.
- 2) Utility poles and light standards: If attaching to a utility pole or light standard, no equipment may extend more than six feet (6') beyond the top of the structure and no equipment other than cabling shall be lower than fifteen feet (15') above the ground.
- 3) Attachments to Water Tanks: If attaching to a water tank, in order to maintain the current profile and height, mounting on the top of the tank or the use of a corral shall only be permitted if the Applicant can prove that to locate elsewhere less visually on the tank will prohibit or have the effect of prohibiting the provision of service or that to do so would be technologically impracticable.
- 4) Profile: So as to be the least visually intrusive and create the smallest profile reasonably possible under the facts and circumstances involved, and thereby have the least adverse visual effect, all antennas attached shall be flush mounted or as near to flush mounted as is possible, unless it can be proven that such would prohibit or serve to prohibit the provision of service or be technologically impracticable.

Section 13. Location of Wireless Telecommunications Facilities

- A. No tower or other new support structure shall be permitted in any existing or planned (i.e. platted) residential neighborhood.
- B. If a new telecommunications support structure is proposed to be located within one-half mile of an existing or planned residential neighborhood, irrespective of the type of zoning, the support structure shall not be taller than ten feet (10') above the tallest obstruction between the proposed support structure and a residential neighborhood.
- C. Applicants shall locate, site and erect all Facilities and associated equipment in accordance with the following priorities, in the following order: more than 10' taller than existing surrounding structures.
 1. On existing structures without increasing the height or size of the profile of the Tower or structure.
 2. On existing structures without increasing the height of the structure by more than can be proven by clear and convincing technical evidence is technically Needed.
 3. On properties in areas zoned for Commercial use.
 4. On properties in areas zoned for Rural use.
 5. On properties in designated Historic Districts without increasing the height or size of the profile of the support structure and only if Camouflaged or Stealthed to the satisfaction of the Planning Director.
 6. On properties in areas zoned for Residential use without increasing the height of the support structure or size of the profile and only if Camouflaged or stealthed to the satisfaction of the Planning Director.
- D. If the applicant proposes and commits to locate on City-owned property or structures, the City expressly reserves the right to waive the Application Fee that would otherwise be paid to the City.
- E. If the proposed site is not proposed for the highest priority listed above, then a detailed narrative and technical explanation shall be provided as regards why a site from all higher priority designations was not selected. The person seeking such an exception must demonstrate to the satisfaction of the Planning Director and the Board the reason or reasons why a Conditional Use Permit or Administrative Approval should be granted for the proposed site.

- F.** Notwithstanding anything else to the contrary, the City may approve any site located within an area in the above list of priorities, provided that the City finds that the proposed site is in the best interest of the health, safety and welfare of the City and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood. The City may also direct that the proposed location be changed to another location that is more in keeping with the goals of this Section and the public interest as determined by the Board and that serves the intent of the Applicant.
- G.** Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the City may disapprove an Application for any of the following reasons:
 - 1. Conflict with safety and safety-related codes and requirements, including but not limited to setback and Fall Zone requirements;
 - 2. Non-Compliance with zoning or land use regulations;
 - 3. The placement and location of a Facility or Complex would create an unacceptable risk, or the reasonable possibility of such, to any person or entity for physical or financial damage, or of trespass on private property;
 - 4. The placement and location of a Facility or Complex would result in a conflict with, compromise in or change in the nature or character of the adjacent and surrounding area, and expressly including but not limited to loss in value as measured over the twelve (12) months preceding the Application having been filed;
 - 5. Conflicts with the provisions of zoning or land use regulations;
 - 6. Failure to submit a Complete Application as required under this Section within sixty (60) days after proper notice and opportunity to make the Application Complete shall be deemed to have been abandoned and require no action.
- H.** Notwithstanding anything to the contrary in this Section, for good cause shown such as the ability to utilize a shorter, smaller or less intrusive Facility or Complex elsewhere and still accomplish the primary service objective, if relocation could result in a less intrusive Facility or Complex singly or in combination with other locations, the City may require the relocation of a proposed site, including allowing for the fact that relocating the site chosen by the Applicant may require the use of more than one (1) site to provide substantially the same service.

Section 14. Type and Height of Towers

- A.** All new Towers shall be of the monopole type. No new Towers of a lattice or guyed type shall be permitted, unless relief is otherwise expressly granted.
- B.** The maximum permitted total height of a new tower or other proposed support structure shall be one hundred feet (100') above pre-construction ground level, unless it can be shown by clear and convincing technical evidence from a carrier who has committed to use the tower that such height would prohibit or have the effect of prohibiting the provision of service in the intended service area within the City. The maximum permitted height is permissive and is expressly not as-of-right.
- C.** As the policy decision has been made that more Facilities of a shorter and less intrusive height is in the public interest, as opposed to fewer but taller support structures, spacing or the distance between Facilities shall be such that the service may be provided without exceeding the maximum permitted height.
- D.** If proposed to be taller than the maximum permitted height, the Applicant for a new Tower or support structure shall submit clear and convincing technical evidence by a carrier or wireless service provider that has committed to use the Tower or other support structure justifying the total height requested and the basis therefore, as well as a copy of a lease or a written commitment to use the Facility upon completion of its construction. If the Applicant chooses to provide evidence in the form of propagation studies, such must include all modeling information and support data used to produce the studies at the requested height and a minimum of ten feet (10') lower to enable verification of the Need for the requested height. The City or its delegatee will provide the form that shall be used for reporting such information.

- E. The City reserves the right to require a drive test to be conducted under the supervision of the City or its delegate i) as evidence of; or ii) to verify the technical Need for what is requested.
- F. At no time shall a Tower or other support structure be of a height that requires lighting by the FAA.
- G. Towers shall be structurally designed to support a minimum of four (4) carriers using functionally equivalent equipment to that used by the first carrier attaching to a Tower or other support structure, so that the height can be increased if Needed.

Section 15. Visibility and Aesthetics

- A. No Tower or support structure that is not a building and is constructed after the effective date of this Section shall be tall enough to require lighting by the FAA.
- B. Stealth: All new Facilities, including but not limited to Towers, shall utilize Stealth or Camouflage siting techniques that are acceptable to the City, unless such can be shown to be either Commercially Impracticable or Technologically Impracticable.
- C. Finish/Color: Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Section.
- D. Lighting: Notwithstanding the prohibition of lighting, in the event lighting is subsequently required by the FAA, the Applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations. For any Facility or Complex for which lighting is required under the FAA's regulations, or that for any reason has lights attached, all such lighting shall be affixed with technology that enables the light to be seen as intended from the air, but that prevents the ground scatter effect so that it is not able to be seen from the ground to a height of at least 20 degrees vertical for a distance of at least 1 mile in a level terrain situation. Such device shall be compliant with or not expressly in conflict with FAA regulations. A physical shield may be used, as long as the light is able to be seen from the air, as intended by the FAA.
- E. Retrofitting: In the event a Tower or other support structure that is lighted as of the effective date of this Section is modified, at the time of the first Modification of the Facility the City reserves the right to require that the Tower be retrofitted so as to comply with the lighting requirements of this Section or be reduced to a height that does not require lighting.
- F. Flush Mounting: Except for omni-directional antennas, all new or replacement antennas, shall be flush-mounted or as close to flush-mounted on the support structure as is functionally possible, unless it can be demonstrated by clear and convincing technical evidence that such has the effect of prohibiting the provision of service to the intended service area, alone or in combination with another site(s), or unless the Applicant can prove that it is technologically impracticable.
- G. Placement on Building: If attached to a building, all antennas shall be mounted on the facade of the building and camouflaged so as to match the color and, if possible, the texture of the building, or in a manner so as to make the antennas as visually innocuous and undetectable as is possible given the facts and circumstances involved.

