

REGULAR MEETING AGENDA

1. Call to Order

2. Approval of Agenda

3. Public Comment

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

4. Reconsiderations

5. Adoption of Consent Agenda

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

A. Approval of minutes of June 5, 2019 **p. 1**

B. Decisions and Findings for Remand of CUP 19-01, a medical clinic at 267 Cityview Street **p. 13**

6. Presentations/Visitors

7. Reports

A. Staff Report 19-55, City Planner's Report **p. 17**

8. Public Hearings

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

9. Plat Consideration

A. Staff Report 19-56, The Shire Preliminary Plat **p. 57**

B. Staff Report 19-57, Lloyd Race 2019 Preliminary Plat **p. 69**

10. Pending Business

A. Staff Report 19-58, Zoning Permit & CUP Requirements **p. 81**

B. Staff Report 19-59, Building Height in the East End Mixed Use District **p. 83**

11. New Business

12. Informational Materials

A. City Manager's Report for the June 10, 2019 Homer City Council meeting **p. 85**

B. AKDOT open house for Homer area projects June 25, 2019 **p. 111**

13. Comments of the Audience

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

14. Comments of Staff

15. Comments of the Commission

16. Adjournment

The next regular meeting is scheduled for Wednesday, July 17, 2019. Meetings will adjourn promptly at 9:30 p.m. An extension is allowed by a vote of the Commission.

Session 19-11, a Regular Meeting of the Homer Advisory Planning Commission was called to order by Chair Venuti at 6:30 p.m. on June 5, 2019 at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

PRESENT: COMMISSIONERS BOS, SMITH, VENUTI, HIGHLAND, PETSKA-RUBACLAVA

ABSENT: COMMISSIONER BANKS, BENTZ (EXCUSED)

STAFF: CITY PLANNER ABBOD
DEPUTY CITY CLERK KRAUSE

The Commission conducted a worksession prior to the meeting with City Attorney Holly Wells on understanding the Quasi-Judicial role of the Commission; drafting good findings and looking beyond findings; Open Meetings Act and How it Applies to the Commission; and Ethics.

APPROVAL OF THE AGENDA

Chair Venuti called for a motion to approve the agenda.

BOS/HIGHLAND – MOVED TO APPROVE THE AGENDA.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

PUBLIC COMMENT

RECONSIDERATION

ADOPTION OF CONSENT AGENDA

- A.** Approval of minutes of May 15, 2019
- B.** Decisions and Findings Document for Conditional Use Permit 19-05, approving a physical therapy clinic at 210 W. Fairview Ave.
- C.** Decisions and Findings Document for Conditional Use Permit 19-06, approving an assembly and fabrication building for boats and vinyl sign making at 3301 East End Road

Chair Venuti requested a motion to approve the Consent Agenda.

BOS/HIGHLAND – MOVED TO APPROVE THE CONSENT AGENDA.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

VISITORS/PRESENTATIONS

REPORTS

A. Staff Report 19-47, City Planner's Report

Chair Venuti introduced the item into the record by reading of the title and invited the City Planner to provide his report.

City Planner Abboud reviewed Staff Report 19-47 for the Commission noting the Ordinance for amending the Building Height in Flood Areas was approved; the upcoming meeting on the 10th of June will have an ordinance rewriting the water and sewer regulations and the ordinance for adding lighting standards will be introduced.

City Planner Abboud reviewed the schedule for attendance at the City Council meetings as follows:

June 10th – Commissioner Smith

June 24th – Commissioner Bos

Commissioner Smith stated that he had a work conflict and would be unable to attend the Council meeting on Monday. Commissioner Petska-Rubalcava volunteered requesting some guidance on what she was to report to Council from Commissioner Smith.

Commissioner Smith would like to have a discussion on bee keeping in Homer at a future meeting.

Chair Venuti inquired as to the reason and concept of the topic of bees.

Commissioner Smith explained that he was approached by two residents who explained recent incidents of increased bee stings due to a neighbor having bee hives, has currently two hives and plans to increase the number to seven.

Chair Venuti suggested adding this topic to a worksession.

City Planner Abboud responded that a motion to add to the worklist will keep it clean.

Chair Venuti requested a motion.

SMITH/BOS MOVED TO ADD THE TOPIC OF BEES AND POSSIBLE REGULATIONS REGARDING THE KEEPING OF BEES IN CITY LIMITS TO THE COMMISSION WORKLIST.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

PUBLIC HEARINGS

A. Staff Report 19-48, Request for a vacation of a portion of the Greatland Street right-of-way near Ohlson Lane

Chair Venuti introduced the item by reading the title into the record.

City Planner Abboud reviewed Staff Report 19-48 for the vacation of a portion of Greatland Street noting the location in Old Town portion of the city. He spoke on the following points:

- Increased block link by eliminating the intersection
- Vehicular Access exists
- Utility easements are sufficient

There was no Applicant present to provide a presentation or speak to the application.

Chair Venuti opened the public hearing. Seeing no one in the audience coming forward to provide testimony he closed the public hearing and opened the floor to questions from the Commission.

Commissioner Bos inquired why this vacation was not completed when it first was approved.

City Planner Abboud responded that he did not have that information, it timed out and he noted that they are being more expeditious on these actions.

Commissioner Highland asked about adding the pedestrian easements to this.

City Planner Abboud responded that the pedestrian access is not part of the Greatland corridor, it goes East to West and is not on any plans for the city. He noted that there is another access from Main behind the Alaska USA which is in the Trails Plan.

BOS/HIGHLAND MOVED TO ADOPT STAFF REPORT 19-48 AND APPROVE THE REQUEST FOR A VACATION OF A PORTION OF GREATLAND STREET RIGHT OF WAY NEAR OHLSON LANE.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

B. Staff Report 19-49, Remand of Conditional Use Permit 18-09 for a medical clinic at 267 Cityview Ave.

Chair Venuti introduced the item into the record by reading of the title and noted the laydown item submitted by Mr. Lund and requested a brief recess to allow the Commission to read the document at 6:46 p.m.

Chair Venuti called the meeting back to order at 6:51 p.m. and requested City planner Abboud to provide his report.

City Planner Abboud commented for the record the general content of Mr. Lund's letter then reviewed Staff Report 19-49 that noted the recommended actions from the Office of Administrative Hearings; the supplemental findings and conditions recommended by staff and reviewed the pictures of the existing conditions contained in the report.

Chair Venuti invited the Applicant to present to the Commission.

Dr. Paul Raymond and Architect Lawrence Peek came forward and informed the commission that in the long term he has applied for a Special Assessment District for Road Improvements for Cityview and believes that there will be no disagreement from the affected property owners and theoretically it should go through and could be completed next summer according to the Public Works Department.

Mr. Peek stated that he had received initial approval from the Fire Marshal on the access via email.

City Planner Abboud responded that was not a requirement of the Conditional Use Permit process and Mr. Peek would still be required to submit the official Fire Marshal permit.

Chair Venuti opened the public hearing, seeing no one in the audience coming forward to provide testimony he closed the public hearing and opened the floor to the Commission for questions.

Commissioner Highland inquired if Mr. Raymond was okay with the Supplemental Condition.

Dr. Raymond responded that he was okay with the new requirements.

Hearing no further questions, Chair Venuti requested a motion.

SMITH HIGHLAND MOVED TO ADOPT STAFF REPORT 19-49 RETRACT FINDING #7 AND REPLACE WITH SUPPLEMENTAL FINDINGS 1 AND 2 AND SUPPLEMENTAL CONDITION 1.

There was a brief dialog on the desire to comment on Mr. Lund's points raised in his letter. It was noted that only if it was pertinent to the discussion. There was no further discussion or comment.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

C. Staff Report 19-50, An ordinance of the Homer City Council to add "Medical Clinic" as a permitted use in the Central Business Zoning District.

Chair Venuti introduced the item by reading of the title.

City Planner Abboud reviewed Staff Report 19-50 noting the error in the 2008 rewrite of the Homer City Code regarding the definition of professional office excluded "medical clinics" in the Central Business Districts.

Chair Venuti opened the Public Hearing.

Ken Castner, city resident, commented on the timing being appropriate for the Commission to explore deeper commenting on the issues that came up tangentially with Set Free and the comments received that if Set Free were going to have medically assisted procedures such as administering a shot then it was alleged that they should be in the area up near the hospital or in the zone that doesn't exist; and that could be addressed to a broader scope than just clinics, it could be applied to rehab facilities or long term care facilities or things like that. It is a bit broader than what the Planner has indicated because it also could have something to do with the ability to do medical assistance which could be tied to the hospital.

Chair Venuti closed the public hearing and opened the floor to questions from the Commission. Hearing no questions from the commission he requested a motion.

BOS/HIGHLAND MOVED TO ADOPT STAFF REPORT 19-50 AND FORWARD THE DRAFT ORDINANCE TO ADD MEDICAL CLINIC AS A PERMITTED USE IN THE CENTRAL BUSINESS DISTRICT TO CITY COUNCIL.

Brief comment was made on it being a good decision to get ahead of this issue.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

PLAT CONSIDERATION

A. Staff Report 19-51, A. A. Mattox 2019 Preliminary Plat

Chair Venuti introduced the item by reading of the title into the record.

City Planner Abboud reviewed Staff Report 19-51 for the Commission and public present.

There was no applicant present.

Chair Venuti opened public comment.

Kim Seymour, property owner of adjacent Lot 22 expressed concerns regarding flooding and drainage that exist when it rains and noted that it can get up to three feet deep in some areas depending on the amount of rain. He explained the flooding in the previous 33 years that he has resided in his residence and added that while he supports development consideration should be afforded the neighboring properties.

Chair Venuti closed the public comment period seeing no one coming forward from the audience and opened the floor to questions from the Commission.

City Planner Abboud responding to questions regarding soil and water displacement from the Commission noted that a Master Stormwater Plan would address these issues, development will displace water and a plan will be needed to address that drainage and they will have to contact the Army Corps of Engineers regarding permits. He expressed concern with what may be proposed to develop there. He was surprised to learn that the drainage goes in that direction as it was assumed it flowed the other direction. This is a preliminary plat and the City is an advisory authority to the Borough and commenting on their codes. This is a development issue.

Commissioner Bos commented on the “if” and “when” of progress on development for this property.

Commissioner Petska-Rubalcava questioned if the Commission has the capacity to suggest or require a drainage easement. This may assist in the application to the Army Corps of Engineers.

City Planner Abboud responded that they could recommend that a drainage easement to facilitate better development.

A brief discussion on the issues of drainage in that area and the concerns with regards to development.

HIGHLAND/BOS MOVE TO ADOPT STAFF REPORT 19-51 AND RECOMMEND APPROVAL OF A.A. MATTOX 2019 PRELIMINARY PLAT WITH THE FOLLOWING COMMENTS:

1. INCLUDE A PLAT NOTE STATING "PROPERTY OWNER SHOULD CONTACT THE ARMY CORPS OF ENGINEERS PRIOR TO ANY ON-SITE DEVELOPMENT OR CONSTRUCTION ACTIVITY TO OBTAIN THE MOST CURRENT WETLAND DESIGNATION (IF ANY). PROPERTY OWNERS ARE RESPONSIBLE FOR OBTAINING ALL REQUIRED LOCAL, STATE AND FEDERAL PERMITS."
2. DEDICATE THE 9.85 FEET OF RIGHT-OF-WAY ALONG LOTS 25A THROUGH 25D.
3. DEDICATE THE 15 FOOT UTILITY EASEMENT FRONTING THE RIGHT-OF-WAY.
4. THE PROPERTY OWNER WILL NEED TO WORK WITH PUBLIC WORKS ON THE REQUIRED WATER MAIN EXTENSION AND PROVIDE WATER AND SEWER SERVICES TO THE LOTS.

PETSKA-RUBALCAVA/SMITH MOVED TO AMEND THE MOTION TO INCLUDE A RECOMMENDATION TO RECOMMEND ADDING A DRAINAGE EASEMENT CONSIDERATION TO THE PLAT.

Further discussion ensued on the enforcement and assurance of the Corps of Engineers permit; construction methods in wetlands for residences and driveways; the plat note to contact is a standard that they add to all plats and how this assists the Planning Department when a property comes in to get a permit; there is no follow-up on issues by the Planning staff; possible solutions in making sure that property owners have the necessary permits; and additional points were made on how a property owner can build responsibly and follow the provisions outlined in city code; the functionality of a drainage easement.

Commissioner Highland called for the vote.

VOTE. (Amendment). NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

There was no further discussion.

VOTE. (Main). YES. BOS, HIGHLAND, VENUTI, PETSKA-RUBALCAVA.

VOTE. (Main). NO. SMITH.

Motion carried.

B. Staff Report 19-52, Northern Enterprises No. 3 Preliminary Plat

Chair Venuti introduced the item by reading of the title.

City Planner Abboud referenced the map located on the wall behind him and proceeded to review Staff Report 19-52.

There was no applicant present.

Chair Venuti opened the public comment period seeing no one coming forward to provide comment he closed the comment period and opened the floor to questions and comments from the Commission.

Commissioner Smith noted a typographical error in the staff report, the number reflected 18-52 and it should read 19-52 on page 91 of the packet.

BOS/HIGHLAND - MOVE TO ADOPT STAFF REPORT 19-52 AND RECOMMEND APPROVAL OF NORTHERN ENTERPRISES NO. 3 PRELIMINARY PLAT WITH THE FOLLOWING COMMENT

1. ADD A PLAT NOTE ABOUT THE FLOOD PLAIN: "KACHEMAK BAY IS SUBJECT TO A 1-PERCENT-ANNUAL-CHANCE FLOODPLAIN AS IDENTIFIED BY THE FEMA FLOOD INSURANCE STUDY DATED OCTOBER 20, 2016, 02122CV001B. PROPERTY OWNER SHOULD CONTACT THE CITY OF HOMER PRIOR TO ANY DEVELOPMENT ACTIVITY."

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

PENDING BUSINESS

A. Staff Report 19-53, Building Height in the East End Mixed Use District

Chair Venuti introduced the item into the record by reading of the title.

City Planner Abboud reviewed the staff report 19-53 and requested the Commission to review the discussion held at the worksession on May 15, 2019.

Commissioner Smith reported on how this issue came before the Commission and related following discussions with interested property owners and those property owners/business owners lending input on how the increased building height will benefit the community overall by providing economic development and bringing additional year round skilled employment to the area.

Further discussion included the points of fire suppression and any building over the current 35 feet and the requirement to be sprinklered; not allowing residential in such buildings. Questioning if this should be limited to marine industry; what other additional other businesses that could be accommodated such as possibly a factory are unknown; no hotels could be built in the district; the ability to move vessels without the requirement to dismantle technology, antennas, etc; storage garages for large vessels, buses, RV's; stackable recreational storage facilities; improvements to the economy of the marine industry to bring real paying jobs to Homer; Fire Marshal approval would be a requirement; Conditional Use Permit is preferred for buildings over 35 feet, non-residential structural.

City planner Abboud provided clarification on the effect of negative impact is to the residential qualities over business would not stand so much in the East End Mixed Use District. He cited examples of areas in the Lower 48 where one sees an industrial area and then one lone single residential property.

There was no further discussion.

B. Staff Report 19-54, Permitting requirements – asbuilts

Chair Venuti introduced the item by reading of the title.

City Planner Abboud reviewed Staff Report 19-54 and noted the following:

- Applies to the CUP process only
- If included in the permitting process overall then what would they exclude if anything
- Implementing a steep fine if done wrong
- Enforcement issues
- No Construction/Building Department

Discussion ensued on the following by the Commission and City Planner:

- Application for a Conditional Use Permit the applicant should provide a survey or an asbuilt and then they should provide a confirmation from the surveyor at completion.
- Not all CUP applications are the same, the owner/builder should not have to go through a public process which can be trying not to mention those requirements can cause undo expense
- Having a survey on the property will provide value to the property
- Depending on the type of survey they do not show all easements, boundary monumentation, only improvements if any, so a question would be if everything is not shown on the plat who would be liable.
- Any changes would have to be recordable to be found and while ALTA surveys would be best this process is the best until the City adopts building codes.
- The Commission only sees the Conditional Use Permit applications and does not review and see all the Building Permits.