Section 16. Security

All Facilities shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

- A. All Facilities, including Antennas, Towers and other supporting structures, such as guy anchor points and guy wires, shall be made inaccessible to unauthorized individuals and shall be constructed or shielded in such a manner that they cannot be climbed or collided with and shall

expressly include removing the climbing steps for the first ten feet (10') from the ground on a monopole; and

- B. Transmitters and Telecommunications control points shall be installed so that they are readily accessible only to persons authorized to operate or service them.

Section 17. Signage

Facilities shall contain a sign no larger than four (4) square feet and no smaller than two (2) square feet in order to provide adequate warning to persons in the immediate area of the presence of RF radiation. A sign of the same size is also to be installed bearing the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the Applicant and must be visible from the access point of the Facility or Complex and must identify the equipment owner of the shelter or cabinet. On Tower sites, an FCC registration sign, as applicable, is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

Section 18. Setback and Fall Zone

- A. All proposed Towers and any other proposed Wireless support structures shall be set back from abutting parcels, recorded rights-of-way and roads and streets by the greater of the following distances: i) a distance equal to the height of the proposed Tower or support structure plus ten percent (110%) of the height of the Tower or other structure, otherwise known as the Fall Zone; or ii) the existing setback requirement of the underlying zoning district, whichever is greater. Any Accessory structure shall be located within the fenced compound area as approved in the Conditional Use Permit and so as to comply with the applicable minimum setback requirements for the property on which it is situated. The Fall Zone or setback shall be measured from the nearest portion of the tower to the nearest portion of the right-of-way of any public road or thoroughfare and any occupied building or domicile, as well as any property boundary lines.
- B. The nearest portion of any private access road leading to a Facility shall be no less than ten (10) feet from the nearest property line.
- C. There shall be no development of habitable buildings within the Setback area or Fall Zone.

Section 19. Retention of Expert Assistance Cost to be Borne by Applicant

- A. To prevent the taxpayers from having to bear the cost related to the issue of permitting and regulating a commercially used Wireless Telecommunications Facilities or negotiating an agreement to lease or amend or modify a lease for any City-owned property or structure, an Applicant shall pay to the City fees as set forth in the City's Fee Schedule. The fees are intended to cover all reasonable costs of the expert assistance needed by the City in connection with the review of any Application, including both the technical review and non-technical review, and the permitting, inspection, construction or Modification requested, any Application pre-approval evaluation requested by the Applicant and any lease negotiations. The payment of the Expert Assistance fees to the City shall precede any work being done that is related to the intended Application or lease, including a pre-application meeting or site visit.
- B. The City may hire any consultant of its choice to assist the City in reviewing and evaluating Applications and negotiating leases, provided the consultant has at least five (5) years experience working exclusively for the public sector regulating Towers and Wireless Facilities and negotiating leases.
- C. The total amount of the funds needed for expert assistance as set forth in the City's Fee schedule may vary with the scope and complexity of the Application, the completeness of the Application and other information as may be needed to Complete the necessary technical and non-technical reviews, analysis and inspection of any construction or Modification or the amount of time spent

responding to an Applicant's arguments as regards its Application or the requirements of this Section.

- D. The City will maintain an accounting record for the expenditure of all such funds.
- E. Pursuant to N.C. 160A-400.52(f), if an Application is Amended, or a waiver or relief is requested from any regulations at any time prior to the grant of the Certificate of Completion required under this Ordinance, the City reserves the right to require additional payment for the review and analysis equal to, but not exceeding, the cost created for the City by the Applicant or its Application. Such amount shall be paid to the City prior to the issuance of the Conditional Use Permit or Administrative Approval or the Certificate of Completion, whichever is procedurally needed next.

Section 20. Procedural Requirements for a Granting a Conditional Use Permit

- A. When a Conditional Use Permit is requested, the following procedures shall apply, including those set forth in Section 7.8 of Article 7 of the City's Land Development Ordinance.
- B. The City shall schedule any required public hearing(s) once it finds the Application is Complete and there are no issues of non-compliance or conflict with applicable law, rule or regulation. The City shall not set a date for a hearing if the Application is not Complete or if there are unresolved issues of non-compliance. The City may, at any stage prior to issuing a Conditional Use Permit or Administrative Approval, require such additional information as it deems Necessary and that is not expressly prohibited from being required by applicable law as relates to the issue of the siting, construction or Modification of or at a Wireless Telecommunications Facility or Complex.
- C. Upon Board approval, a Conditional Use Permit shall be issued for a new Tower or Substantially Modified Wireless Support Structure or Substantial Co-location. Notwithstanding the preceding, the Building Permit for a new Tower or other proposed support structure shall not be issued until an Applicant has provided clear and convincing substantiating documentation governing the placement of the first antenna array of a carrier who has committed to use the structure prior to its construction and that carrier has been properly permitted under this Ordinance.

Section 21. Action on an Application

- A. The City will undertake, or have undertaken, a review of an Application pursuant to this Article in a timely fashion, consistent with its responsibilities and applicable law, and shall act within the time required by applicable law.
- B. The City may refer any Application or part thereof to any advisory committee or consultant for a non-binding recommendation.
- C. Either after the public hearing if a hearing is required, or after Administrative review as applicable, and after formally considering the Application, the City may i) approve; ii) approve with conditions; or iii) deny for cause a Permit or Administrative Approval. The decision shall be in writing and shall be supported by substantial evidence contained in a written record, which record may be the minutes of any or all official meetings. Throughout the Application and permitting process, the burden of proof for compliance with this Ordinance or the need for a waiver or relief shall always be upon the Applicant.
- D. An Applicant shall not be permitted to refuse to provide information needed to establish the substantial written record required under federal law and applicable case law. Refusal for more than sixty days without agreement by the Board shall result in denial of the Application or the Application shall be deemed abandoned.
- E. Approval Notification: If the City approves the Conditional Use Permit or Administrative Approval for the Facility or Complex, then the Applicant shall be notified of approval of its Application, including any conditions, within 30 calendar days of the City's action. The Conditional use Permit or Administrative Authorization shall be issued within thirty (30) days after such approval.

- F. Denial Notification: The Applicant shall be notified of a denial of its Application at the Board Meeting, and in writing within 30 calendar days of the Board's action, which notice shall contain the reason or reasons for the denial.