- The type of Building Permit applications received by the Planning Department can be as conceptual sketch on a napkin to engineered drawings.
- Homer is the exception with not having a Building Department for a municipality of its size.
- They could apply this requirement on all building permits to require a survey
- Current projects are being inspected and built according to Standard International and National Standards which is being driven by the Financing industry.

Chair Venuti called for a recess at 8:28 p.m. The meeting was called back at 8:32 pm

The Commission discussed their preferences in the Options provided and discussed and whether it applied only to CUP's or all Building Permits within the 20 foot setback or not and it could be relevant to building location and septic.

Chair Venuti called for a motion.

Commissioner Highland provided some direction to Commissioner Smith on how he could formulate the motion needed.

Commissioner Bos requested clarification on including the 20 foot setback specificity within the motion providing his recall of the input from the surveyors.

PETSKA-RUBALCAVA/BOS – MOVED TO REQUIRE PROPERTY LINES BE STAKED BY A LICENSED SURVEYOR PRIOR TO CONSTRUCTION FOR ALL IMPROVEMENTS AND FURTHER REQUIRE AN ASBUILT BE DONE UPON PROJECT COMPLETION.

City Planner Abboud explained that staff would bring something back at the next meeting for further review and possible discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

NEW BUSINESS

INFORMATIONAL MATERIALS

A. City Manager's Report for the May 28, 2019 Homer City Council meeting

COMMENTS OF THE AUDIENCE

Kim Seymour, city resident, stated that he decided to hang out to see what the Commission does and then commented in support of the idea of raising the building height testifying that

it would be an economic windfall for Homer and the skilled workers that are available to provide those services locally. But he would also suggest recommending that all power lines in Homer be buried since those provide some logistical issues with transporting the larger vessels from the Port to repair facilities. Keep up the good work.

Mayor Castner commented that he attended the meeting in his official capacity as a consulting member tonight and there were some things that were on his radar since he last spoke to the commission the 2005 Transportation Plan is sorely in need of attention and he understands that the Commission is very busy but the transportation plan is really important. The Council set aside some funding to allow hiring someone to help with that update and with the impending rollout of 5G service they can expect it within the next four years, due to the recent experience transitioning from 3G to 4G service in the past.

Mayor Castner continued stating he believes it will happen sooner than that due to the efforts of the FCC to federalize the whole thing which would eliminate any local control. There is already a lawsuit in the courts filed by several Mayors. He believed 5G would impact a transportation plan by allowing autonomous vehicles. He has been working with AKDOT on improved pedestrian safety on Pioneer Avenue. He stated that it is time to pick up on safety improvements for pedestrians at Homer's intersections as he realized how difficult it is to cross an intersection on two good legs, let alone if someone has some mobility issues.

Mayor Castner then noted that Homer is on the cusp of big changes but he never thought the changes would be so profound such as Homer becoming an agricultural hub, all the people wanting to live here; looking at the boats it is similar to the peonies.

As Mayor he is excited and it is his intent for the Commission to be the autoclave or percolator of these ideas and kick these things around. A lot of things they are dealing with are past problems and there is a need to be progressive and not spend so much time on these past problems. He commented on the court decision that was favorable for the city and sooner or later they will emerge from the shadow of what you can do and what you must do, not as an advisory body to the borough but as a decisive role and deciders on how to interpret our code and what reasonable person would do.

COMMENTS OF THE STAFF

Deputy City Clerk Krause commented that it was an interesting meeting as always.

City Planner Abboud commented that he received the news Tuesday afternoon (June 4, 2019) that they prevailed on all issues for CUP 13-13 to building a duplex and once they got past the standing issue they ran board with it. He will provide it for the next packet.

COMMENTS OF THE COMMISSION

Commissioner Highland commented it was an interesting meeting, they got through a few issues.

Commissioner Bos commented it was a good meeting and training. Good findings.

Commissioner Petska-Rubalcava echoed Commissioners Bos sentiments on a great meeting.

Commissioner Smith stated fantastic meeting, Thanked Rick for all the work that he does in making this commission work as well as it does. He appreciated the changes to allow the new building height and is looking forward to the improvements in the industry from those changes.

Chair Venuti commented that it was an interesting meeting they got through a lot.

ADJOURN

There being no further business to come before the Commission, the meeting adjourned at 8:55 p.m. The next regular meeting is scheduled for Wednesday, June 19, 2019 at 6:30 p.m. in the City Hall Cowles Council Chambers. There is a worksession scheduled at 5:30 p.m. prior to the meeting.

RENEE KRAUSE, MMC, DEPUTY CITY CLERK

Approved: _____



City of Homer

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HOMER ADVISORY PLANNING COMMISSION

Remand of CUP 19-01 at the Meeting of June 5, 2019

RE: Conditional Use Permit (CUP) 19-01

Address: 267 Cityview Street

Legal Description: T 6S R 13W SEC 18 SEWARD MERIDIAN HM 2005061 FAIRVIEW SUB
FLYUM ADDN LOT 2A BLK 6

DECISION

Introduction

The Homer Advisory Planning Commission approved CUP 18-09 on September 19, 2019 and subsequently approved CUP 19-01 as an amendment to CUP 18-09 on January 2, 2019. The approved CUP permitted a medical clinic per HCC 21.16.030(d) and a structure of over 8,000 square feet of building area per HCC 21.16.030(e).

CUP 19-01 was appealed. The appeal was considered by an Administrative Law Judge from the Alaska Office of Administrative Hearings, as allowed per HCC 21.93. The order was remanded to the Commission for the following additional proceedings:

1. Gather additional facts necessary to address the issue of road access in the context of Homer City Code 21.71.030(e), including, if desired, consulting with the applicant regarding his willingness and ability to secure adequate access;
2. Create a record on the issue of road access in the context of Homer City Code 21.71.030(e);
3. Make new findings regarding the criterion in Homer City Code 21.71.030(e), which shall be based on the augmented record; and
4. Impose any new Conditions related to access that the Commission, in its best judgment, feels are warranted.

The remanded CUP was scheduled for a public hearing as required by Homer City Code 21.94 before the Commission on June 5, 2019. Notice of the public hearing was published in the local newspaper and sent to 25 property owners of 36 parcels prior to the meeting.

At the June 5, 2019 meeting of the Commission, the Commission voted to approve the request with five Commissioners present. The Commission approved the revised findings and additional condition of CUP 19-01 with unanimous consent.

Evidence Presented

City Planner Abboud reviewed the staff report. Dr. Raymond and Architect Lawrence Peek made a presentation and responded to questions of the Commission. One written comment in opposition was received and provided as a lay down to the commissioners. No public testimony was provided.

Findings of Fact

After careful review of the record, the Commission approves CUP 19-01 by approving the amended Findings under HCC 21.71.030(e) by retracting Finding 7, making Supplemental Findings 1 & 2 and making a Supplemental Condition.

HCC 21.71.030(e), Public services and facilities are or will be, prior to occupancy, adequate to serve the proposed use and structure.

Finding 6: Existing public services are or will be adequate to serve the medical clinic.

Finding 7: ~~Recommendation that the applicant work with the City of Homer to share costs of improving the roads so that access is adequate.~~ **Retracted**

Finding 1 Supplemental: Adequate access to the proposal will be provided with design and construction approved by the Homer Volunteer Fire Department and/or the State Fire Marshal.

Finding 2 Supplemental: A Licensed Civil Engineer can confirm that the access to the project meets local Fire Department and Fire Marshall standards.

Condition 1 Supplemental. A written statement from Licensed Civil Engineer shall be provided to the Planning Office confirming that the access meets all standards required of the Homer Volunteer Fire Department and/or the State Fire Marshal.

Conclusion: Based on the foregoing findings of fact and law, the remand of Conditional Use Permit 2019-01 is hereby approved, with the retraction of Finding 7, the addition of Supplemental Findings 1&2 and Supplemental Condition 1.

Date

Chair, Franco Venuti

Date

City Planner, Rick Abboud

NOTICE OF APPEAL RIGHTS

Pursuant to Homer City Code, Chapter 21.93.060, any person with standing that is affected by this decision may appeal this decision to the Homer Board of Adjustment within thirty (30) days of the date of distribution indicated below. Any decision not appealed within that time shall be final. A notice of appeal shall be in writing, shall contain all the information required by Homer City Code, Section 21.93.080, and shall be filed with the Homer City Clerk, 491 East Pioneer Avenue, Homer, Alaska 99603-7645.

CERTIFICATION OF DISTRIBUTION

I certify that a copy of this Decision was mailed to the below listed recipients on _____, 2019. A copy was also delivered to the City of Homer Planning Department and Homer City Clerk on the same date.

Date

Travis Brown, Planning Technician

Paul Raymond
PO Box 2755
Homer, AK 99603

Larry Peek
3715 Ben Walters Drive
Homer, AK 99603

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

Katie Koester, City Manager
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TO: Homer Advisory Planning Commission
FROM: Rick Abboud AICP, City Planner
DATE: June 19, 2019
SUBJECT: Staff Report 19-55 City Planner's Report

City Council 6/10/19

Ordinance 19-26, An Ordinance of the City Council of Homer, Alaska Adding Rural Residential Zoning District 21.12.060 Lighting Standards And Urban Residential Zoning District 21.14.060 Lighting Standards. Planning Commission. Recommended dates Introduction June 10, 2019, Public Hearing and Second Reading June 24, 2019 Memorandum 19-069 from City Planner as backup

Ordinance 19-28, An Ordinance of the City Council of Homer, Alaska, Authorizing the Expenditure in an Amount up to \$6,000 from the HART Funds for Construction of an ADA Accessible Trail on City of Homer Property and Kachemak Heritage Land Trust Property. Mayor. Recommended dates Introduction June 10, 2019, Public Hearing and Second Reading June 24, 2019 Memorandum 19-070 from Deputy City Planner as backup

Ordinance 19-29, An Ordinance of the City Council of Homer, Alaska, Authorizing the Expenditure in an Amount up to \$13,900 from the HART Funds for Construction of an ADA Accessible Trail on City of Homer Property and Kachemak Heritage Land Trust Property. Venuti. Recommended dates Introduction June 10, 2019, Public Hearing and Second Reading June 24, 2019 Memorandum 19-071 from Parks Art Recreation and Culture Advisory Commission as backup

Ordinance 19-19, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code Title 14.08, "Water Rules and Regulations" to add HCC 14.08.015, "Water Service Area" and Prohibiting the City from Providing Water Service Outside the City of Homer Unless Authorized by Ordinance or Required by Law and Requiring the Adoption of Extraterritorial Public Utility Agreements by Resolution. Aderhold. Introduction April 22, 2019, Postponed to May 28, 2019, Public Hearing and Second Reading June 10, 2019.

Ordinance 19-19(S), An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code Title 14.08, "Water Rules and Regulations" to add HCC 14.08.015,

“Water Service Area” and Permitting the City to Provide Water Service Outside the City of Homer so Long as the Property Served is Adjacent to a Water Main Installed to Serve City Property and Such Service is Required by Law or Authorized by Ordinance and Requiring a Council Approved Agreement Regulating Use, Operation, Installation, and Maintenance of Water Service on the Property. Aderhold.

Ordinance 19-25, An Ordinance of the City Council of Homer, Alaska, Approving the Sale of the Homer Public Library Lot Located at 3713 Main Street and Authorizing the City Manager to Execute the Appropriate Documents to Dispose of the Lot. Aderhold.

Introduction May 28, 2019, Public Hearing and Second Reading June 10, 2019.

Eight people commented.

FAILED with discussion.

Landslide Hazards Mapping and Bluff Stability Project

Lidar and oblique aerial photography have been acquired on June 3rd and will be processed in the next month. Final project submittal for the Bluff Stability Project will be completed in the week or so in time for an October start date.

Appeals

After an affirmative standing determination by the Alaska Supreme Court Mr. Griswold's challenge of CUP 13-13 was upheld on all accounts of points of appeal.

I have been working on a brief and reply motion regarding the administrative appeal of CUP 14-14 by Mr. Griswold.

Work list

- Green Infrastructure – Syverine to attend conference and report back to HAPC. Goal is to increase capacity for a future plan update.
- Medical district – awaiting decision on the appeal
- Transportation plan – will be working on a schedule to bring to the Commission next meeting
- Permit requirements – Agenda item
- Bee keeping – Beekeeping professional, Linda Gorman, has provided an introduction letter to herself and beekeeping practices in the Homer area. She is able to present at our July work session.

City Council report sign up

6.24.19 Tom

7.22.19

8.12.19

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Attachments

Linda Gorman informational beekeeping letter
Superior Court decision CUP 13-13

June 14, 2019

City of Homer
Planning and Zoning Office

Attention: Travis Brown

RE: Honeybees in Homer

My name is Linda Gorman, owner of Homer Girls Honey. I have been keeping bees in Homer since 2007. I am passionate about honeybees and their keepers. I teach beginning beekeeping in Homer at least once a year. I run a honeybee club and post daily educational information about honeybees on Homer Communications Facebook page.

I am the peninsula distributor for the largest bee supplier in Alaska bringing in 52 packages of bees in 2008, and 81 packages in 2019. I have knowledge of the other bee packages suppliers in Alaska and can address any concerns the commission has on keeping bees in Homer and the growth of wannabe keepers I keep in touch with around 100 keepers on my email list.

In 2018 I brought in 92 packages of bees. A package contains 15,000 bees and one queen. At the height of the nectar flow, typically July a single hive has up to 60 thousand bees in it. With my knowledge of how many people had hives last year in July the honeybee population would have be around 12 million bees in the Homer, North Fork, East End, Dimond Ridge, and Old Sterling areas.

I offer the following written information to the commission on honeybees in Homer and surrounding areas since I am unable to attend your June 19th meeting. Travis Brown has communicated with me with some specific questions which I will address.

Honeybees are generally calm and happy just looking for food for their hive, if you leave them alone, they will leave you alone. I've taught beekeeping in Homer for the past 6 years; my average attendance is 10-15 folks each class. Not all of them go forward and keep bees, but there is a huge interest in bees. I would say 5-8 new keepers give it a try each season. A lot of people try keeping for a couple of years and give it up due to the time issues of maintaining a healthy hive.

Bees really are not that interested in us humans; they may buzz around you, unless you swat at her, she won't bother you. She might land on your shoulder and have a look at you before she moves on. If a person other than the keeper gets close to a hive, the bees would continue to do their business and most generally ignore the human. It comes down to the human behavior. If you mess with a hive they will come after you, as they defend their hives. If you are a block away from a hive, they may check you out, and move on. Honeybees don't sting unnecessary they sting to protect themselves. If they sting, they die. Unlike a wasp that can continue to sting. Dogs, cows, and horses all live will with the bees.

Honeybees go around trees, buildings and other structures, they are focused on the route home. Bees have an internal sense of where they are in relation to their hive and the sun.

When a forager comes out for the first time, she does an orientation flight in front of hive, then takes off in the direction she has been told to go. Bees communicate through what we call dancing. They are deaf, live in the dark and communicate through their pheromones. They don't fly in a group unless they are in a swarm mode. They have 5 eyes; see in ultraviolet light and colors us humans can't see. They have facial recognition of us keepers. 98% of the bees are female worker bees with a life span of 58 days.

Keepers try to protect their hives away from busy urban areas, but you can't restrict a bee from foraging. There are three main types of bees that we keep in Homer. Italians, they fly up to a mile from their hive, Carnies, they fly up to three miles from their hive, and Buckfast can fly five miles from their hive. There are a few Russian hives around and they also fly up to five miles.

Our season in Homer is the end of April through mid-October. The nectar flow typically happens in July to mid-August depending on the year. We feed our hives light sugar water in the spring until they find some other sources of food, and again in the fall with heavy sugar water when the bees are in dearth. (no food)

Homer can sustain many hives within the city limits. To my knowledge there are 10 hives around Bayview/hospital area this season. The bulk of the keepers live on Dimond ridge, East Hill, West Hill, Old Sterling, North Fork, Ohlson Mountain, Fitz Creek, Bear Creek, the bench out east as far out as Lusk.

Bees pollinate the flowers, vegetables, fruits and other items we grow in Homer. Bees are very welcome here. The biggest issue is education on the behavior of the bees, like what does a swarm mean? Bees are not dangerous, they are misunderstood. The biggest fear is when people see a swarm of bees. Bees in swarm mode are the calmest you will ever see. You could stick your head in the swarm and they would not sting you. But they are an intimidating force to a lot of people. Swarming can be controlled by the beekeeper, if they do their hive checks every 7-10 days starting in mid-June the possibilities of a swarm is greatly reduced. I do have a list of swarm gathers here in Homer.

The State asks that we register our hives with them; this is for disease control. I send a form out every year to the folks that I deliver bees to, I don't think it is well received. I don't believe Alaska has a qualified

Honeybee Inspector on board either. There is no restriction from the state on keeping bees. Anchorage does have regulations on keeping hives.

There are five bee suppliers in the State; they are required to hold a health certificate for the packages they bring into the state. This is again a health concern.

I am looking forward to having a conversation on bees at your next meeting.

Linda Gorman

Keeper, teacher, speaker, mentor

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT HOMER

FRANK GRISWOLD,

Appellant,

vs.

HOMER BOARD OF ADJUSTMENT, RICK
ABBOUD, JOSE RAMOS, and KENTON
BLOOM,

Appellees.

CASE NO. 3HO-15-00021CI

DECISION ON REMAND

I. INTRODUCTION

The Homer Advisory Planning Commission ("Planning Commission") approved a Conditional Use Permit ("CUP") twice in 2014. The Homer Board of Adjustment ("BOA") ultimately upheld the approved CUP after the Planning Commission made additional findings. Mr. Frank Griswold appealed the BOA decision to this court. In the appeal, Mr. Griswold asserts that the Planning Commission lacked authority to issue a CUP. He claims that the Homer City Council violated his substantial due process rights when they amended Homer City Codes 21.70.010, 21.90.030, 21.93.060, 21.93.500. He alleges partiality and conflict of interests by members of the BOA, as well as an ethical violation by the City Attorney. Lastly, Mr. Griswold believes that substantial evidence does not support certain CUP findings. The court affirms the BOA's decision.

II. FACTS AND PROCEEDINGS

A. Lot 1-A-1 Application for Conditional Use Permit

On October 16, 2013, Kenton Bloom, doing business as Seabright Survey + Design, applied for a CUP for Lot 1-A-1 Carl Sholin Sudb. No. 5 in Central Business District (“Lot 1-A-1”).¹ Jose Ramos owns Lot 1-A-1, however.² The CUP application listed Mr. Ramos on the application, and Mr. Ramos signed the application as required by Homer City Code (“HCC”) 21.71.020(a)(9).³ Mr. Bloom is the Applicant, and Mr. Ramos is the Property Owner.⁴ The Applicant sought the CUP to build a duplex on Lot 1-A-1, where six structures already exist.⁵ Under HCC 21.18.030(k), a lot in the Central Business District may have no “more than one building containing a permitted principal use on a lot” absent a CUP.⁶

B. Approval of Conditional Use Permit for Lot 1-A-1

The Planning Commission is responsible for approving or denying a CUP application.⁷ On December 4, 2013, the Planning Commission held a public hearing and reviewed Mr. Bloom’s application.⁸ The Appellant, Frank Griswold, who owns a lot within 300 feet of Lot 1-A-1, submitted a written opposition to the CUP application.⁹ The Planning Commission approved the application as “CUP 13-13” on January 6, 2014.¹⁰ Mr. Griswold appealed to the BOA.¹¹

¹ R. at 11, 18.

² R. at 11, 18.

³ R. at 21.

⁴ R. at 18.

⁵ R. at 11, 19.

⁶ HCC 21.18.030(k).

⁷ HCC 2.72.050.

⁸ R. at 46-49.

⁹ *Griswold v. Homer Bd. of Adjustment*, 426 P.3d 1044, 1045, n.1 (Alaska 2018); R. at 40-43.

¹⁰ R. at 49-54.

¹¹ R. at 6-8.

On April 9, 2014, the BOA convened to hear Mr. Griswold's appeal. The BOA is comprised of the Homer City Councilmembers.¹² The Homer Mayor presides over the BOA, participates in deliberations, but may only vote if there is a tie.¹³ Beauregard Burgess, Barbara Howard, David Lewis, Francie Roberts, and Gus Van Dyke were the BOA Board members present.¹⁴ Mayor Mary Wythe was the BOA Chair.¹⁵ Holly Wells of Birch Horton Bittner & Cherot served as City Attorney.¹⁶ Mr. Griswold, Deputy City Planner Julie Engebretsen, and Mr. Bloom appeared before the BOA.¹⁷ Mr. Griswold and the City Planner submitted briefs.¹⁸

At the beginning of the BOA meeting, Mr. Griswold raised a conflict of interests claim regarding City Attorney, Ms. Wells.¹⁹ The firm of Birch Horton Bittner & Cherot serves as the Legal Department for Homer.²⁰ Homer has a policy of dual representation which allows for attorneys from the same firm to provide legal advice to different departments or boards provided there is a "Chinese Wall" and a few other limitations.²¹ Mr. Griswold alleges the conflict of interests because another attorney from Birch Horton Bittner & Cherot assisted the Planning Department.²² Ms. Wells informed the BOA that a "Chinese Wall" is in place.²³ The BOA found that Ms. Wells had no conflict of interest.²⁴

¹² HCC 21.91.100.

¹³ *Id.*

¹⁴ R. at 402.

¹⁵ R. at 402.

¹⁶ R. at 402.

¹⁷ R. at 405-06, 480.

¹⁸ R. at 56-76.

¹⁹ R. at 406.

²⁰ R. at 79, 407-11.

²¹ R. at 79, 408-09.

²² R. at 406-11.

²³ R. at 411.

²⁴ R. at 9, 409-11.

Board member Van Dyke next disclosed that the Property Owner is a client of his vehicle repair business.²⁵ Mr. Van Dyke did not inform the BOA how much money he earned due to this relationship, or whether Mr. Van Dyke would benefit from upholding CUP 13-13.²⁶ Neither the Board members nor the Mayor asked Mr. Van Dyke these questions. The BOA found no conflict of interest.²⁷

Mr. Griswold then claimed partiality by Mayor Wythe because he believed that she had longstanding animosity against him.²⁸ He also claimed that she was partial to the Planning Commission because she appointed the Planning Commission members as authorized under HCC 2.72.010(b).²⁹ The BOA found that Mayor Wythe was not partial.³⁰

Mr. Griswold challenged next whether the City Planner, Deputy City Planner, and Mr. Bloom could be parties to the appeal, and suggested that they were practicing law without a law license.³¹ The BOA held that Mr. Bloom and the Planning Department staff have a right to be parties under HCC 21.93.500(b) and HCC 21.93.060.³² The BOA also held that neither Mr. Bloom nor the Planning Department staff committed the unauthorized practice of law.³³

Lastly, Mr. Griswold asserted that the Planning Commission lacked authority to issue a CUP,³⁴ that CUP 13-13 violated HCC 21.90.030, that the Community Design Manual strictly applied, and that substantial evidence did not support the Planning Commission's findings.

²⁵ R. at 413.

²⁶ R. at 413.

²⁷ R. at 415.

²⁸ R. at 416-17.

²⁹ R. at 80-81, 416-17.

³⁰ R. at 81.

³¹ R. at 62-76, 402-505.

³² R. at 81-83.

³³ R. at 83.

³⁴ R. at 62-76.

On June 6, 2014, the BOA affirmed most of the Planning Commission's findings, but found insufficient evidence on Findings 5 and 8.³⁵ On remand, the Planning Commission was "to require and consider additional evidence in determining whether the Property complies with the Homer Zoning Code as required under HCC 21.90.030, to make findings regarding the Property's compliance with the Homer Zoning Code, and revisit Findings Nos. 5 and 8 after considering additional evidence regarding compliance."³⁶ The BOA also held that the Planning Commission has the authority to issue a CUP, and the Community Design Manual was correctly applied.³⁷

C. Rehearing of Conditional Use Permit for Lot 1-A-1

The Planning Commission re-heard the issues on remand on July 16, 2014. Mr. Griswold, the Planning Department, and Thomas Klinkner of Birch Horton Bittner & Cherot supplied additional evidence.³⁸ Neither the Applicant nor the Property Owner participated. The Planning Commission issued a written decision on August 8, 2014, making: Revised Finding 5 and 8; additional findings to support their Revised Finding 8; and five additional conditions.³⁹ Mr. Griswold appealed to the BOA.⁴⁰

D. Amendment of Homer City Codes 21.93.060 and 21.93.500

On September 22, 2014, the Homer City Council adopted Ordinance 14-45, which amended HCC 21.93.060, Standing- Appeal to board of Adjustment, and HCC 21.93.500, Parties eligible to appeal to Board of Adjustment- Notice of appearance.⁴¹ This change

³⁵ R. at 89.

³⁶ R. at 89.

³⁷ R. at 84.

³⁸ R. at 146-309.

³⁹ R. at 139-44.

⁴⁰ R. at 100.

⁴¹ City of Homer, AK, Ordinance 14-45 (Sept. 22, 2014).

specifically articulates that the City Planner's designee has standing to appeal a Planning Commission decision to the BOA, and also exempts either the City Planner or their designee from the need to file a notice of appearance for an appeal with the City Clerk.

E. Second Appeal to the Homer Board of Adjustment

On December 1, 2014, the BOA convened to hear Mr. Griswold's second appeal.⁴² The composition of the BOA changed from the first BOA hearing.⁴³ David Lewis, Catriona Reynolds, Francie Roberts, Gus Van Dyke, and Bryan Zak were present on December 1, 2014.⁴⁴ Mayor Wythe was still the BOA Chair.⁴⁵ Holly Wells of Birch Horton Bittner & Cherot again served as City Attorney.⁴⁶ Mr. Griswold and the City Planner appeared and submitted briefs.⁴⁷

Mr. Griswold's protests were similar to the ones that he made in his first appeal.⁴⁸ Again, he challenged the conflict of interests of Ms. Wells, whether the Planning Department could be a party, and the partiality of Mayor Wythe.⁴⁹ The Mayor, hearing no objection from the members, refused to address issues previously decided by the BOA.⁵⁰ However, the BOA allowed Mr. Griswold to read into the record an article about the Mayor receiving an award for volunteer advice and mentoring of the planning commission after CUP 13-13 was remanded.⁵¹ The Mayor stated that she did not receive an award.⁵² Councilmember Lewis confirmed that the Mayor did not receive an award.⁵³ He stated that the reporter was not even at the event for the full time, and

⁴² R. at 507.

⁴³ R. at 402,507.

⁴⁴ R. at 507.

⁴⁵ R. at 507.

⁴⁶ R. at 507.

⁴⁷ R. at 357, 362, 507, 509.

⁴⁸ R. at 362-94.

⁴⁹ R. at 525-34, 550.

⁵⁰ R. at 525-34, 550-55.

⁵¹ R. at 536-42.

⁵² R. at 537-38.

⁵³ R. at 537-43.

the article was wrong.⁵⁴ Councilmember Roberts also said that the newspaper report was incorrect.⁵⁵ The BOA found that the Mayor had no partiality.⁵⁶ Mr. Griswold then went on to assert partiality by BOA members Van Dyke and Zak based on comments they made during the election campaigns.⁵⁷ The BOA found no partiality.⁵⁸

The BOA upheld the Planning Commission's findings on January 26, 2015.⁵⁹

F. Amendment of Homer City Codes HCC 21.70.010 and HCC 21.90.030

On January 26, 2015, the Homer City Council adopted Ordinance 14-56(A),⁶⁰ which amended HCC 21.70.010, Zoning permit required, and HCC 21.90.030, Invalid land use permits.⁶¹ This ordinance added language regarding when a permit is required for adding to an existing building.⁶² It also stated that a CUP approval may be conditioned upon correction of violations.⁶³

G. Court Proceedings

Mr. Griswold appealed to the Homer Superior Court. Oral arguments were held on February 24, 2016, before Judge Bauman. Judge Bauman found that Mr. Griswold lacked standing and dismissed the appeal.⁶⁴ The Alaska Supreme Court found that Mr. Griswold's due process rights were violated and remanded the case to be addressed on the merits.⁶⁵ On

⁵⁴ R. at 538, 543.

⁵⁵ R. at 545.

⁵⁶ R. at 545.

⁵⁷ R. at 546.

⁵⁸ R. at 546-47, 550.

⁵⁹ R. at 399-401.

⁶⁰ Exhibit B.

⁶¹ City of Homer, AK, Ordinance 14-56(A) (Jan. 26, 2015).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Griswold v. Homer Bd. of Adjustment*, 426 P.3d 1044, 1045 (Alaska 2018).

⁶⁵ *Id.*

December 3, 2018, a hearing was held before the undersigned judge. The parties stated that they were relying on previously filed briefs.⁶⁶

III. STANDARD OF REVIEW

The court applies five standards of review when analyzing an administrative board's decisions: (1) substantial evidence, (2) reasonable basis, (3) substitution of judgment, (4) reasonable and not arbitrary, and (5) abuse of discretion.⁶⁷

The substantial evidence standard applies to questions of fact.⁶⁸ "Judicial review of zoning board decisions is narrow, and board decisions are accorded a presumption of validity. A zoning body's decision shall not be reversed if it is supported by substantial evidence."⁶⁹ Substantial evidence is what a "reasonable mind might accept as adequate to support a conclusion."⁷⁰

The reasonable basis standard applies to questions of law "implicat[ing] agency expertise or the determination of fundamental policies within the scope of the agency's statutory functions."⁷¹ This standard requires the court to give "deference to the agency's interpretation so long as it is reasonable."⁷²

The substitution of judgment standard applies to questions of law that do not implicate agency expertise "or the formation of fundamental policies."⁷³ This standard enables the court to

⁶⁶ Hr'g re: Remand back to Super. Ct. at 3:31:58-3:38:18 p.m. Griswold v. Homer Board of Adjustment, et al., Case No. 3HO-15-00021CI.

⁶⁷ *Rubey v. Alaska Comm'n on Postsecondary Educ.*, 217 P.3d 413, 415 (Alaska 2009); *Amidon v. State*, 604 P.2d 575, 577 (Alaska 1979).

⁶⁸ *Rubey*, 217 P.3d at 415.

⁶⁹ *Griswold v. City of Homer*, 55 P.3d 64, 67 (Alaska 2002).

⁷⁰ *DeYonge v. NANA/Marriott*, 1 P.3d 90, 94 (Alaska 2000) (quoting *Miller v. ITT Arctic Servs.*, 577 P.2d 1044, 1046 (Alaska 1978)).

⁷¹ *Marathon Oil Co. v. State, Dep't of Nat. Res.*, 254 P.3d 1078, 1082 (Alaska 2011).

⁷² *Id.*

⁷³ *Balough v. Fairbanks N. Star Borough*, 995 P.2d 245, 254 (Alaska 2000).