Section 22. Transfer or Assignment

The extent and parameters of a Conditional Use Permit or Administrative Authorization for a Facility or Complex shall be as follows:

- A. Such Conditional Use Permit or Administrative Authorization shall not be assigned, transferred or conveyed without the express prior written notification to the City, such notice to be not fewer than thirty (30) business days prior to the intended assignment, transfer or conveyance.
- B. A transfer, assignment or other conveyance of the Conditional Use Permit or Administrative Authorization shall require the written commitment of the proposed new holder of the Conditional Use Permit or Administrative Authorization to abide by all applicable laws, rules and regulations, including but not limited to this Ordinance.

Section 23. Violations

- A. Following written notice of violation and an opportunity to cure, any Permit or Administrative Approval granted under this Ordinance may be revoked, canceled, or terminated for a violation of the conditions and provisions of the Conditional Use Permit or other applicable law, rule, regulation or order, and if warranted the payment of a fine(s) as is permissible.
- B. If not cured within the time frame set forth in the Notice of Violation, a hearing shall be held upon due prior notice to the Applicant citing the violation and the date, time and place of the hearing, which shall be provided by registered mail to the last known address of the holder of the Conditional Use Permit.
- C. Following the original notice and an opportunity to cure, subsequent or repeated violations of a substantially similar nature shall not require an opportunity to cure prior to the imposition of fines or penalties.

Section 24. Removal and Performance Security

- A. Removal and Performance: The Applicant and the owner of record of any proposed new Tower or other support structure or Complex shall, at its sole cost and expense, be required to execute and file with the City a bond or other form of security that is acceptable to the City as to the type of security and the form and manner of execution, in an amount of at least \$75,000.00 for a Tower or other support structure and with such sureties as are deemed adequate by the City to assure the faithful performance of the terms and conditions of this Section and conditions of any Conditional Use Permit issued pursuant to this Section. The full amount of the bond or security shall remain in full force and effect throughout the term of the Conditional Use Permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original Conditional Use Permit. The amount of the Bond is, in part, determined by the current cost of demolition, removal and site restoration multiplied by the compounding or cumulative effect of a three percent (3%) annual cost escalator over a thirty (30) year projected useful life of the structure.
- B. Performance: The owner of any equipment attached to a support structure or located in a Complex shall be required to execute and file with the City a performance bond or other form of performance security that is acceptable to the City as to the type of security and the form and manner of execution, in the amount of \$25,000.

Section 25. Reservation of Authority to Inspect Wireless Telecommunications Facilities

- A.** In order to verify that the holder of a Conditional Use Permit for a Facility or Complex and any and all lessees, renters, and/or licensees of Wireless Telecommunications Facilities, places, constructs and maintains such facility in accordance with all applicable technical, safety, fire, building codes, zoning codes, laws, ordinances and regulations and conditions of any permit granted under this Ordinance, the City or its designee shall have the right to inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, Modification and maintenance of such facilities, including, but not limited to, Towers, Antennas, buildings and equipment and connections contained therein, or other structures constructed or located on the permitted site.
- B.** Refusal to allow or grant access to the City's representative upon reasonable notice shall be deemed a violation of this Ordinance.

Section 26. Liability Insurance

- A.** A holder of a Conditional Use Permit for a Wireless Telecommunications Support Structure shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Conditional Use Permit in amounts as set forth below:
 - 1.** Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$3,000,000 aggregate; and
 - 2.** Automobile Coverage: \$1,000,000.00 per occurrence/ \$3,000,000 aggregate; and
 - 3.** A \$3,000,000 Umbrella coverage; and
 - 4.** Workers Compensation and Disability: Statutory amounts.
- B.** For a Facility or Complex located on City property, the Commercial General Liability insurance policy shall specifically name the City and its officers, Boards, employees, committee members, attorneys, agents and consultants as additional insureds.
- C.** The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with an AM Best's rating of at least A.
- D.** The insurance policies shall contain an endorsement obligating the insurance company to furnish the City with at least thirty (30) days prior written notice in advance of the cancellation of the insurance.
- E.** Renewal or replacement policies or certificates shall be delivered to the City at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.
- F.** Before construction of a permitted Wireless Telecommunications Facility or Complex is initiated, but in no case later than fifteen (15) days prior to the grant of the Building Permit, the holder of the Conditional Use Permit shall deliver to the City a copy of each of the policies or certificates representing the insurance in the required amounts.
- G.** A Certificate of Insurance that states that it is for informational purposes only and does not confer rights upon the City shall not be deemed to comply with this Section.

Section 27. Indemnification

- A.** Any application for Wireless Telecommunication Facilities that is proposed to be located on City property shall contain a signed statement fully and completely indemnifying the City. Such provision shall require the applicant, to the extent permitted by applicable law, to at all times defend, indemnify, protect, save, hold harmless and exempt the City and its officers, Boards, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising there from, either at

law or in equity, which might arise out of, or are caused by, the placement, construction, erection, Modification , location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said Facility or Complex, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the City, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the City.

- B. Notwithstanding the requirements noted in subsection A of this section, an indemnification provision will not be required in those instances where the City itself, or an agency or department of the City, applies for and secures a Conditional Use Permit for a Wireless Telecommunications Facility or Complex.

Section 28. Fines

- A. In the event of a violation of this Section, or any Conditional Use Permit or Administrative Approval issued pursuant to this Section, the City may impose and collect, and the holder of the Conditional Use Permit or Administrative Approval for a Wireless Telecommunications Facility or Complex shall pay to the City, fines or penalties as set allowed by State law or as otherwise established by the City.
- B. Notwithstanding anything in this Section, the holder of the Conditional Use Permit or Administrative Approval for a Facility or Complex may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Section or any section of this Ordinance. An attempt to do so shall subject the holder of the Conditional Use Permit to termination and revocation of the Conditional Use Permit in addition to the payment of fines. The City may also seek injunctive relief to prevent the continued violation of this Section without limiting other remedies available to the City.

Section 29. Default and/or Revocation

If a support structure, Facility or Complex is repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Ordinance or of the Conditional Use Permit or Administrative Approval, then the City shall notify the holder of the Conditional Use Permit or Administrative Approval in writing of such violation. A Permit or Administrative Approval holder found to be in violation may be considered in default and subject to fines as permitted under applicable State law, and if a violation is not corrected to the satisfaction of the City in a reasonable period of time the Conditional Use Permit or Administrative Approval shall be subject to revocation.

Section 30. Moving or Removal of Co-located Facilities and Equipment

- A. If attached to an existing tower or other support structure, unless the Board deems doing so to be in the public interest, it shall be impermissible for a wireless service provider's or carrier's equipment to be relocated from one structure to another without clear and convincing evidence that not to do so would, for technical reasons, prohibit or serve to prohibit the provision of service in the service area served by the existing wireless facility.
- B. If the lease for the existing attachment and use expires and is not renewed, thereby forcing the facility to be moved, such move shall be allowed upon i) the provision of clear and convincing evidence satisfactory to the Board of the need to move or relocate the facility; and ii) clear and convincing evidence satisfactory to the Board of the lack of impact on the neighborhood or area of intended new location. Cancellation or abandonment of a lease by a lessee or refusal to agree to terms of a lease that are not Commercially Impracticable shall not be deemed a permissible reason for relocating.
- C. The owner of any Facility or Complex shall be required to provide a minimum of thirty (30) days written notice to the City Clerk prior to abandoning any Facility or Complex.