“substitute its own judgment for that of the agency even if the agency’s decision had a reasonable basis in law.”⁷⁴

The reasonable and not arbitrary standard applies to claims that legislative enactments violate substantial due process.⁷⁵

The abuse of discretion standard applies to recusal.⁷⁶ Abuse of discretion exists when “it is plain that a fair-minded person could not rationally come to that conclusion on the basis of the known facts.”⁷⁷

IV. DISCUSSION

A. The Homer Advisory Planning Commission is authorized to grant Conditional Use Permits.

Appellant argues the Homer Advisory Planning Commission is only advisory and cannot authorize the approval of a CUP. The Alaska Supreme Court partially addressed this issue in *Griswold IV*.⁷⁸ The Planning Commission’s power derives from the State, the Kenai Peninsula Borough, and the Homer City Council.⁷⁹ AS 29.40.020 states that a “borough shall establish a planning commission.”⁸⁰ The Homer City Council stands in the place of the Kenai Peninsula Borough for AS 29.40.020 because the Kenai Peninsula Borough delegated its zoning power to Homer.⁸¹ AS 29.40.020 lists the duties of the planning commission and states additional duties will be “prescribed by ordinance.”⁸² When the Homer City Council passes an ordinance, it becomes codified in the Homer City Code. The Homer City Council authorized the Planning

⁷⁴ *Tesoro Alaska Petroleum Co. v. Kenai Pipe Line Co.*, 746 P.2d 896, 903 (Alaska 1987).

⁷⁵ *Jager v. State*, 537 P.2d 1100, 1107 n. 23 (Alaska 1975); *Concerned Citizens of S. Kenai Peninsula v. Kenai Peninsula Borough*, 527 P.2d 447, 452 (Alaska 1974).

⁷⁶ *Rubey*, 217 P.3d at 415; *Amidon*, 604 P.2d at 577.

⁷⁷ *Amidon*, 604 P.2d at 577.

⁷⁸ *Griswold v. City of Homer*, 186 P.3d 558, 561-63 (Alaska 2008).

⁷⁹ *Id.* at 561-62.

⁸⁰ AS 29.40.020.

⁸¹ *Griswold IV*, 186 P.3d at 562.

⁸² AS 29.40.020.

Commission to approve CUPs via HCC 21.71.010, 21.71.040, 21.71.050. There is no language that states that the Planning Commission is only to issue advisory opinions on CUPs. Therefore, the Planning Commission is authorized by state and local ordinances to approve CUPs.

B. The Homer City Council did not violate Mr. Griswold's substantial due process rights by amending HCC 21.70.010, 21.90.030, 21.93.060, 21.93.500.

Appellant argues that his substantial due process rights were violated when the Homer City Council amended HCC 21.93.060 and 21.93.500 through Ordinance 14-45, as well as HCC 21.70.010 and 21.90.030, through Ordinance 14-56(A). The Alaska Supreme Court addressed in detail substantial due process claims:

Substantial due process is denied when a legislative enactment has no reasonable relationship to a legitimate governmental purpose. It is not a court's role to decide whether a particular statute or ordinance is a wise one; the choice between competing notions of public policy is to be made by elected representatives of the people. The constitutional guarantee of substantial due process assures only that a legislative body's decision is not arbitrary but instead based upon some rational policy.

A court's inquiry into arbitrariness begins with the presumption that the action of the legislature is proper. The party claiming a denial of substantial due process has the burden of demonstrating that no rational basis for the challenged legislation exists. This burden is a heavy one, for if any conceivable legitimate public policy for the enactment is apparent on its face or is offered by those defending the enactment, the opponents of the measure must disprove the factual basis for such a justification.⁸³

Yet, the court "will invalidate zoning decisions which are the result of prejudice, arbitrary decision-making, or improper motives."⁸⁴ Mr. Griswold asserts that the amendments were arbitrarily and illegally enacted to thwart his appeal and justify the approval of CUP 13-13.

The Homer City Council enacted Ordinance 14-45 approximately four months after the first BOA appeal.⁸⁵ Mr. Griswold argued in his first appeal to the BOA that the Deputy City

⁸³ *Concerned Citizens of S. Kenai Peninsula*, 527 P.2d at 452.

⁸⁴ *Griswold v. City of Homer*, 925 P.2d 1015, 1019 (Alaska 1996).

Planner could not participate under the Homer City Code.⁸⁶ However, the BOA found that a Deputy City Planner qualified as “any governmental official” under HCC 21.93.060(b) for standing.⁸⁷ Ordinance 14-45 added a “City Planner’s designee” as a party with standing to appeal.⁸⁸ Ordinance 14-45 also exempted the City Planner or the City Planner’s designee from the need to file a notice of appearance for an appeal to the BOA.⁸⁹

The court is to presume the enactment was proper. Mr. Griswold did not address the amendment to HCC 21.93.500 in his briefs, only HCC 21.93.060. The only evidence Mr. Griswold offers in support of his argument that Ordinance 14-45 was arbitrarily and illegally enacted to thwart his appeal and justify the approval of CUP 13-13 is the date of enactment of the Ordinance. The Appellees⁹⁰ assert that the Deputy City Planner already had standing as “any governmental official” under HCC 21.93.060 and that Ordinance 14-45 expressly clarifies that point.

Some statutes and codes are challenging to understand. Legislative bodies attempting to clean up the language to make a statute or code more straightforward for the average person to understand is a legitimate government purpose. Moreover, the Deputy City Planner was already allowed to be a party under the previous HCC 21.93.060(b). The time of enactment does not show any improper motives without more evidence, which Mr. Griswold is responsible for providing. Therefore, the court finds that Mr. Griswold failed to meet his burden to demonstrate Ordinance 14-45 is arbitrary and has no rational basis, or that there were any improper motives.

⁸⁵ R. at 89; City of Homer, AK, Ordinance 14-45 (Sept. 22, 2014).

⁸⁶ R. 420-23.

⁸⁷ HCC 21.93.060(b).

⁸⁸ City of Homer, AK, Ordinance 14-45 (Sept. 22, 2014).

⁸⁹ *Id.*

⁹⁰ Jose Ramos and Kenton Bloom did not submit briefs to the court. Therefore, when the court refers to Appellees, the court is referring to Homer Board of Adjustment and Rick Abboud.

The Homer City Council enacted Ordinance 14-56(A) the day the BOA upheld CUP 13-13, but the Ordinance did not come into effect until the day after.⁹¹ This ordinance amended HCC 21.70.010 and HCC 21.90.030.⁹² HCC 21.70.010 was changed by including language regarding when a permit is required for adding to an existing building.⁹³ HCC 21.90.030 was amended to permit the issuance of a CUP conditioned upon correction of violations.⁹⁴ Mr. Griswold did not address the amendment to HCC 21.70.010. Instead, he focuses on HCC 21.90.030. Mr. Griswold believes that the 2008 version of HCC 21.90.030 prevents CUP approval if there are any zoning violations on the property. Because this property contains zoning violations, Mr. Griswold believes CUP 13-13 was issued in error.

CUP 13-13 was conditioned upon correction of violations on Lot 1-A-1.⁹⁵ A literal reading of the 2008 version of HCC 21.90.030 would prevent a person from getting a permit for construction to correct existing zoning violations. Therefore, it would be impossible to bring a building into compliance without knocking down the building and starting over, in a catch-22 situation. The Planning Commission and the BOA interpreted the 2008 version of HCC 21.90.030 to mean that it should not prohibit construction required to correct a zoning violation.⁹⁶

Appellees assert that the amendments clarify the Homer City Code. This helps to avoid misinterpretations which lead to protracted appeals, and delays to developments that serve the public interest. Additionally, HCC 21.90.030 serves the public policy goal of offering incentives

⁹¹ Exhibit B; HCC 1.08.030.

⁹² City of Homer, AK, Ordinance 14-56(A) (Jan. 26, 2015).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ R. at 399-401.

⁹⁶ R. at 142, 148-49, 400-01.

to zoning violators to come into compliance if they want a CUP. These are legitimate legislative goals.

Again, the only evidence Mr. Griswold offers in support of his argument that Ordinance 14-56(A) was arbitrarily and illegally enacted to thwart his appeal and justify the approval of CUP 13-13 is the date of its enactment. Moreover, the Planning Commission and the BOA already interpreted the previous version of HCC 21.90.030 to allow for CUP 13-13. They did not need to amend HCC 21.90.030, because they could have gone forward arguing their interpretation, and the court would have reviewed their interpretation using the reasonable basis standard. Again, Mr. Griswold has not met his burden of presenting evidence that Ordinance 14-56(A) is arbitrary, had no rational basis, or was improperly motivated.

C. Current Homer City Codes, 21.70.010, 21.90.030, 21.93.060, 21.93.500, are controlling.

Appellees argue that HCC 21.70.010, 21.90.030, 21.93.060, 21.93.500 are now controlling. The court will generally “apply the law as it exists at the time of the decision, not the law existing at the time the case was commenced.”⁹⁷ Therefore, the court will apply the current Homer City Codes to the case.

D. City Planning Department employees may fully participate in appeals to the BOA and they did not violate Homer Personnel Regulation 8.7.3 nor did City Planning Department employees commit the unauthorized practice of law.

Mr. Griswold asserts that Planning Department employees may not participate in an appeal to the BOA, file briefs, or present oral arguments. Under HCC 21.93.060 and 21.93.500, a City Planner or the City Planner’s designee may be a party to a BOA appeal. HCC 21.93.530(a) and 21.93.540(b) specifically allow a party to file a brief and make oral argument. Therefore, the City Planner and the Deputy City Planner could be a party, file a brief, and make oral argument.

⁹⁷ *Univ. of Alaska v. Tumeo*, 933 P.2d 1147, 1151 (Alaska 1997).

Mr. Griswold also claims that HCC 1.18.048(a) prohibits Planning Department employees from participating in his BOA appeal because of their partiality. HCC 1.18.048(a) applies only to a “City official” or the “City Manager.” A “City official” is defined as “a person who holds elective office under the ordinances of the City, or who is a member of a board or commission whose appointment is subject to confirmation by the City Council.”⁹⁸ The Planning Department employees are not the City Manager, nor are they elected to office or appointed to a board or commission. Thus, HCC 1.18.048(a) does not prohibit the city Planning Department employees from participating in the BOA appeal.

Mr. Griswold further argues that the Planning Department employees’ participation violates Homer Personnel Regulation 8.7.3 because they used the implied authority of their position to unduly influence the board’s decision. Undue influence means “the improper use of power or trust in a way that deprives a person of free will and substitutes another’s objective.”⁹⁹ Mr. Griswold failed to supply evidence that the Planning Department employees exerted undue influence over either the Planning Commissioners or the BOA members. Thus, the court finds that the city Planning Department employees did not violate Homer Personnel Regulation 8.7.3.

Mr. Griswold also accuses the Planning Department employees of unauthorized practice of law by appearing before the BOA, filing briefs, and making oral arguments. The unauthorized practice of law occurs when: (1) someone “represent(s) oneself by words or conduct to be an attorney”; and “either (i) represent(s) another before a court or governmental body which is operating in its adjudicative capacity, including the submission of pleadings, or (ii), for

⁹⁸ HCC 1.18.020.

⁹⁹ *Undue Influence*, *Black’s Law Dictionary* (10th ed. 2014).

compensation, provid(s) advice or prepar(es) documents for another which affect legal rights or duties.”¹⁰⁰

The City Planner and the Deputy City Planner never said they were attorneys or acted as though they were. The City Planner’s brief clearly stated that the City Planner was submitting it on his own behalf. Moreover, the custom in Alaska allows this practice.¹⁰¹ Lastly, Mr. Griswold raised this issue before the BOA, so they were even more aware of the issue. Mr. Griswold’s assertion fails the first prong of the unauthorized practice of law test. Therefore, the court will not address the second prong. The court finds that the City Planner and the Deputy City Planner were not committing unauthorized practice of law.

E. BOA correctly held that Kenton Bloom had the right to participate before the BOA as Applicant, he represented himself, and he did not commit unauthorized practice of law.

Mr. Griswold asserts that the BOA erred in finding that Mr. Bloom had the authority to participate in the BOA appeal as the Applicant. HCC 21.71.020(a)(9) recognizes there is an applicant and a property owner for a CUP. The party applying for a CUP may or may not be the Property Owner.¹⁰² If the Applicant is not the Property Owner, the Property Owner must sign the application which then gives the Applicant “the authority to (a) apply for the conditional use permit and (b) bind the owner to the terms of the conditional use permit, if granted.”¹⁰³ HCC 21.93.060, 21.93.100, 21.93.110, 21.93.500 also all distinguish that there is an applicant and a property owner. HCC 21.93.500(a) states “only persons who actively and substantially participated in the matter before the Commission and who would be qualified to appeal under

¹⁰⁰ Alaska Bar R. 63(b); AS 08.08.230.

¹⁰¹ 1979 WL 22915 (Alaska A.G. Sept. 11, 1979).

¹⁰² HCC 21.71.020(a)(9).

¹⁰³ *Id.*

HCC 21.93.060 may participate as parties in an appeal from the Commission to the Board of Adjustment or a hearing officer.” The Applicant is qualified to appeal under HCC 21.93.060(a).

Here, the CUP application for Lot 1-A-1 lists Mr. Bloom, doing business as Seabright Survey + Design, as Applicant and the Property Owner signed the application.¹⁰⁴ Therefore, Mr. Bloom is the Applicant for CUP 13-13 and was authorized to be the Applicant by Mr. Ramos. Mr. Bloom actively and substantially participated in the matter before the Planning Commission. Thus, he was authorized to participate as a party before the BOA.

Mr. Griswold further argues that Mr. Bloom was not representing himself but rather Mr. Ramos; thus, Mr. Bloom committed unauthorized practice of law. The BOA clarified at the first appeal who Mr. Bloom was representing.¹⁰⁵ Mr. Bloom stated that he was representing himself and the BOA agreed.¹⁰⁶ The court concurs. Therefore, Mr. Bloom did not commit unauthorized practice of law.

F. Partiality and conflict of interests.

Under HCC 1.18.048(a), “a City official or the City Manager who has partiality concerning a quasi-judicial matter shall not advise on the matter, adjudicate the matter or serve as a member of a body adjudicating the matter.” A “City official” is defined as “a person who holds elective office under the ordinances of the City, or who is a member of a board or commission whose appointment is subject to confirmation by the City Council.”¹⁰⁷ “Partiality” is:

1. The ability of a member of the quasi-judicial body to make an impartial decision is actually impaired; or

¹⁰⁴ R. 18-21.

¹⁰⁵ R. at 480.

¹⁰⁶ R. at 480, 482-83.

¹⁰⁷ HCC 1.18.02.

2. The circumstances are such that reasonable persons would conclude the ability of the member to make an impartial decision is impaired and includes, but is not limited to, instances in which:

- a. The member has a personal bias or prejudice for or against a party to the proceeding including a party's lawyer;
- b. The member or an immediate family member is a party, material witness to the proceeding or represents a party in the proceeding.¹⁰⁸

Therefore, any member of the Planning Commission or BOA would be prohibited from participating in CUP 13-13 if they had partiality.¹⁰⁹

1. Mayor Wythe has no partiality against Mr. Griswold.

Mr. Griswold asserts that Mayor Wythe was partial because: (1) as Mayor, she was a consulting member of the Planning Commission; (2) as Mayor, she appointed members to the Planning Commission; and (3) Mayor Wythe had longstanding animosity towards Mr. Griswold. The Homer Mayor is a consulting member of the Planning Commission, and may attend the meetings but does not have a vote.¹¹⁰ Here, Mayor Wythe did not attend the Planning Commission hearings regarding CUP 13-13 or any Planning Commission meetings.¹¹¹ Mr.

¹⁰⁸ HCC 1.18.020.

¹⁰⁹ Mr. Griswold quotes comments by Commissioner Tom Stoozas regarding Mr. Griswold, but does not accuse Commissioner Stoozas of partiality. The comments are quoted in the section that he argues the Planning Commission is only advisory. Mr. Griswold focuses on Commissioner Stoozas' comment about grandfathering in a property. Mr. Griswold is a seasoned pro se litigant. He extensively briefed all his other accusations of partiality. The court interprets the absence of briefing on this issue that Mr. Griswold is not accusing Commissioner Stoozas of partiality. Commissioner Stoozas' comment relating to Mr. Griswold is extremely alarming to the court. However, the issue of Commissioner Stoozas' partiality is not before the court because Mr. Griswold did not address it in his briefs.

Mr. Griswold asserts that BOA failed to make findings on substantive issues. He states that the BOA did not make findings on his assertion of partiality by Commissioner Franco Venuti. That assertion is incorrect. The BOA did make a finding, that there was no partiality by Commissioner Venuti. R. at 398. Mr. Griswold did not brief on this partiality issue, like he did with his other partiality claims. Therefore, it will not be addressed by the court.

In Mr. Griswold's Points of Appeal, he accuses BOA member Beau Burgess of having a bias against him. However, Mr. Griswold failed to brief this issue. Mr. Griswold briefed his numerous accusations of partiality. The court interprets the absence of briefing on this issue that Mr. Griswold is waving this point of appeal.

¹¹⁰ HCC 2.72.010(d).

¹¹¹ R. at 537-38, 545.

Griswold's only evidence to the contrary is a newspaper article that he read to the BOA.¹¹² The article reported that the Mayor received an award for volunteer advice and mentoring of the Planning Commission.¹¹³ However, several members who attended the event stated that the article was wrong, the reporter was not present for the entire time, and Mayor Wythe did not receive an award.¹¹⁴ Mayor Wythe also said she did not receive an award.¹¹⁵ The Mayor cannot be *per se* partial because of her ability to attend the Planning Commission as an advisory member.

The Homer City Codes also charge the Mayor with appointing members to the Planning Commission with confirmation by the Homer City Council.¹¹⁶ If the court followed Mr. Griswold's logic, then not only would the Mayor be disqualified from participating due to partiality, but any Council members who voted to confirm the nominations would also be disqualified. This could lead to the BOA having an insufficient number of members to make any decision, and then the rule of necessity would apply. The Mayor cannot be *per se* partial because of nominating a member to a board. There is no inherent partiality due to Mayor Wythe's authority to nominate members to the Planning Commission.

Mr. Griswold argues that Mayor Wythe has longstanding animosity against him. He believes that, because she did not refute his statement, the court should accept it as fact. He also alleges that she hampered his public records request, but provided no supporting evidence. The fact that Mayor Wythe did not respond to Mr. Griswold's allegations regarding animosity does not make the statement true. Mr. Griswold's assertion that she hampered his public records

¹¹² R. at 545.

¹¹³ R. at 545.

¹¹⁴ R. at 542-46.

¹¹⁵ R. at 537-38.

¹¹⁶ HCC 2.72.010(b).

request does not make the statement true. Mr. Griswold must present evidence to support his allegations.¹¹⁷ Because he has not done so, the Court finds no abuse of discretion.

2. BOA members Zak and Van Dyke had no partiality based on their comments made during their election campaigns, and Mr. Van Dyke had no partiality based on his business relationship with Lot 1-A-1 owner.

Mr. Griswold argues the comments made by BOA members Zak and Van Dyke at a Homer City Council Candidate Forum show their partiality because they are pro-business and anti-zoning. When looking at previous statements to determine if there is a bias or prejudgment, the American Law of Zoning, a legal treatise, recommends looking at “who is making what remark and the timing of such statements.”¹¹⁸ Candidates “may be free to provide opinions and articulate platforms as part of their campaigning. The key is that once elected, a person must remain open-minded when reviewing specific applications before the board.”¹¹⁹

Here, BOA members Zak and Van Dyke were running for office, at an event for candidates, and before voters. Mr. Zak was asked to provide two specific examples of city rules and regulations that made it hard for business.¹²⁰ He gave a zoning example which is unrelated to CUP 13-13 and does not have any parties in common.¹²¹ Mr. Van Dyke’s comment was only that he thought there ought to be less government interference with business.¹²² Neither man believed that they had a bias that would prevent them from making an unimpaired decision.¹²³ The members of BOA reached the same conclusion.¹²⁴ The Court finds that the BOA did not abuse its discretion.

¹¹⁷ *Braun v. Borough*, 193 P.3d 719, 734 (Alaska 2008).

¹¹⁸ 4 Am. Law. Zoning Prejudgment and Bias § 38:14 (5th ed.).

¹¹⁹ *Id.*

¹²⁰ R. at 548.

¹²¹ R. at 548.

¹²² R. at 546.

¹²³ R. at 548-49.

¹²⁴ R. at 546-50.

Mr. Griswold also argues that Mr. Van Dyke is partial to the Property Owner of CUP 13-13 due to their business relationship. There is no evidence of partiality except the existence of a business relationship which *Mr. Van Dyke* disclosed.¹²⁵ Moreover, Mr. Griswold, who was very vocal at the hearing and had no issue with interrupting members, did not assert partiality upon hearing the information. None of the BOA members were concerned that there was partiality nor requested a vote on it.¹²⁶ Again, the Court finds that there was no abuse of discretion by the BOA.

3. Mr. Van Dyke did not have a conflict of interest.

Mr. Griswold asserts that BOA member Van Dyke had a conflict of interests due to Mr. Van Dyke's business relationship with the Property Owner of CUP 13-13. Under HCC 1.18.030, no City official:

shall participate in any official action in which:

1. The person is the applicant, a party or has a substantial financial interest in the subject of the official action.
2. Within a period of one year after the action the person will have a substantial financial interest in the subject of the official action.
3. The person resides or owns land within a 300-foot periphery of any property that is the subject of any action.
4. The person does or will recognize a substantial financial interest as a result of the action.¹²⁷

“‘Substantial financial interest’ means a financial interest that would result in a pecuniary gain or loss exceeding \$1,000 in a single transaction or more than \$5,000 in the aggregate in 12

¹²⁵ R. at 413.

¹²⁶ R. at 413-14.

¹²⁷ HHC 1.18.030.

consecutive months.”¹²⁸ If a conflict of interests exists, then the court will have to determine if the BOA decision should be invalidated.¹²⁹

Here, the subject of the official action is the approval to build a duplex on Mr. Ramos’ property. Mr. Van Dyke would need to have a financial interest in the building of the duplex or Lot 1-A-1 that would either gain or lose him \$1,000 in one transaction or over \$5,000 in twelve months at the time of his participation or in the following year. Mr. Van Dyke’s business relationship is related to Mr. Van Dyke repairing Mr. Ramos’ vehicle(s), which has no relation to building a duplex.¹³⁰

Mr. Griswold argues that the business relationship was longstanding and speculated that it involved a substantial amount of money. Notably, Mr. Griswold, who was very vocal at the hearing and had no issue with interrupting members, did not assert a conflict of interest upon hearing the disclosure. Mr. Van Dyke’s situation is not like Homer Councilmember Sweiven situation in *Griswold I*, or the situation in *Carney v. State, Board of Fisheries*.¹³¹ Mr. Griswold’s argument is pure conjecture with no evidence supporting it. While it may be best practice for the BOA to make more thorough inquiries into disclosures such as this, nothing suggests that Mr. Van Dyke will benefit substantially from CUP 13-13. The BOA did not abuse its discretion.

4. City Attorney Holly Wells had no conflict of interest.

Mr. Griswold accuses City Attorney Holly Wells of a conflict of interests because she represented the BOA and a fellow member of her firm advised the Planning Department.

¹²⁸ HCC 1.18.020.

¹²⁹ *Griswold I*, 925 P.2d at 1029.

¹³⁰ R. at 413.

¹³¹ *Griswold I*, 925 P.2d at 1025-27; *Carney v. State Bd. of Fisheries*, 785 P.2d 544, 548 (Alaska 1990).

However, it is not the conflict of interests rule under HCC 1.18.030 that applies,¹³² but rather the legal profession's self-imposed conflict of interest standards. The Alaska Bar Association published an ethics opinion over 20 years ago, allowing, as a routine matter, a municipal attorney to "represent a quasi-judicial municipal board hearing a disputed matter in which the municipality is a party to the dispute."¹³³ The Alaska Bar Association did impose some restrictions on this operating structure. There must be "Chinese wall" between the attorney representing the board and the attorney representing the municipality, and the attorney representing the board is limited to providing advice regarding procedural matters and may not participate in deliberations.¹³⁴ Alaskan attorneys, State of Alaska, and local governments use this type of operational structure.

Homer has operated with this type of representation structure since 2011.¹³⁵ Birch Horton Bittner & Cherot serves as the City's Legal Department. This structure allows Homer to meet "many of the challenges associated with securing representation on municipal administrative matters in a timely and cost effective manner."¹³⁶ Ms. Wells confirmed to the BOA that there was a "Chinese wall" in place and that her role was limited to providing procedural advice.¹³⁷ The BOA found no conflict of interests either by Ms. Wells or by the operational structure.¹³⁸ Mr. Griswold raised it again at the second BOA appeal. The BOA declined to revisit issues

¹³² HCC 1.18.030 only applies to a "City official" or "City manager." Under HCC 1.18.020, a "City official" is defined as "a person who holds elective office under the ordinances of the City, or who is a member of a board or commission whose appointment is subject to confirmation by the City Council." Therefore, HCC 1.18.030 does not apply to the City Attorney.

¹³³ Alaska Bar Association, Board of Governors, Ethical Op. 99-2.

¹³⁴ *Id.*

¹³⁵ R. at 79, 408-09.

¹³⁶ R. at 79.

¹³⁷ R. at 79, 408-11.

¹³⁸ R. at 79.

already decided.¹³⁹ Mr. Griswold also asserts that Ms. Wells' role went outside of providing procedural advice. The record does not support his assertion. Therefore, the court finds that Ms. Wells complied with her professional ethics.

Mr. Griswold also claims that this structure violates due process, although his reasons are not entirely clear. He seems to say that because HCC 21.93.540 requires that an attorney be present at the BOA hearing, but does not limit the attorney's role to providing only procedural advice, there is a due process violation. There was an attorney present at the hearing. The BOA was aware of her limited role. If the BOA wanted an attorney for substantial issues, then it could have requested one. The court sees nothing about this representation structure that impacts Mr. Griswold's right to due process.

G. The BOA addressed all conflict of interests and partiality claims.

Mr. Griswold asserts that the BOA erred by ruling all conflict of interests and bias issues were outside the scope of the remand hearing and denied Mr. Griswold the right to present new evidence and question witnesses regarding procedural matters. The record is contrary to Mr. Griswold's assertion. The BOA did decline to revisit the issues raised and decided at the first BOA appeal.¹⁴⁰ However, the BOA members were given an option to revisit the issues, if the members felt inclined.¹⁴¹ None were inclined.¹⁴²

The BOA allowed Mr. Griswold to go forward, for a second time, with his claim of partiality against Mayor Wythe.¹⁴³ The Mayor even turned over her gavel.¹⁴⁴ He complains that he was not allowed to submit the article about the Mayor receiving an award for volunteer advice

¹³⁹ R. at 526-36.

¹⁴⁰ R. at 531-34.

¹⁴¹ R. at 533-34, 545-46, 550-53.

¹⁴² R. at 533-34, 545-46, 550-53.

¹⁴³ R. at 537-46.

¹⁴⁴ R. at 540.

and mentoring of the planning commission after CUP 13-13 was remanded.¹⁴⁵ However, he was allowed to read it into the record, and there was a substantial discussion about the article.¹⁴⁶

Mr. Griswold was also allowed to assert a partiality claim against Mr. Van Dyke, even though Mr. Griswold never claimed a conflict of interests or partiality at the first BOA appeal.¹⁴⁷ Again, Mr. Griswold was allowed to read an article into the record.¹⁴⁸ He was also allowed to bring any conflict of interests claims or partiality claims against any of the new BOA members, or Mr. Zak, who was a BOA member at the time of the first appeal but did not participate in it.¹⁴⁹ In reviewing the record, the court finds Mr. Griswold's assertion to be without merit.

H. The CUP 13-13 findings are supported by substantial evidence.

The court's role is narrow in reviewing BOA decisions. BOA decisions are accorded a presumption of validity.¹⁵⁰ The court will not reverse the BOA's decisions unless they are not supported by substantial evidence.¹⁵¹ Substantial evidence is what a "reasonable mind might accept as adequate to support a conclusion."¹⁵²

The court struggled to discern which findings Mr. Griswold challenges. He appears to take issue with findings related to the criteria listed in HCC 21.71.030(c)(h)(i) and (j).¹⁵³

1. The finding for HCC 21.71.030(c) is supported by substantial evidence.

The Planning Commission needed to make a finding on the following criterion: "the value of the adjoining property will not be negatively affected greater than that anticipated from

¹⁴⁵ R. at 536-42.

¹⁴⁶ R. at 537-46.

¹⁴⁷ R. at 546.

¹⁴⁸ R. at 546.

¹⁴⁹ R. at 535-36, 548-50.

¹⁵⁰ *Griswold III*, 55 P.3d at 67.

¹⁵¹ *Id.*

¹⁵² *DeYonge*, 1 P.3d at 94 (quoting *Miller v. ITT Arctic Servs.*, 577 P.2d 1044, 1046 (Alaska 1978)).

¹⁵³ The court will not address the Horizon Tower issue. Mr. Griswold stated at oral arguments on February 24, 2016, that the tower has been removed. Therefore, the tower issue is moot.

other permitted or conditionally permitted uses in this district.”¹⁵⁴ The Planning Commission found, and the BOA affirmed, that “the proposed use will have no visual, traffic or other effects that would negatively affect the value of adjoining property. Proposed on-site landscaping and other amenities potentially will positively affect the value of adjoining property.”¹⁵⁵

Mr. Griswold contends the finding is not supported by substantial evidence because numerous police reports demonstrate the existing structures promote and/or attract criminal activity.¹⁵⁶ The evidence before the Planning Commission was that the duplex was going to be painted in earth tones, in front of each building will be a planting area, and 50 feet along Heath Street would be landscaped.¹⁵⁷ The neighborhood is of mixed residential and commercial uses.¹⁵⁸ Residential uses will not negatively affect adjacent property greater than non-residential uses.¹⁵⁹ Homer’s parking standards require two parking spaces per residential unit.¹⁶⁰ The property had sufficient parking area.¹⁶¹ A reasonable person could find that the evidence is adequate to support the finding that a duplex in earth tones on a property with extensive landscaping in a mixed-use area would not impact traffic, and could positively affect the value of adjoining property. The finding supports the criterion in HCC 21.71.030(c).

2. The findings for HCC 21.71.030(h) is supported by substantial evidence.

The Planning Commission needed to make a finding on the following criterion: “the proposal does or will comply with the applicable regulations and conditions specified in this title

¹⁵⁴ HCC 21.71.030(c).

¹⁵⁵ R. at 50, 89.

¹⁵⁶ R. at 266-309.

¹⁵⁷ R. at 12.

¹⁵⁸ R. at 13.

¹⁵⁹ R. at 13.

¹⁶⁰ R. at 12.

¹⁶¹ R. at 12.

for such use.”¹⁶² The BOA found in the first appeal that the Planning Commission’s original finding was based on insufficient evidence.¹⁶³ The BOA remanded to the Planning Commission “to require and consider additional evidence in determining whether the Property complies with the Homer Zoning Code as required under HCC 21.90.030, to make findings regarding the Property’s compliance with the Homer Zoning Code,” and to make a new finding for the HCC 21.71.030(h).¹⁶⁴

The Planning Commission found, and the BOA affirmed, that: “a zoning permit requires compliance with all applicable regulations per HCC 21.70.030(a).¹⁶⁵ The Planning Commission also made seven additional findings regarding compliance with HCC 21.90.030 and the property’s compliance with the Zoning Code, which were also affirmed by the BOA¹⁶⁶:

Finding R1: A permit or permit(s) may be issued when zoning compliance of the project site will result.