- D. Under the following circumstances, the City may determine that the health, safety, and welfare interests of the City warrant and require the removal of Facilities.
1. a Facility or Complex that has been abandoned (i.e. not used as Wireless Telecommunications Facilities) for a period exceeding ninety (90) consecutive days or a cumulative total of one hundred-eighty (180) non-consecutive days in any three hundred-sixty five (365) day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall be completed within 90 days of abandonment;
 2. A Support Structure or Facility or Complex falls into such a state of disrepair that it creates a health or safety hazard or is deemed an attractive nuisance or a visual blight;
 3. A Support Structure or Facility or Complex has been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Conditional Use Permit, or Administrative Approval, and the Conditional Permit or Administrative Approval may be revoked.
- E. If the City makes such a determination as noted in subsections (2) or (3) of this section, then the City shall notify the holder of the Permit or Administrative Approval for the Facility or Complex that said Facility or Complex is to be removed.
- F. The holder of the Conditional Use Permit or Administrative Approval, or its successors or assigns, shall dismantle and remove such Facility or Complex and all associated structures and equipment from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability. Restoration shall be completed within ninety (90) days of receipt of written notice from the City. However, if the owner of the property upon which the Facility or Complex is located wishes to retain any access roadway to the Facility or Complex, the owner may do so with the approval of the City.
- G. If a Facility or Complex has not been removed, or substantial progress has not been made to remove the Facility or Complex, within ninety (90) days after the permit holder has received notice, then the City may order officials or representatives of the City to remove the Facility or Complex at the sole expense of the owner or Conditional Use Permit holder.
- H. If the City removes, or causes Facilities to be removed, and the owner of the Facility or Complex does not claim and remove it from the site to a lawful location within ten (10) days, then the City may take steps to declare the Facility or Complex abandoned, and sell them and their components.
- I. Notwithstanding anything in this Section to the contrary, the City may approve a temporary use permit/agreement for the Facility or Complex for no more than ninety (90) days duration, during which time a suitable plan for removal, conversion, or re-location of the affected Facility or Complex shall be developed by the holder of the Conditional Use Permit, subject to the approval of the City, and an agreement to such plan shall be executed by the holder of the Conditional Use Permit or Administrative Approval and the City. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the City may take possession of and dispose of the affected Facility or Complex in the manner provided in this Section and utilize the bond in Section (BB).

Section 31. RF Emissions

- A. To assure the protection of the public health and safety the City expressly reserves the right to require that an Applicant, a user of a Facility or Complex or the owner of the Facility or Complex verify compliance with the FCC's regulations regarding RF emissions cumulatively at the Site, as may be deemed appropriate from time to time, and that all users of the Facility or Complex cooperate with the party responsible for such testing or verification. Failure to cooperate shall be deemed a violation of this Section and subject the non-cooperating party to all applicable and permissible fines and penalties.

- B. With respect to Support Structures other than Towers, if any section or portion of the structure attached to or to be attached to, or any adjacent to the Site, is not in compliance with the FCC's regulations regarding RF radiation, that section or portion must be barricaded with a suitable barrier to discourage approaching into the area in excess of the FCC's regulations, and be marked off with brightly colored plastic chain or striped warning tape, as appropriate, as well as placing RF Radiation signs as needed and appropriate to warn individuals of the potential danger. As deemed warranted by the City at any time, the right of the City is expressly reserved to do itself, or order done, an on-site RF emissions survey.

Section 32. Relief

- A. Any Applicant desiring relief, waiver or exemption from any aspect or requirement of this Section shall address and identify such at the Pre-Application meeting. The relief or exemption must be contained in the submitted Application for either a Conditional Use Permit or Administrative Approval, or in the case of an existing or previously granted Conditional Use Permit or Administrative Approval, a request for Modification of the Facility or Complex and/or equipment. Such relief may be temporary or permanent, partial or complete.
- B. The burden of proving the need for the requested relief, waiver or exemption shall be solely on the Applicant to prove.
- C. The Applicant shall bear all costs of the City in considering the request and the relief, waiver or exemption.
- D. No relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted, the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the City, its residents and other service providers.

Section 33. Adherence to State and/or Federal Rules and Regulations

- A. To the extent that the holder of a Conditional Use Permit or Administrative Approval for a Wireless Telecommunications Facility or Complex has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Conditional Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- B. To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a Conditional Use Permit or Administrative Approval for Wireless Telecommunications Facilities, then the holder of such a Conditional Use Permit or Administrative Approval shall conform the permitted Facility or Complex to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

Section 34. Conflict with Other Laws

Where this Section differs or conflicts with other Laws, rules and regulations, unless the right to do so is preempted or prohibited by the City, State or federal government, the more stringent shall apply.

Section 35. Effective Date

This Section shall be effective immediately upon passage, pursuant to applicable legal and procedural requirements.

Section 36. Authority

This Section is enacted pursuant to applicable authority granted by the State and federal government.

Approved as to Form

The Center for Municipal Solutions

We are frequently asked what the goals of a *well-crafted* ordinance regulating tower and wireless facilities should be. Here are some suggestions as regards some of the goals a community may wish to achieve in the development of its ordinance. We've found that a key to preventing a successful challenge is that ordinances regulating this issue should **require, limit, prohibit, allow or incent** (*through specific policies*); *and should avoid words like not 'encourage' or 'request'*. While some may disagree, we've found this approach works extremely well and discourages arguments and challenges.

Establish an ordinance that contains the ability to create **'Win-Win'** scenarios for all parties when possible.
Only a community that is truly in true control can do this;

Protect all legal rights and authority allowed under applicable law and does not sacrifice rights a community's legal rights and authority for a 'get along' relationship¹;

Assure the Community is placed in control and knows **how to use** the ordinance (*to the extent allowed by applicable law*), so that it may then make *informed* decisions and **choose** the extent to which it wishes to exercise that control;

Assure there are **no loopholes** or ways to avoid, evade or circumvent the ordinance, or the Community's intent as expressed in the ordinance;

Assure the ordinance is as **technology neutral** as possible to minimize the need to amend or revise it as technology evolves;

For new towers and other support structures, establish an *enforceable* **'Proof-of-Technical-Need'** requirement for what is requested, as the first 'test', since *everything else should be based on this*;

Minimize the likelihood of **residents' fears, resentment and political dissatisfaction**;

Assure the means to require the **least visually intrusive** facility reasonably possible;

Assure that certain types of facilities, e.g. towers, **do not go in areas not deemed in the public interest** and that the **right** types of facilities (that don't change the **nature, character or property values** of an area) are located in areas where the Community deems the visual intrusiveness to be a concern;

Assure that the **cost to construct is not a factor** that is required to be considered;

Assure that taxpayers' dollars **don't ever have to pay for or subsidize** the processing of applications, **inspections** and the **administration** of the permit;

Assure that **the right safety codes** and standards are required to be complied with, e.g. the latest edition of ANSI EIA/TIA 222. This is critical;

Provide a means to identify [previously] **unpermitted facilities** and **unpermitted work** on facilities and remedy the situation;

Assure required compliance with all applicable State and Federal laws and rules;

Assure the ordinance allows the Community to realize the **maximum revenue allowable** from carriers and owners of support structures for the Community;

Minimize the likelihood of successful legal challenges to the ordinance.