Finding R2: An approved site plan requires compliance with local, state and federal regulations.

Finding R3: Compliance will result when local, state and federal regulations are met.

Finding R4: An approved CUP allows for multiple structures containing a principle use on a lot in the CBD.

Finding R5: The “6th” structure currently found furthest to the east is noncompliant and a new zoning permit is required.

Finding R6: Commercial structures are required to gain fire marshal approval.

Finding R7: Proof of compliance with State DEC regulations is required.¹⁶⁷

The commission made five additional conditions that the BOA also upheld¹⁶⁸:

R1: A zoning permit is required for the 6th structure.

¹⁶² HCC 21.71.030(h).

¹⁶³ R. at 89.

¹⁶⁴ R. at 89.

¹⁶⁵ R. at 142,400.

¹⁶⁶ R. at 400-01.

¹⁶⁷ R. at 142.

¹⁶⁸ R. at 400-01.

R2: Proof of compliance with State Fire Marshall regulations regarding the tow commercial structures shall be produced prior to issuance of a zoning permit.
R3: Submission of engineered plans for water and sewer service for all structures must be accepted for compliance with AKDEC.
R4: Proof of installation of approved plans for water and sewer systems are required to be verified prior to occupancy of the newly proposed structure.
R5: All buildings on the site are subject to issuance of a zoning permit before commencing further activity on the lot.¹⁶⁹

Mr. Griswold argues that the findings are not supported by substantial evidence, because, according to his interpretation of HCC 21.90.030 enacted in 2008, a CUP cannot be issued if there are any zoning violations on the property. However, as explained earlier, the court is applying the current HCC 21.90.030. HCC 21.90.030 allows for a permit to be issued if there are zoning violations provided the CUP is conditioned on correcting the violations.¹⁷⁰

The Planning Department, Mr. Griswold, and City Attorney Thomas Klikner supplied new evidence. The evidence is that on Lot 1-A-1 there are two commercial buildings and four residential buildings.¹⁷¹ The commercial buildings lack Fire Marshal permits.¹⁷² In 2003 there was a building permit for four existing cabins and a duplex on Lot 1-A-1, and it may or may not have been revoked.¹⁷³ The 6th building on the property did not follow the building dimensions in the zoning permit for the building and was not used as a motel.¹⁷⁴ There is no change of use permit for the commercial buildings. There is noncompliance with DEC regulations for water and sewage service to multiple buildings.¹⁷⁵ HCC 21.18.030(j) allows for “more than one building containing a permitted principal use on a lot.”¹⁷⁶ These violations can be corrected.¹⁷⁷

¹⁶⁹ R. at 144.

¹⁷⁰ HCC 21.90.030.

¹⁷¹ R. at 19.

¹⁷² R. at 150.

¹⁷³ R. at 135, 240.

¹⁷⁴ R. at 149-50.

¹⁷⁵ R. at 149, 251.

¹⁷⁶ HCC 21.18.030(j).

¹⁷⁷ R. at 152.

The Planning Commission concluded that current buildings needed a permit to bring the buildings into compliance, which is why they made the condition R5.¹⁷⁸

A reasonable person could find that the evidence is adequate to support the findings, which are further supported by conditions R1-R5: that a CUP may be approved upon conditions to correct violations; the property needs to comply with local, state, and federal regulations; the property is not entirely in compliance with local, state, and federal regulations; more than one building can be on Lot 1-A-1; and once the property complies with local, state, and federal regulations there is compliance. The findings and conditions support the criterion in HCC 21.71.030(h) because the property will comply with all applicable regulations and conditions.

3. The finding for HCC 21.71.030(i) is supported by substantial evidence.

The Planning Commission needed to make a finding on the following criterion: “the proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan.”¹⁷⁹ The Planning Commission found, and the BOA affirmed, that:

This proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan. By providing additional housing in the Central Business District, it supports and is compatible with the following applicable land use goals and objectives of the Comprehensive Plan:

- Increase the supply and diversity of housing, and encourage infill (Goal 1).
- Encourage high-quality site development (Goal 3).
- Promote housing choice by supporting a variety of dwelling options (Goal 5).¹⁸⁰

Mr. Griswold argues that there is no substantial evidence to support the above findings and that the Planning Commission did not make a specific finding on Goal 2. Goal 2 of the

¹⁷⁸ R. at 134-37.

¹⁷⁹ HCC 21.71.030(i).

¹⁸⁰ R. at 51, 85, 89.

Comprehensive Plan is to “maintain the quality of Homer’s natural environment and scenic beauty.”¹⁸¹

The evidence before the Planning Commission was that the duplex was going to be painted in earth tones, in front of each building will be a planting area, and 50 feet along Heath Street would be landscaped.¹⁸² The neighborhood is of mixed residential and commercial uses.¹⁸³ Residential uses will not negatively affect adjacent property greater than non-residential uses.¹⁸⁴ The Planning Commission found that “this proposal is not contrary to the applicable land use goals”,¹⁸⁵ therefore the Planning Commission addressed Goal 2. A reasonable person could find that the evidence is adequate to support the finding that a duplex increases the supply and diversity of housing; is infilling; is consistent with the surrounding community character; promotes housing choice by providing a different type of dwelling option; maintains the quality of Homer’s natural environment and scenic beauty by being painted in earth tones and including extensive landscaping; and that this landscaping is consistent with high-quality site development. The finding supports the criterion in HCC 21.71.030(i).

4. The finding for HCC 21.71.030(j) is supported by substantial evidence.

The Planning Commission needed to make a finding on the following criterion: “the proposal will comply with all applicable provisions of the Community Design Manual.”¹⁸⁶ The Planning Commission found, and the BOA affirmed, “the proposal will comply with all

¹⁸¹ Appellant’s Br. 16.

¹⁸² R. at 12.

¹⁸³ R. at 13.

¹⁸⁴ R. at 13.

¹⁸⁵ R. at 51.

¹⁸⁶ HCC 21.71.030(j) (emphasis added).

applicable provisions of the Community Design Manual through the permitting process.”¹⁸⁷ The Community Design Manual (CDM) applies to “all non-residential uses and uses with more than 12 residential units” in the Central Business District.¹⁸⁸

First, the Applicant submitted a CDM Review Application describing in detail how the proposed new duplex will contribute to the property’s “overall facelift.”¹⁸⁹ The 10 page application provides substantial evidence that the Applicant has considered the CDM and made efforts to honor its requirements. The additional conditions adopted by the Commission also further the goals of CDM.

Second, assuming for the sake of argument that the proposal falls short of strict adherence to the CDM, the court notes that the criterion refers only to applicable CDM provisions. Mr. Griswold has not made clear which provisions he believes CUP 13-13 violates. The evidence before the Planning Commission was that Lot 1-A-1 is in the Central Business District, contains two commercial buildings and four residential buildings, and that CUP13-13 is for a duplex (two residential units).¹⁹⁰ Given the low number of residential units, it is possible that the CDM may have no applicable provisions.

For both of these reasons, a reasonable person could find that the evidence supports the finding that the proposal will comply with applicable CDM provisions.

¹⁸⁷ R. at 51, 86, 89.

¹⁸⁸ Community Design Manual For The City Of Homer, 3, <https://www.cityofhomer-ak.gov/planning/community-design-manual>.

¹⁸⁹ R. at 22.

¹⁹⁰ R. at 11-27.

V. CONCLUSION

For the above stated reasons the BOA decisions are AFFIRMED.

DATED at Kenai, Alaska this 4 day of June, 2019.


Jennifer K. Wells
SUPERIOR COURT JUDGE

I certify that a copy of the forgoing was
☒ mailed to Griswold, Bloom, Ramos
☐ placed in court box to _____
☐ faxed to _____
☒ scanned to Jennifer Wells
LB 6-4-19
Judicial Assistant _____ Date



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Staff Report 19-56

TO: Homer Advisory Planning Commission **19-56**
FROM: Julie Engebretsen, Deputy City Planner
THROUGH: Rick Abboud, City Planner
DATE: 6/19/2019
SUBJECT: The Shire Preliminary Plat

Requested Action: Recommend approval of a lot line vacation.

General Information:

Applicants:	Robin McAllistar 152 W Bayview Ave Homer, AK 99603	Margaret Pate 4140 Canyon Lake Dr Rapid City, SD 57702
	Seabright Surveying + Design 1044 East End Rd Ste A Homer, AK 99603	
Location:	West Bayview Ave between Main St and Hohe St.	
Parcel ID:	17505106, 17505105	
Size of Existing Lot(s):	0.26 acres each	
Size of Proposed Lots(s):	0.508 acres, or just over 22,000 square feet	
Zoning Designation:	Urban Residential District	
Existing Land Use:	Residential, vacant	
Surrounding Land Use:	North: Residential South: Residential East: Bayview Park – small city park at top of Main St West: Residential	
Comprehensive Plan:	Goal 1 Objective C: Maintain high quality residential neighborhoods; promote housing choice by supporting a variety of dwelling options.	
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 52 property owners of 54 parcels as shown on the KPB tax assessor rolls.
----------------	---

Analysis: This subdivision is within the Urban Residential District. This plat vacates the common lot line between two parcels. From aerial photos it appears an agricultural high tunnel cross the lot existing lot lines. Vacation of the lot line will remedy this issue.

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: The plat does not meet these requirements. A 15 foot utility easement is required along W. Bayveiw Ave.

- 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: The plat meets these requirements.

- 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: 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. Staff recommends verifying with the Kenai Peninsula Borough if the Pates should be shown as a property owner and sign the plat. There is a recorded purchase agreement for Ms. McAllistar to purchase the property from the Pate's.

- 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 plat meets these requirements.

- 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: The plat meets these requirements.

- 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: 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. Information is on file at City of Homer Public Works.

- 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: The plat meets these requirements.

- 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. No encroachments are shown.

- 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: The plat meets these requirements.

Public Works Comments:

1. A development agreement is not required
2. Change the 10' utility easement fronting the ROW to 15'.

Fire Department Comments: No objections.

Staff Recommendation:

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

1. Dedicate a 15 foot utility easement along Bayview Ave as required by HCC 22.10.051(b).
2. The plat depicts a 5 foot building setback. No documentation or history has been provided. Unless there is a parent document with this requirement, staff recommended deleting the depiction. Plat note 3 regarding City of Homer zoning regulations is sufficient.
3. Acceptance of the plat does not imply acceptance of any nonconforming structures or uses.

Attachments:

1. Preliminary Plat
2. Surveyor's Letter
3. Public Notice
4. Aerial Map

1. A BUILDING SETBACK OF 20' FROM ALL STREET RIGHT-OF-WAYS AND 5' FROM ALL SIDE LOT LINES IS REQUIRED UNLESS A LESSER STANDARD IS APPROVED BY RESOLUTION OF THE APPROPRIATE PLANNING COMMISSION. THE FRONT 10' OF THE 20' BUILDING SETBACK IS A UTILITY EASEMENT. NO PERMANENT STRUCTURES SHALL BE CONSTRUCTED OR PLACED WITHIN A UTILITY EASEMENT WHICH WOULD INTERFERE WITH THE ABILITY OF A UTILITY TO USE SAID EASEMENT.

3. THE DEVELOPMENT WITHIN THIS SUBDIVISION IS SUBJECT TO THE CITY OF HOMER ZONING REGULATIONS.

4. THIS PLAT WAS PREPARED FOR THE VACATION OF LOT LINES ONLY. NO SURVEY WAS PERFORMED FOR THE PREPARATION OF THIS PLAT. ALL LOT DIMENSIONS SHOWN ON THIS PLAT ARE FROM RECORD DATE AS SHOWN ON PLAT HM 0562936.

○ RECORD 2" ALCAP 7610-S 2018 (HM 2018005)

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

FOR: _____

ACKNOWLEDGED BEFORE ME THIS _____

DAY OF _____, 2019

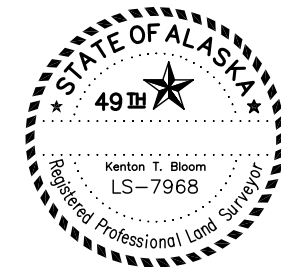
NOTARY PUBLIC FOR ALASKA

MY COMMISSION EXPIRES _____



I HEREBY CERTIFY THAT I AM THE OWNER OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREON, THAT I HEREBY ADOPT THIS PLAT OF SUBDIVISION, AND BY MY FREE CONSENT DEDICATE ALL RIGHTS OF WAY AND PUBLIC AREAS TO PUBLIC USE, AND GRANT ALL EASEMENTS TO THE USE SHOWN HEREON.

ROBIN MCALLISTAR
152 W BAYVIEW AVE.
HOMER, AK 99603



HOMER RECORDING DISTRICT

KPB FILE NO. 2019-XXX

"THE SHIRE"

A REPLAT OF LOTS 3 & 4, TRACT A FAIRVIEW
SUBDIVISION (HM 0562936) LOCATED WITHIN THE NE
1/4 SE 1/4 SE 1/4, SEC 28, T. 6 S., R. 14 W.,
SEWARD MERIDIAN,
CITY OF HOMER, KENAI PENINSULA BOROUGH,
THIRD JUDICIAL DISTRICT, ALASKA
CONTAINING 0.508 ACRES

SEABRIGHT SURVEY + DESIGN
KENTON T. BLOOM, P.L.S.

1044 EAST ROAD, SUITE A
HOMER, ALASKA 99603
(907) 299-1091

CLIENT: ROBIN MCALLISTAR
152 W BAYVIEW AVE., HOMER AK 99603

DRAWN BY: KK	CHKD BY: KB	JOB #2019-31
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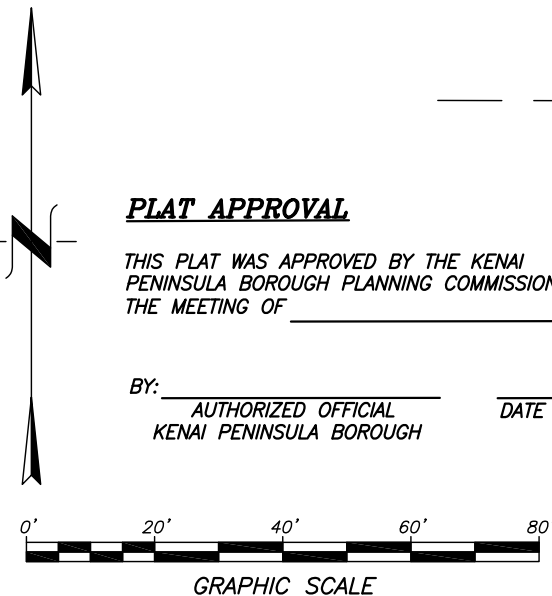
DATE: 5/2019	SCALE: 1"=20'	SHEET #1 OF 1
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THIS PLAT WAS APPROVED BY THE KENAI
PENINSULA BOROUGH PLANNING COMMISSION AT
THE MEETING OF

BY: _____
 AUTHORIZED OFFICIAL
 KENAI PENINSULA BOROUGH

 DATE



SEABRIGHT SURVEY + DESIGN

Kenton Bloom, PLS
1044 East Road Suite A
Homer, Alaska 99603
(907) 299-1091
seabrightz@yahoo.com

May 30, 2019

City of Homer
Planning Dept.
491 E. Pioneer
Homer, Alaska 99603

RE: Preliminary Plat Submittal "The Shire"

Dear Planning Department:

Here are the two full size copies for the preliminary plat referenced above. We are also submitting the \$300 fee. Please let me know if there are any concerns or clarifications I can address.

Cordially,



Kenton Bloom, P.L.S.
Seabright Survey + Design

RECEIVED

MAY 30 2019

**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:

The Shire Preliminary Plat

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, June 19, 2019 at 6:30 p.m. at Homer City Hall, Cowles Council Chambers, 491 East Pioneer Avenue, Homer, Alaska.