Contact Info:

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Examples of Need for Local Governments to Require Safety Inspections & Reports
as part of the Application Process re Existing Facilities

This Tower had an ‘Engineered’ Break Point Cell Tower Collapse Could Have Been Prevented

Posted on: 5:53 pm, March 6, 2013, by [George Sells](#), updated on: 06:54pm, March 6, 2013

ST. LOUIS, MO (KTVI)– There are new questions in south St. Louis in the wake of a cellular tower collapse in high winds Tuesday afternoon. FOX 2 has obtained video showing the tower swaying violently in a different wind storm nearly three months earlier. Witnesses say someone apparently tried to make repairs, though the work clearly was not enough.

Martin Howard is a security guard who works at a nearby grocery store. He shot the video in question on his phone back in December. The images show the tower swaying from left to right with a great deal more flexibility than would seem normal. Howard was concerned enough that he had people parked nearby move their cars farther away.

“There was like an uneven seam in it and they had already been out there before to fix it, and the seam was still there and it was swaying and I was saying, that sucker’s gonna snap off because there was nothing tethering it down.”

His prediction came true Tuesday. Gusting winds tore in on the tail end of morning snow showers. The tower apparently flexed again, then snapped.

“I heard a loud crackle and bang,” Howard said of the pole, which was “sliding down and breaking apart and **hitting the brick building**, and then **swinging back up and hitting the other building**.” (emphasis added)

The owner of a nearby business, Ross Watson, owns the brick building that was hit.

“It sounded as if it were incoming howitzer,” he said of the noise.

He wasn’t surprised by the video when we showed it to him.

“I’ve seen this thing in this condition before,” Watson said.

He and Howard both agree it’s miraculous no one was hurt in the incident. And both find it a little disconcerting that it might have been prevented.

FOX 2 attempted to contact the tower's owner, Crown Castle International, both at their St. Louis location and at their corporate offices in Houston, Texas. Our calls were not returned.

Certified by PE as Being Structurally Adequate

North County Communications Affected by Radio Tower Collapse (Excerpt from Complete Article)

By Jack Guerino

iBerkshires Staff

North Adams, Ma.

04:01PM / Sunday, March 30, 2014



Update: 4:07 p.m. with information from press conference; complete rewrite throughout.

Officials report that service should be restored within 24 hours but new towers will have to be installed to permanently fix the situation.

NORTH ADAMS, Mass. — Two radio towers on Florida Mountain collapsed sometime between midnight and 3 a.m. Sunday morning, causing disruptions in communications throughout North County.

"We are still left in shock by the events of this past week, but I just want everyone to be rest assured that this is being taken care of at a very very high level with all state agencies involved," North Adams Mayor Richard Alcombright said at a press conference Sunday afternoon at City Hall.

The cell towers hold the emergency communications relays for North Adams; the collapses also affected some of the countywide emergency communications.

Fire Director Stephen Meranti said the damage has left limited-to-no cell phone service, however emergency communications have been restored through temporary means.

"Right now we have temporary communications vehicle stationed at the Western Summit [on Route 2], and we are transmitting and receiving through that unit," Meranti said. "Contractors are at the site, and they are working to reinstall the antennas on a temporary pole until the tower can be reconstructed."

The towers are owned by North Adams Tower Co. and space is leased to local carriers. Owner Corydon Thurston was on the scene and working with crews and the Massachusetts Emergency Management Agency to evaluate the situation.

An emergency operations center has been set up at North Adams Ambulance Service and the city is working with the communications and dispatch center at the Berkshire County sheriff's office to ensure contact with Berkshire Medical Center in Pittsfield.

With the closure of the emergency room at North Adams Regional Hospital on Friday, communication with BMC has been critical.

Although 911 services are available, the lack of cell phone service is making emergency communications more problematic. The mayor urged citizens to use alternative methods of communications if they don't have a landline.

He added citizens can post emergencies on the North Adams Police Departments Facebook page or email napd911@gmail.com. Both options are being actively monitored.

"In this day in age everyone depends on that cell phone, but look to your alternate methods of communication for at least the next 24 to 48 hours until we can have some real confidence that we are back up and running," said Lt. Col. Thomas Grady of the Berkshire County sheriff's office.

He'd earlier described the destruction as "a catastrophic failure, there's no nice way to spin this."

"This is Mother Nature at its best," Grady said.

Grady explained that even though temporary antennas are being installed, the restoration of the towers will be a long process. He added that the Department of Public Health must investigate the structural integrity of the towers and the ability to safely work on the site. After this determination the site will be cleaned up and new towers will constructed.

"It's not an overnight fix, and we are looking at the immediate needs, the interim needs, and then the long term needs to get everything up to where it needs to be for the city," Grady said. "The mayor and the two commissioners from police and fire have done a good job in ensuring the city and its residents that public safety has not been compromised."

Earlier Sunday, at the scene of the cell tower collapse, Meranti said radio interference had alerted first-responders to the problem.

"Last night, we had a wind gust, we were getting some interference on our radios trying to locate the problem, where the interference was coming from," said Meranti. "We came up here and found the towers over."

A temporary solution had been set up for now in van parked near the site, he said. "We're actually using that [van] as a relay point for fire, police and EMS."

Minehold Gap, Buncomb County, N.C.
(Structural Design Signed and Stamped by a P.E.)
Thank goodness no one was walking on the path at the time.



Structure design appears to have contributed to Crown Castle monopole collapse in Missouri

March 7, 2013 - A monopole that was either incorrectly installed, under-designed or over-capacity partially **collapsed** Tuesday afternoon in St. Louis, Mo. in wind gusts that were well below required design standards. (emphasis added)

Two techs remain in serious condition after riding a collapsing tower to the ground

October 12, 2012 - Two tower technicians are still in grave condition a week after a tower they were working on **collapsed** in Camuy, located near Puerto Rico's north coast.

Authorities said that Jaime Montero ,48, and Jesus Maldonado, 58, were performing maintenance on the structure last Friday when it fell. They were unable to identify at what height both men were working.

A review of a number of photographs by Wireless Estimator indicates that the men might have been changing out braces near the 30-foot level at the time of the accident.

No redundant bracing appeared to be in place to prevent the 225-foot guyed angle iron tower built in 1981 from collapsing.

Straight line winds topple Minnesota PBS tower

September 6, 2012 - An early morning storm on Wednesday toppled an Austin, Minn. broadcast tower owned by KSMQ-TV, but the station returned to the air at about 8 p.m. using a temporary tower. . .

Its 444-foot tall guyed tower went down (**totally collapsed**) Wednesday in a parking lot in Riverland Community College. . .

Wind speed in Austin gusted to 53 mph at the Austin Municipal Airport and as high as 74 in northwest Rochester, according to the National Weather Service in La Crosse, Wis.

Excerpt from Wireless Industry News – June 30, 2009

. . . Severin said Prelog was at the top of the radio tower, attached by a safety harness lanyard, when it **fell down sideways**, crashing him to the ground. "**The tower failed at the base**," Severin said.

Two of three metals legs at the base bent and buckled, causing the tower to lurch sideways and collapse. It was not immediately known who the tower manufacturer was. The tower was anchored into the ground at the base and stabilized by guy wires, and it is not known what caused the metal braces to give way, Severin said.

Severin said Monday that the tower was 30 feet tall and Prelog was as the top when it **toppled over**. Climbing the tower is a common way to install an antennae on a tower of that height, and Prelog was **following proper safety measures**, Severin said.

Prelog died Sunday morning at Borgess Hospital in Kalamazoo from injuries suffered in the fall. He is survived by a wife, two daughters and a son. He was employed as Andrews University's telecommunications manager since 1994.(emphasis added)

Leaning cell tower of Jefferson County fails inspection, closing school

11/4/13

ARNOLD • A leaning cellphone tower near Lone Dell Elementary School has failed a safety inspection, and classes will not be held there today, officials said Wednesday.

The tower owned by US Cellular is on property owned by the Fox School District. The tower and school are in the 2500 block of Tomahawk Drive near Arnold.

The worry isn't that the tower could fall on the school, but rather for cars and buses entering the driveway near the tower, according to a statement posted on the Fox website by Superintendent Dianne Critchlow.

Critchlow said the tower was inspected Tuesday. The results of that inspection were issued Wednesday — it failed, Critchlow said.

The tower failed a stability evaluation, according to the Jefferson County Sheriff's Office. According to District Superintendent Dianne Critchlow, inspectors said there were bolts loose or missing.

Lone Dell students will be picked up today at their usual bus stops, but will be taken to Rickman Auditorium for class. They will also use the district's service center for fall parties. The district asks that parents pack a lunch for their kids, but if that isn't possible, the district will provide a sack lunch.

Tomahawk Drive and Gary Road near the school were closed Wednesday evening but should reopen today.

Deputies and US Cellular employees were to be posted near the tower throughout the night and "protective measures" were under way in case of a collapse, the sheriff's office said.

Parents with questions should call the district at 636-296-8000 or [check its website](#) for more information.

Examples of Why Adequate Fall Zones are Critical

Note: 'Catastrophic' failure is an industry term for a total collapse

Risk factors soar as LTE installs overload carriers' antenna mounts

January 31, 2013 - The issue isn't **whether** new LTE loading on existing antenna mounts will jeopardize the safety of telecom workers and the public, the question is **how soon** will it be before there is a **catastrophic** failure?

Many manufacturers, engineers, carriers and installers will readily acknowledge that **current loading configurations are overstressing scores of mounts that were not designed to handle the additional weight and flat plate loading of remote radio units required for LTE installations.**

Although some carriers are mapping existing structures and requiring new mounts when they've been identified to be inadequate, **in the feverish rush for LTE deployment, others are ignoring the problem and exposing tower technicians to fatal risks, even if they are properly tied off elsewhere on the mount's supporting structure.** (emphasis added)

Two workers killed in collapse of Kansas cell towers

[KMAN-AM story](#)

March 26, 2014

Staff *Wichita Business Journal*

Two cell phone towers collapsed Tuesday near Blaine, a town about 50 miles northwest of Topeka, killing two workers who were in the process of dismantling the older tower.

[KMAN-AM reports](#) the workers were reported to be at a height of more than 250 feet when the collapse happened.

Two other workers who were on the ground were not hurt, KAKE News reports.

Two Men Identified, Tower Related Fatalities Increasing In Kansas

March 26, 2014

BLAINE, Kan. (WIBW) The two workers who died after two communications towers collapsed near Blaine Tuesday have been identified and the Federal Occupational and Health Administration is involved in the investigation.

Pottawatomie County Sheriff Greg Riat has identified the men as 25-year-old Seth Garner of Saint Peters, Missouri and 38-year-old Martin Powers of Saint Charles, Missouri.

They died Tuesday while working at the 250 foot level of the telecommunication tower that collapsed. Riat said Powers died at the scene and Garner at a local hospital.

13 News has learned the two men had worked for Wireless Horizon of Saint Louis for less than five months. Wireless Horizon is a subcontractor working for the Union Pacific Railroad.

The two men were dismantling an old tower which was right next to a new tower when the accident happened, destroying both towers.

Michael Moon, Acting Director for OSHA (Occupational Safety and Health Administration), says there were 13 tower related fatalities in Kansas last year and 4 this year.

"They are in a very high risk job. In 2013, we were more than double in the number of fatalities for tower related incidents than we were in 2011 and 2012 combined," said Moon.

This isn't the first time Wireless Horizon employees have been killed. According to http://www.wirelessestimator.com/breaking_news.cfm, in 2005, an Illinois technician was killed after falling 120 feet. Wireless Horizon was fined \$1,500.

And in West Virginia, five people have died on or around cell phone towers in the past eight months.

Their deaths are attributed to towers collapsing and equipment failures, according to <http://www.wvgazette.com>, a West Virginia online newspaper.

"There isn't a specific cause that we can say but they are all preventable, should be preventable, if employers would just simply take a few extra moments and a few extra precautions to check and see what they are doing," said Moon.

Moon told 13 News they had investigators on site Wednesday near highway 16 and Rock Creek Road where the incident happened. He said the investigation could take up to 6 months. Violations could mean a fine anywhere from \$7,000-\$70,000.



Is this supposed to be the 'engineered' break point?



The Maintenance inspectors over the years must have been wearing blindfolds to have missed this.



The driver was the luckiest man in this Illinois town that day!



The latest type of car crusher?

Oh well, the Chief needed a new car anyway.



And they question why adequate 'fall zones' are necessary



No injuries were reported when a 300-foot self supporting tower fell upon church property. A neighbor's home less than 20-feet away was spared following the cell tower's collapse.

Thank goodness it wasn't Sunday



**New back yard freeform sculpture . . . or do they need a permit
to start a new junkyard in their back yard?**

Incorrect Structural Design
Wrong type of foundation design for the type of soils
(Structural Design Signed and Stamped by a P.E.)



Imported from Pizza, Italy?

Incorrect Structural Design
Wrong type of foundation design for the type of soils
(Structural Design Signed and Stamped by a P.E.)



Another Pizza, Italy import?

Failed *When it's Most Needed* . . .

What Do 'First Responders' and the public do now?