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.

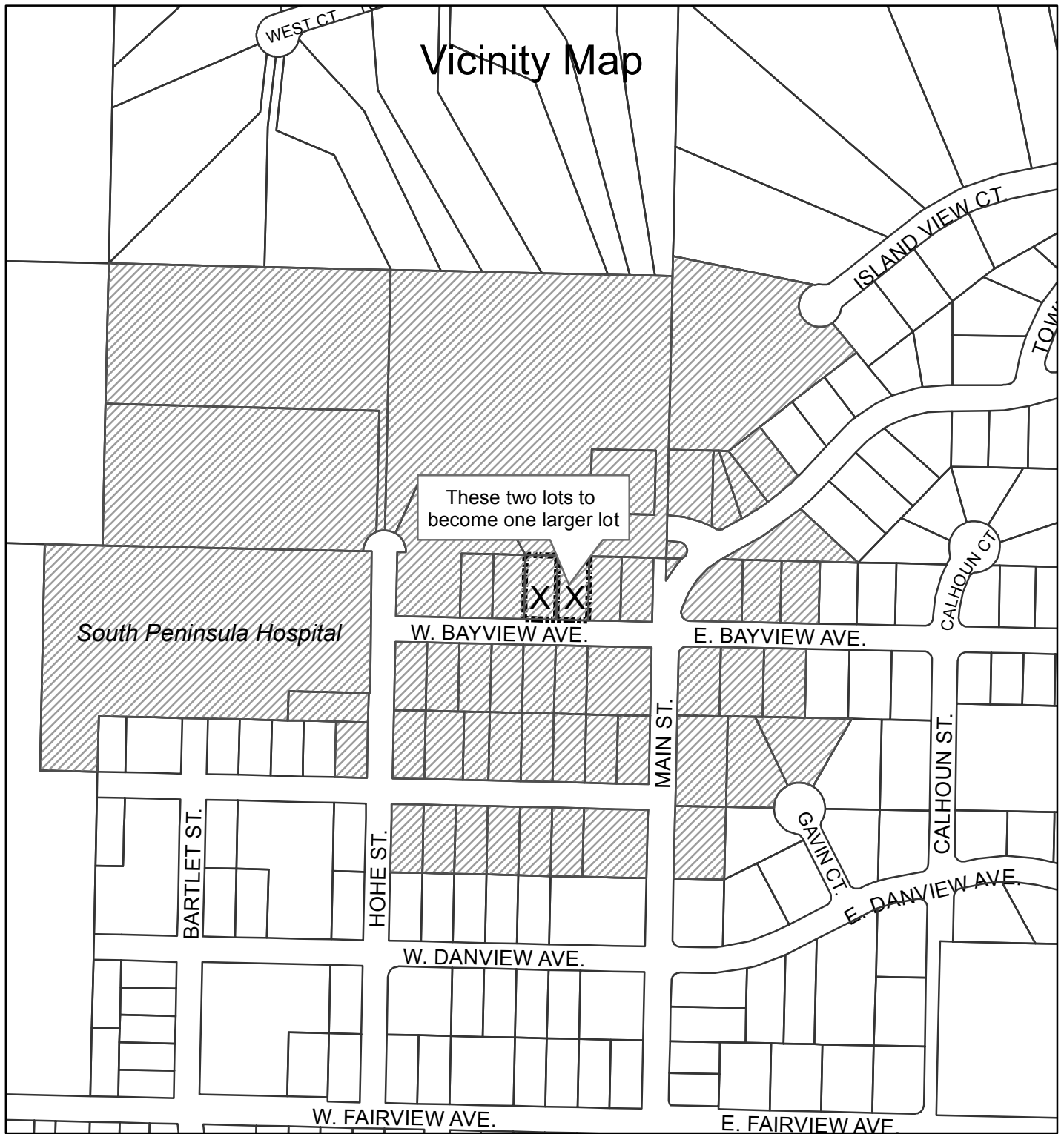
The complete proposal is available for review at the City of Homer Planning and Zoning Office located at Homer City Hall. For additional information, please contact Rick Abboud in the Planning and Zoning Office, 235-3106.

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

.....

VICINITY MAP ON REVERSE

Vicinity Map



City of Homer
Planning and Zoning Department

June 6, 2019

The Shire Preliminary Plat

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

0 250 500 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.

NOTES

1. A BUILDING SETBACK OF 20' FROM ALL STREET RIGHT-OF-WAYS AND 5' FROM ALL SIDE LOT LINES IS REQUIRED UNLESS A LESSER STANDARD IS APPROVED BY RESOLUTION OF THE APPROPRIATE PLANNING COMMISSION. THE FRONT 10' OF THE 20' BUILDING SETBACK IS A UTILITY EASEMENT. NO PERMANENT STRUCTURES SHALL BE CONSTRUCTED OR PLACED WITHIN A UTILITY EASEMENT WHICH WOULD INTERFERE WITH THE ABILITY OF A UTILITY TO USE SAID EASEMENT.

2. THESE LOTS ARE SERVED BY CITY OF HOMER WATER AND SEWER.

3. THE DEVELOPMENT WITHIN THIS SUBDIVISION IS SUBJECT TO THE CITY OF HOMER ZONING REGULATIONS.

4. THIS PLAT WAS PREPARED FOR THE VACATION OF LOT LINES ONLY. NO SURVEY WAS PERFORMED FOR THE PREPARATION OF THIS PLAT. ALL LOT DIMENSIONS SHOWN ON THIS PLAT ARE FROM RECORD DATE AS SHOWN ON PLAT HM 0562936.

LEGEND

○ RECORD 2" ALCAP 7610-S 2018 (HM 2018005)

WASTEWATER DISPOSAL

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

NOTARY'S ACKNOWLEDGMENT

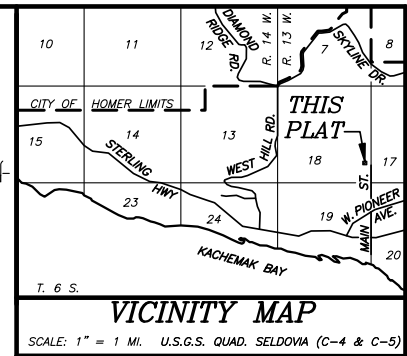
FOR: _____

ACKNOWLEDGED BEFORE ME THIS _____

DAY OF _____, 2019

NOTARY PUBLIC FOR ALASKA

MY COMMISSION EXPIRES _____



CERTIFICATE OF OWNERSHIP

I HEREBY CERTIFY THAT I AM THE OWNER OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREON, THAT I HEREBY ADOPT THIS PLAT OF SUBDIVISION, AND BY MY FREE CONSENT DEDICATE ALL RIGHTS OF WAY AND PUBLIC AREAS TO PUBLIC USE, AND GRANT ALL EASEMENTS TO THE USE SHOWN HEREON.

ROBIN MCALLISTAR
152 W BAYVIEW AVE.
HOMER, AK 99603



HOMER RECORDING DISTRICT

KPB FILE NO. 2019-XXX

"THE SHIRE"

A REPLAT OF LOTS 3 & 4, TRACT A FAIRVIEW SUBDIVISION (HM 0562936) LOCATED WITHIN THE NE 1/4 SE 1/4 SE 1/4, SEC 28, T. 6 S., R. 14 W., SEWARD MERIDIAN, CITY OF HOMER, KENAI PENINSULA BOROUGH, THIRD JUDICIAL DISTRICT, ALASKA CONTAINING 0.508 ACRES

SEABRIGHT SURVEY + DESIGN KENTON T. BLOOM, P.L.S.

1044 EAST ROAD, SUITE A
HOMER, ALASKA 99603
(907) 299-1091

CLIENT: ROBIN MCALLISTAR
152 W BAYVIEW AVE., HOMER AK 99603

DRAWN BY: KK CHKD BY: KB JOB #2019-31

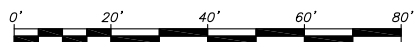
DATE: 5/2019 SCALE: 1"=20' SHEET #1 OF 1

PLAT APPROVAL

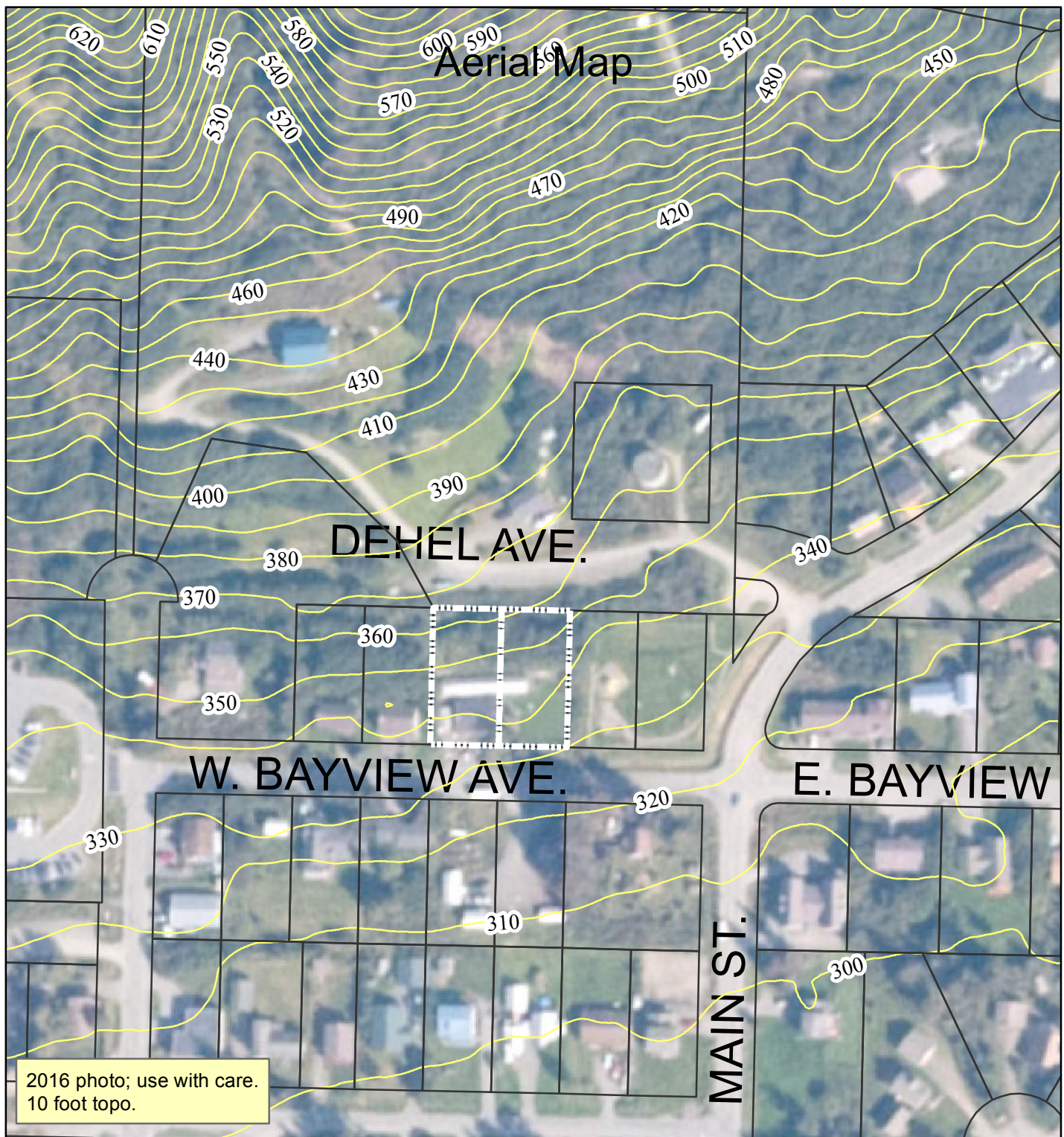
THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF _____

BY: _____ AUTHORIZED OFFICIAL
KENAI PENINSULA BOROUGH

DATE



GRAPHIC SCALE



City of Homer
Planning and Zoning Department

June 6, 2019

The Shire Preliminary Plat

0 230 460 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 19-57

TO: Homer Advisory Planning Commission **19-57**
FROM: Julie Engebretsen, Deputy City Planner
THROUGH: Rick Abboud, City Planner
DATE: 6/19/2019
SUBJECT: Lloyd Race 2019 Preliminary Plat

Requested Action: Shift of a common lot line between two parcels

General Information:

Applicants:	Scott and Cathy Ulmer PO Box 1950 Homer, AK 99603	Ability Surveys 152 Dehel Ave Homer, AK 99603
Location:	Mission Road	
Parcel ID:	17403021, 17403033	
Size of Existing Lot(s):	1.66 and 7.98 acres	
Size of Proposed Lots(s):	2.471 and 7.180 acres	
Zoning Designation:	Rural Residential District	
Existing Land Use:	Residential, vacant	
Surrounding Land Use:	North: Residential South: Vacant/private subdivision park East: Vacant/Residential West: Residential	
Comprehensive Plan:	Goal 3 Objective B: Encourage high quality site design and buildings.	
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 not available at this time.	
Public Notice:	Notice was sent to 28 property owners of 24 parcels as shown on the KPB tax assessor rolls.	

Analysis: This subdivision is within the Rural Residential District. This plat shifts the common lot line between two parcels. The terrain is steep with several ravines. The surveyor states the reason for the lot line shift is to resolve the current septic system encroachment on the adjacent lot.

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: The plat does not meet this requirements. Ensure there is a 15 feet easement across the entirety of lot 11-C1.

- 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: The plat meets these requirements.

- 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: 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. Verify if a section line easement extends along the southern lot line.

- 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 plat meets these requirements.

- 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: The plat meets these requirements.

- 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: 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: The plat meets these requirements.

- 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: The plat meets these requirements.

Public Works Comments:

1. Carry the 15' utility easement across the full frontage of lot 11-C1.
2. Typo: The wastewater note under "for lot 11-C1," incorrectly mentions lot 13-A.

Fire Department Comments: No objections.