Tower did not break at 'engineered' break point



Failed *When it's Most Needed* . . .

What Do 'First Responders' and the public do now?

Tower did not break at 'engineered' break point



Failed *When it's Most Needed* . . .

What Do 'First Responders' and the public do now?

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Failed *When it's Most Needed* . . .

What Do 'First Responders' and the public do now?

Tower did not break at 'engineered' break point



Why is Expert Assistance Needed by Local Officials? Survey Question re Staff Training

Have you or any of your staff been trained in, and are they technically capable of, addressing the **safety** issues vis-à-vis tower-related structural requirements and the physical conditions of the various components of a tower or other support structure as relates to wireless carriers. The question is this:

As a certified planner and/or licensed inspector, have you or members of your staff ever been provided training in the **interrelationship among the International Building Code, the State Building Code and the ANSI/TIA 222 code, and applying it in the real world, specifically in relation to communications towers and wireless facilities/antennas, and if so by what organization?**

This is Why (see next page) . . .

A Few Examples of Typical Responses to E-Mail Survey

**From close to a hundred responses, not a single response said
anyone had been trained**

'No'

Michael D. Harvey AICP, CFO, CZO
Current Planning Supervisor – Planner III
Orange County Planning Department

In response to your question below, no one in the inspections department has received training in the matters you referenced as regards cell towers and the requirements of ANSI/TIA 222.

We are all aware of its reference in Section 3108 (Telecommunication and Broadcast Towers) and in Chapter 35 (Referenced Standards) of the NC Building Code. But as with many portions of the code, *we must rely on third party expert assistance in dealing with the matter.*

David Sudderth CZO, CFM
Stokes County
Director of Planning & inspections

No. That's why we use an outside expert.

Chip Russell, AICP
Planning Director
Wake Forest, NC

The answer to your questions below is, no and no.

Berry Gray
Planning Director
Johnston County Planning Department

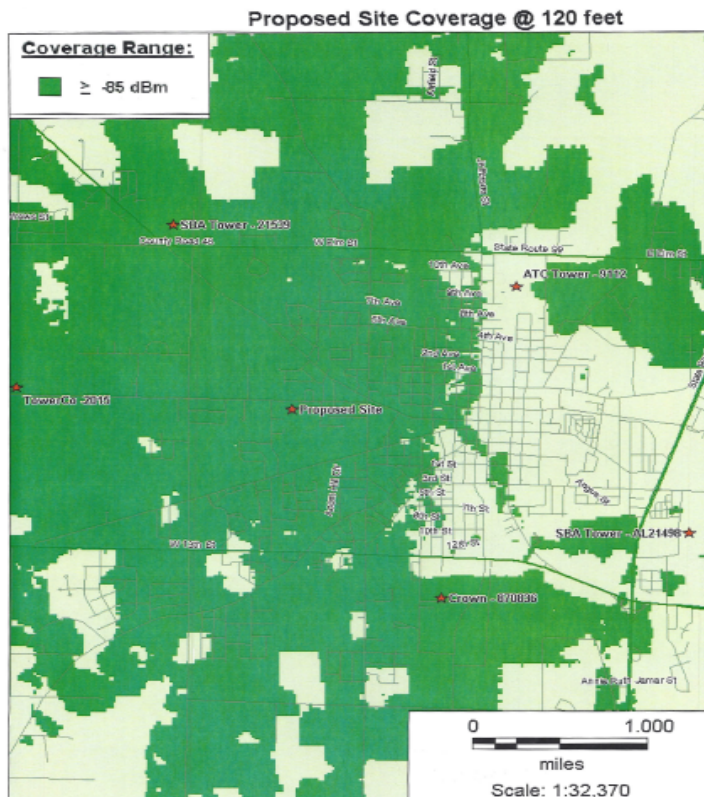
No, and thus the need for an outside consultant to protect the safety of the public and of private property.

Paula Murphy
Planning Director
Person County

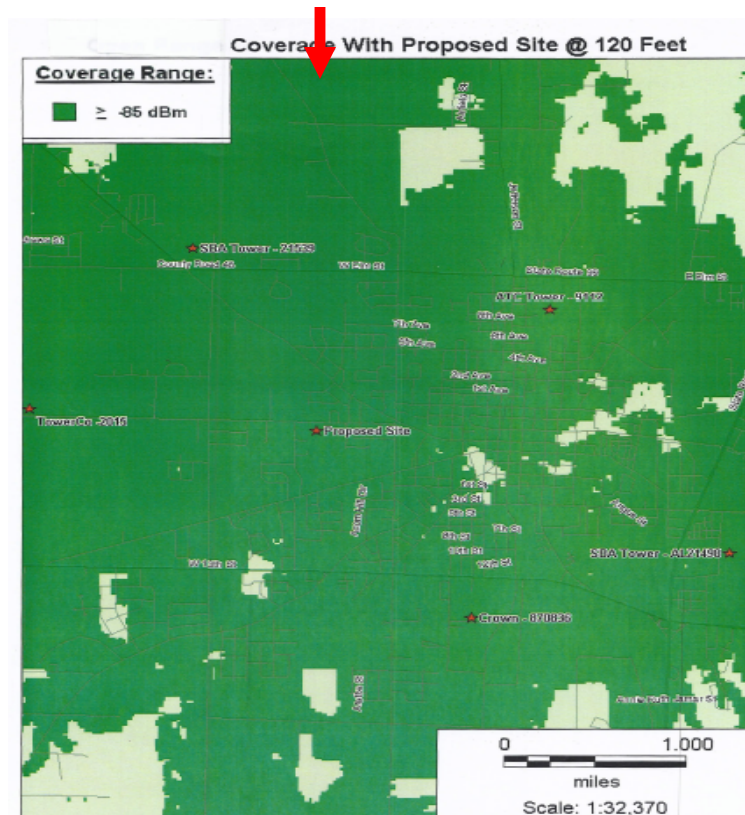
'MANIPULATED' PROPAGATION MAP (Oops. Busted!)

SAME SITE, SAME HEIGHT, SAME SIGNAL STRENGTH, DIFFERENT COVERAGE.

Original submittal showing large gaps at 120'



Later submittal, after an analysis showed that the original map was 'manipulated' to try to prove that 120' would not fill a significant gap when trying to get a 199' tower approved. Note: Large gaps 'miraculously' disappeared after analysis.



This is the bottom-line or underlying issue in most applications for a new facility, as it determines i) the technical need for a proposed new facility in the first place; ii) the need for the proposed location; and iii) the visual intrusiveness (e.g. the need for a tower versus a co-location and the needed height of the tower).

The basic underlying issue is '**Proof-of-Technical Need**', which the 1996 Telecommunications Act allows a community to require proof of. The point of this is to demonstrate that *without the modeling information (i.e. inputted variables) used to produce the maps, the map is useless* and should not be relied upon, as it can easily be manipulated to show a pre-determined (desired) outcome, as the original submittal above did.

Manipulating propagation maps to show a desired, pre-determined outcome is an all-too-common practice and results in facilities being permitted for which there is **no technical justification**. All-too-many communities simply take the applicant's word, which is *not recommended as evidenced by the example above*. Avoiding the issue of verifying the technical need for what is requested is *not doing the due diligence officials are supposed to be doing vis-à-vis serving the public interest and protecting the nature and character of the community*. Avoiding the issue of verification of evidence, claims or assertions i) does not fulfill the mandate of local government and ii) can create major political problems when it's discovered.



City of Homer

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Staff Report PL 15-84

TO: Homer Advisory Planning Commission
FROM: Rick Abboud, City Planner
DATE: December 2, 2015
SUBJECT: Marijuana Licensing

Introduction: I was asked to bring the subject of license restriction to the Planning Commission for consideration of license limitations including amount of licenses and hours of operation.

Analysis: Currently, hours of operation mirror those for selling alcohol which are not to operate between the hours of 5-8am. An amendment to the state regulations now permits use of the product at retail facilities. This action may deserve consideration in regards to the hours of operation.

Municipalities may also limit the amount of licenses. This can be done in a few different ways. It could be total licenses for each type of license throughout the city and/or it could be tied to the amount of license type allowed in the respective districts where such activities are allowed. After speaking with the City Attorney, it was cautioned that limiting the number of licenses may open up the city to litigation.

I believe that the demand for the various licenses in Homer will sort itself out, resulting in only a handful of operations at most. Of course, we do not have definitive proof of this yet. Keeping the facilities restricted to minimal zoning districts may be a better way to contain and measure the impact of the new industry.

My early recommendation to the CAC was to disallow any operations in residential districts. My reports on lessons learned in the various conference sessions and literature on the industry continue to support my recommendation. The only mitigating factor for this activity may be the reference to "allow for limited agricultural pursuits" in the purpose of the rural residential district *[The purpose of the Rural Residential District is primarily to provide an area in the City for low-density, primarily residential, development; allow for limited agricultural pursuits; and allow for other uses as provided in this chapter (Homer Comprehensive Plan 2010).]*

Staff Recommendation: If so desired make motion(s) to support policy decisions regarding the licensing and/or recommended hours of operation for retail marijuana establishments to the City Council.



City of Homer

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City Manager's Report

TO: Honorable Mayor Wythe and Homer City Council

FROM: Katie Koester, City Manager

DATE: November 23, 2015

SUBJECT: City Manager's Report

Get out the Vote for HART

HART education is in full swing in preparation for the December 1st election. This includes the attached mailing that was sent to all registered voters in City limits, spots on local radio stations, and pieces in the paper. Thank you to councilmembers who volunteered to be on the radio and write opinion pieces for the paper.

Strategic Doing on ADA

When Council initiated the strategic doing process, they chose ADA accessibility as one of the items they would like to tackle first. I have been working with Rick Malley of the Independent Living Center on suggestions on how to make the City of Homer more ADA friendly. He has met with public works staff to go over some of the accessibility issues and put me in contact with a specialist in training municipal employees on ADA sensitivity. In light of the Council's commitment and the Independent Living Center's willingness to help the City of Homer become more ADA friendly, I have dedicated the January Strategic Doing to ADA accessibility. At that session the Council will work on laying the ground work for a transition plan detailing the ways Homer can be more accessible. One thing that I have learned through this process is that ADA accessibility is often not about infrastructure but about employees finding creative solutions to help all residents access municipal programs, information and activities. In that vein, I am hoping to bring in a specialist and offer training to frontline City of Homer employees on ADA sensitivity in the near future.

Website Upgrades

We have been talking for quite some time about making the City of Homer website more mobile friendly and updating its form and functions. The contractor that designs our website (aHa Consulting) will be here in December to train employees on the new interface. We are hoping to keep many of the features that the community loves the same, but upgrade the look and functionality of the website. Stay tuned for a fresh and functional City of Homer web experience for the new year.

Welcome New Faces to the City of Homer Staff

The City would like to extend a warm welcome to Kim Gilbert in the Finance Department and Jason Hoffman at Public Works. Please say hi to the newest members of the City of Homer team if you get a chance.

Town Hall

Despite the blustery and slushy winter weather, we had a great Town Hall on Monday the 9th. I really appreciate the full Council attending. It provided a great opportunity for those in attendance to ask direct questions of the decision makers and exchange ideas and opinions.

At the Town Hall we unveiled an excel spreadsheet tool that lets the public chose elements of Budget A (assumes revenue) and Budget B (bare bones) coupled with the suspension of the HART fund to try their hand at balancing the budget. A survey is also included with questions on HART and the outreach process (<https://www.surveymonkey.com/r/N639HFG>) .

Preliminary survey results are attached. We also introduced an online budget tool called Open Budget that provides a graphic representation of the City of Homer budget over the last 5 years. This is neat tool for the public, Council and staff to more easily understand both historical budgets and current spending. So far, lots of great questions internally have come from being able to see the numbers in a bar chart form and I am looking forward to questions from the public. Check out both tools on the City of Homer website: <http://www.cityofhomer-ak.gov/>.

Land Sales – Do we Need a Professional?

This fall Council directed me to make City of Homer Land sales simpler. In response, Council passed Ordinance 15-28(A) streamlining the land sale process. Staff proceeded through the process of RFPing lots Council had identified an interest in selling. For example, we RFP'd the Lillian Walli lots in October. Even though we have had developers express an interest in the lots, no one has signed up on the planholders list and I extended the time frame until December 14th. During this time we also began advertising the lots on Zillow and Craigslist. As of Monday the 16th, we had almost 500 views - but no bites yet. I perceive a disconnect between the City of Homer RFP process and how people look for property. To maintain integrity and transparency of the RFP process, staff cannot let individuals know when City of Homer has issued an RFP. However the RFP process is problematic for land sales. For the most part, people use a real estate agent, or at least browse online through sites like MLS, when looking for property. If the City wants to make an active push to get rid of land, I think the City should consider hiring a municipal real estate agent.

Using an agent is necessary to get property onto MLS and other information sources commonly used by prospective purchasers to search for properties that are for sale. A good agent also can provide helpful advice regarding pricing and market conditions. The best way to hire an agent consistently with the code would be to solicit proposals to provide this service. The RFP might be for particular properties and/or for a particular limited time period (agents are accustomed to an agreement for an exclusive listing for a specified period). This

would allow the City to evaluate the effectiveness of this approach (and the selected agent) without making a more general commitment.

Out of Room at Hickerson Cemetery

Hickerson Cemetery has only a handful of lots left that are spread out around the cemetery. Parks has proposed a \$350,000 capital request to purchase land for a new cemetery. Fully developing the cemetery would cost an additional \$230,000. Public Works has proposed a fee increase as part of the FY2016 budget process to help recoup these costs (\$250,000 to \$1,000). However, there is a substantial upfront capital investment that is needed. The current City Manager's proposed budget does not include expansion of the cemetery. Without this project, the City will likely have to turn families away in the near future.

Enc:

HART mailer

Budget Breakdown Survey Results

Letter of support for Coastal Studies grant application