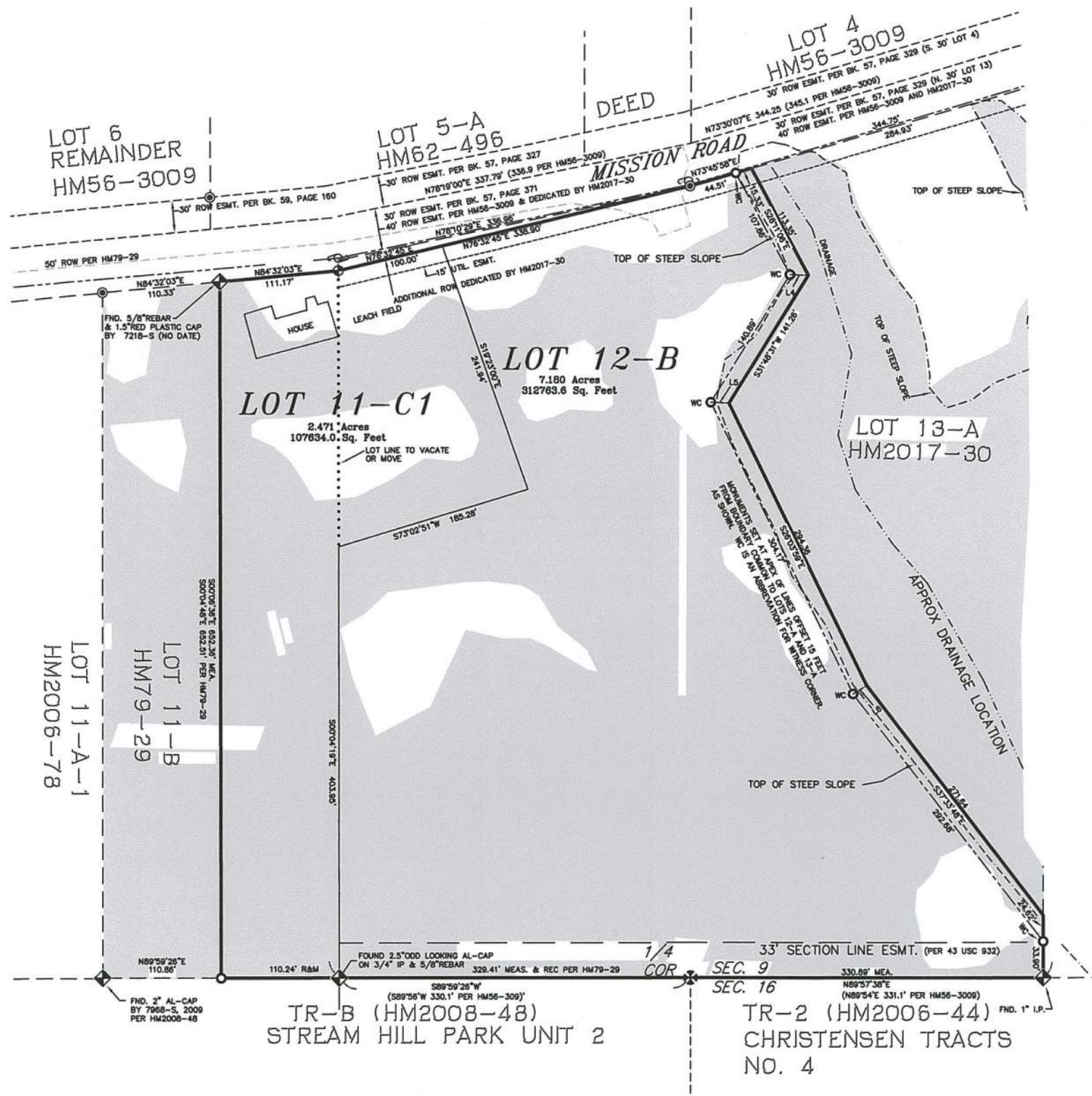
Staff Recommendation:

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

1. Include a plat note stating "Property owner should contact the Army Corps of Engineers prior to any on-site development or construction activity to obtain the most current wetland designation (if any). Property owners are responsible for obtaining all required local, state and federal permits."
2. Dedicate any missing portions of a 15 foot utility easement along Mission Ave as required by HCC 22.10.051(b).
3. Verify if a section line easement extends along the southern lot line.
4. Correct the typo referencing lot 13-A in the wastewater note.

Attachments:

1. Preliminary Plat
2. Plat with contours and steep areas shaded
3. Surveyor's Letter
4. Public Notice
5. Aerial Map



LEGEND

- ✕ FND. GLO BRASS CAP 1/4 COR. (1917)
- ⊕ FOUND 2.5" BRASS CAP BY 2234-S, 1978 PER HM79-29
- ⊙ FOUND 5/8" REBAR
- FOUND 2" AL-CAP ON 5/8" REBAR 2017
- ◆ FOUND MONUMENT AS DESCRIBED
- R&M = RECORD PER HM79-29 & MEASURED THIS SURVEY

NOTES

- DEVELOPMENT ON THESE LOTS IS SUBJECT TO HOMER CITY CODE.
- NO PERMANENT STRUCTURE SHALL BE CONSTRUCTED OR PLACED WITHIN A UTILITY EASEMENT WHICH WOULD INTERFERE WITH THE ABILITY OF A UTILITY TO USE THE EASEMENT.

WASTEWATER NOTES

WASTEWATER DISPOSAL:

FOR LOT 12-B:
LOT 12-B IS AT LEAST 200,000 SQUARE FEET, OR NOMINAL 5 ACRES IN SIZE AND CONDITIONS MAY NOT BE SUITABLE FOR ONSITE WASTEWATER TREATMENT AND DISPOSAL. ANY WASTEWATER TREATMENT OR DISPOSAL SYSTEM MUST MEET THE REGULATORY REQUIREMENTS OF THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

FOR LOT 11-C1:
SOIL CONDITIONS ON LOT 13-A HAVE BEEN FOUND UNSUITABLE FOR CONVENTIONAL ONSITE WASTEWATER TREATMENT AND DISPOSAL SYSTEMS. PLANS FOR A TYPICAL ALTERNATE WASTEWATER DISPOSAL SYSTEM FOR USE ON LOTS IN THIS SUBDIVISION ARE INCLUDED IN THE ENGINEER'S SUBDIVISION AND SOILS REPORT AND ARE AVAILABLE FROM THE KENAI PENINSULA BOROUGH. ALL ALTERNATE ONSITE WASTEWATER TREATMENT AND DISPOSAL SYSTEMS MUST BE DESIGNED BY A PROFESSIONAL ENGINEER REGISTERED TO PRACTICE IN ALASKA, AND THE DESIGN MUST BE APPROVED BY THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION PRIOR TO CONSTRUCTION.

ENGINEER _____ DATE _____

CERTIFICATE OF OWNERSHIP

We hereby certify that we are the owners of the real property shown and described hereon, and that we hereby adopt this plan of subdivision, and by our free consent dedicate all public rights-of-way and grant all easements and public areas to the use shown.

SCOTT A. ULMER (for former lot 11-B)
P.O. Box 1950
Homer, AK 99603

M. CATHERINE ULMER (for former lot 11-B & 12-A)
P.O. Box 1950
Homer, AK 99603

NOTARY'S ACKNOWLEDGEMENT

Acknowledged before me this _____ day of _____ 2019.

For : SCOTT A. ULMER

Notary public for Alaska _____ My Commission Expires _____

NOTARY'S ACKNOWLEDGEMENT

Acknowledged before me this _____ day of _____ 2019.

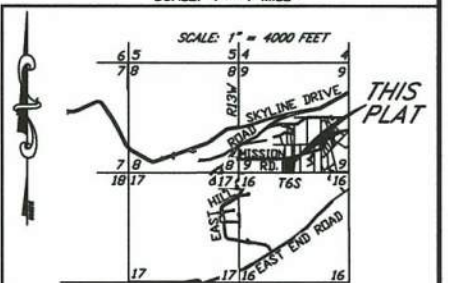
For : M. CATHERINE ULMER

Notary public for ALASKA _____ My Commission Expires _____

PLAT APPROVAL

This plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of _____ KENAI PENINSULA BOROUGH

BY _____
Authorized Official
VICINITY MAP
SCALE: 1" = 1 MILE



LLOYD RACE 2019

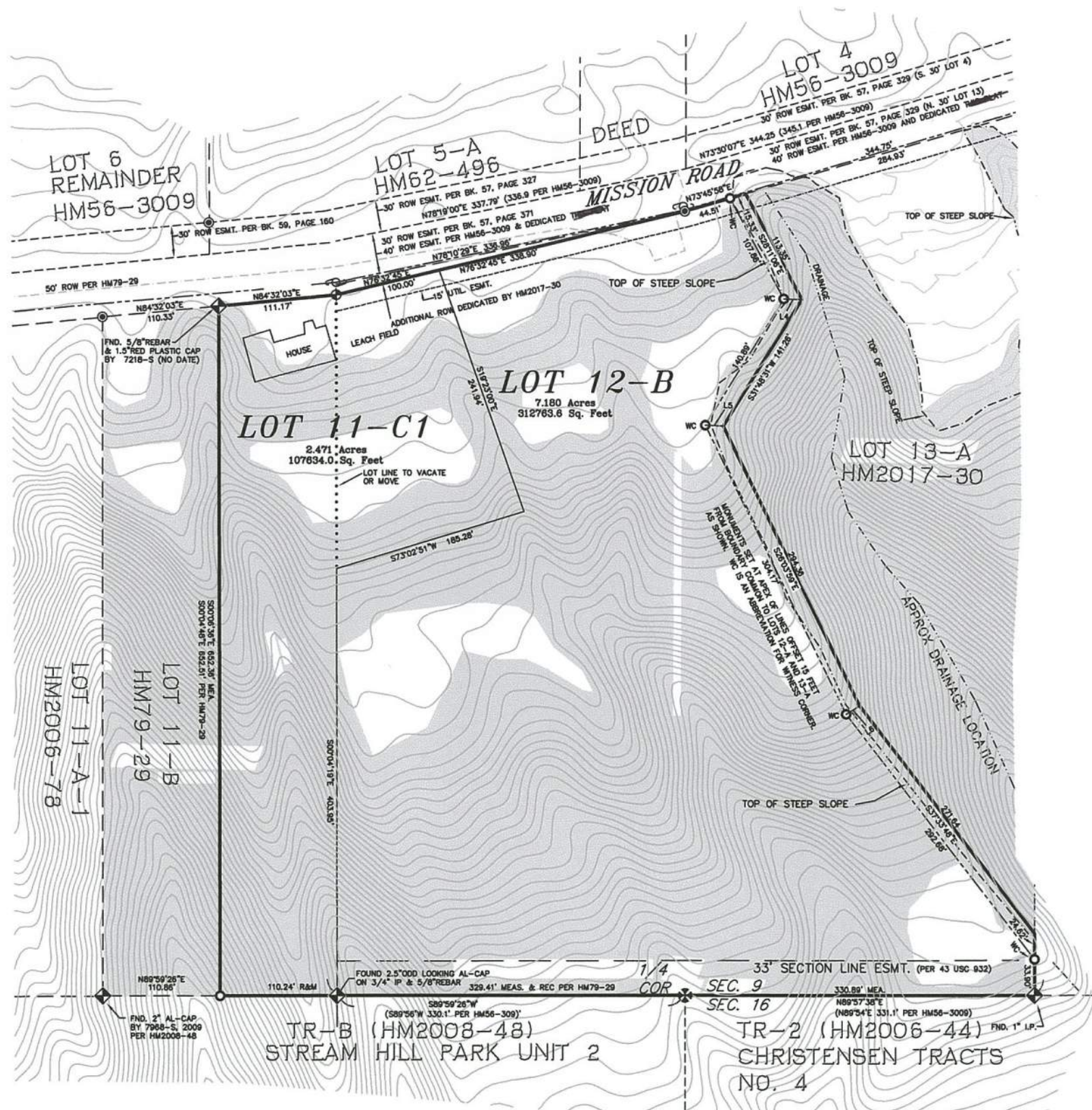
A REPLAT OF LOT 12-A LLOYD RACE 2017 (HM2017-30), AND LOT 11-C LEVESQUE SUBDIVISION (HM79-29), WITHIN THE SW1/4 AND SE1/4 OF SECTION 9, T8S, R13W, S.M., IN THE CITY OF HOMER, KENAI PENINSULA BOROUGH, THIRD JUDICIAL DISTRICT, HOMER RECORDING DISTRICT, STATE OF ALASKA CONTAINING 9.651 ACRES

OWNER'S:
SCOTT A. ULMER, AND M. CATHERINE ULMER
P.O. BOX 1950
HOMER, AK 99603



ABILITY SURVEYS

GARY NELSON, PLS
(907) 235-8440
152 DEHEL AVE., HOMER ALASKA 99603



- LEGEND**
- ✕ FND. GLO BRASS CAP 1/4 COR. (1917)
 - ⊕ FOUND 2.5" BRASS CAP BY 2234-S, 1978 PER HM79-29
 - ⊙ FOUND 5/8" REBAR
 - FOUND 2" AL-CAP ON 5/8" REBAR 2017
 - ◆ FOUND MONUMENT AS DESCRIBED
 - R&M = RECORD PER HM79-29 & MEASURED THIS SURVEY

NOTES

1. DEVELOPMENT ON THESE LOTS IS SUBJECT TO HOMER CITY CODE.
2. NO PERMANENT STRUCTURE SHALL BE CONSTRUCTED OR PLACED WITHIN A UTILITY EASEMENT WHICH WOULD INTERFERE WITH THE ABILITY OF A UTILITY TO USE THE EASEMENT.
3. CONTOUR INTERVAL IS 4'.
4. GRAY SHADING IS SLOPES STEEPER THAN 20%.

WASTEWATER NOTES

WASTEWATER DISPOSAL:

FOR LOT 12-B:
LOT 12-B IS AT LEAST 200,000 SQUARE FEET, OR NOMINAL 5 ACRES IN SIZE AND CONDITIONS MAY NOT BE SUITABLE FOR ONSITE WASTEWATER TREATMENT AND DISPOSAL. ANY WASTEWATER TREATMENT OR DISPOSAL SYSTEM MUST MEET THE REGULATORY REQUIREMENTS OF THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

FOR LOT 11-C1:
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ENGINEER _____ DATE _____

CERTIFICATE OF OWNERSHIP

We hereby certify that we are the owners of the real property shown and described hereon, and that we hereby adopt this plan of subdivision, and by our free consent dedicate all public rights-of-way and grant all easements and public areas to the use shown.

SCOTT A. ULMER (for former lot 11-B)
P.O. Box 1950
Homer, AK 99603

M. CATHERINE ULMER (for former lot 11-B & 12-A)
P.O. Box 1950
Homer, AK 99603

NOTARY'S ACKNOWLEDGEMENT
Acknowledged before me this _____ day of _____ 2019.

For : SCOTT A. ULMER

Notary public for Alaska _____ My Commission Expires _____

NOTARY'S ACKNOWLEDGEMENT
Acknowledged before me this _____ day of _____ 2019.

For : M. CATHERINE ULMER

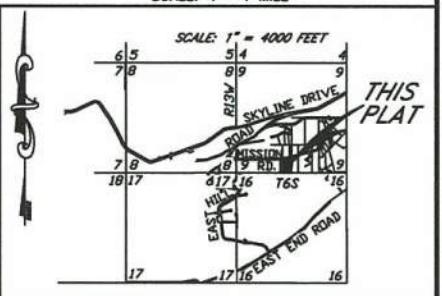
Notary public for ALASKA _____ My Commission Expires _____

PLAT APPROVAL

This plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of _____ KENAI PENINSULA BOROUGH

BY _____ Authorized Official

VICINITY MAP
SCALE: 1" = 1 MILE



LLOYD RACE 2019

A REPLAT OF LOT 12-A LLOYD RACE 2017 (HM2017-30), AND LOT 11-C LEVESQUE SUBDIVISION (HM79-29), WITHIN THE SW1/4 AND THE SE1/4 OF SECTION 9, T8S, R13W, S.M., IN THE CITY OF HOMER, KENAI PENINSULA BOROUGH, THIRD JUDICIAL DISTRICT, HOMER RECORDING DISTRICT, STATE OF ALASKA CONTAINING 9.651 ACRES

OWNER'S:
SCOTT A. ULMER, AND M. CATHERINE ULMER
P.O. BOX 1950
HOMER, AK 99603



ABILITY SURVEYS
GARY NELSON, PLS
(907) 235-8440
152 DEHEL AVE., HOMER ALASKA 99603

ABILITY SURVEYS

MEASURING MAPPING & REPORTING ON ALASKA'S INFRASTRUCTURE SINCE 1976

152 DEHEL AVE. , HOMER, AK. 99603 PH. 907-235-8440 FAX. 235-8440

email; gary@abilitysurveys.com

May 31, 2019

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

Re: Preliminary Plat Submittal of LLOYD RACE 2019

Enclosed herewith for preliminary plat submittal please find:

- One full sized paper copy of the preliminary plat.
- One reduced to 11"X 17" copy of the preliminary plat.
- Check number 3497 in the amount of \$300.

The owners would like to move a portion of one lot line that divides their two parcels to resolve a leach field encroachment issue.

Thank you for your assistance in this endeavor.



Gary Nelson, PLS

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:

Lloyd race 2019 Preliminary Plat

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, June 19, 2019 at 6:30 p.m. at Homer City Hall, Cowles Council Chambers, 491 East Pioneer Avenue, Homer, Alaska.

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.

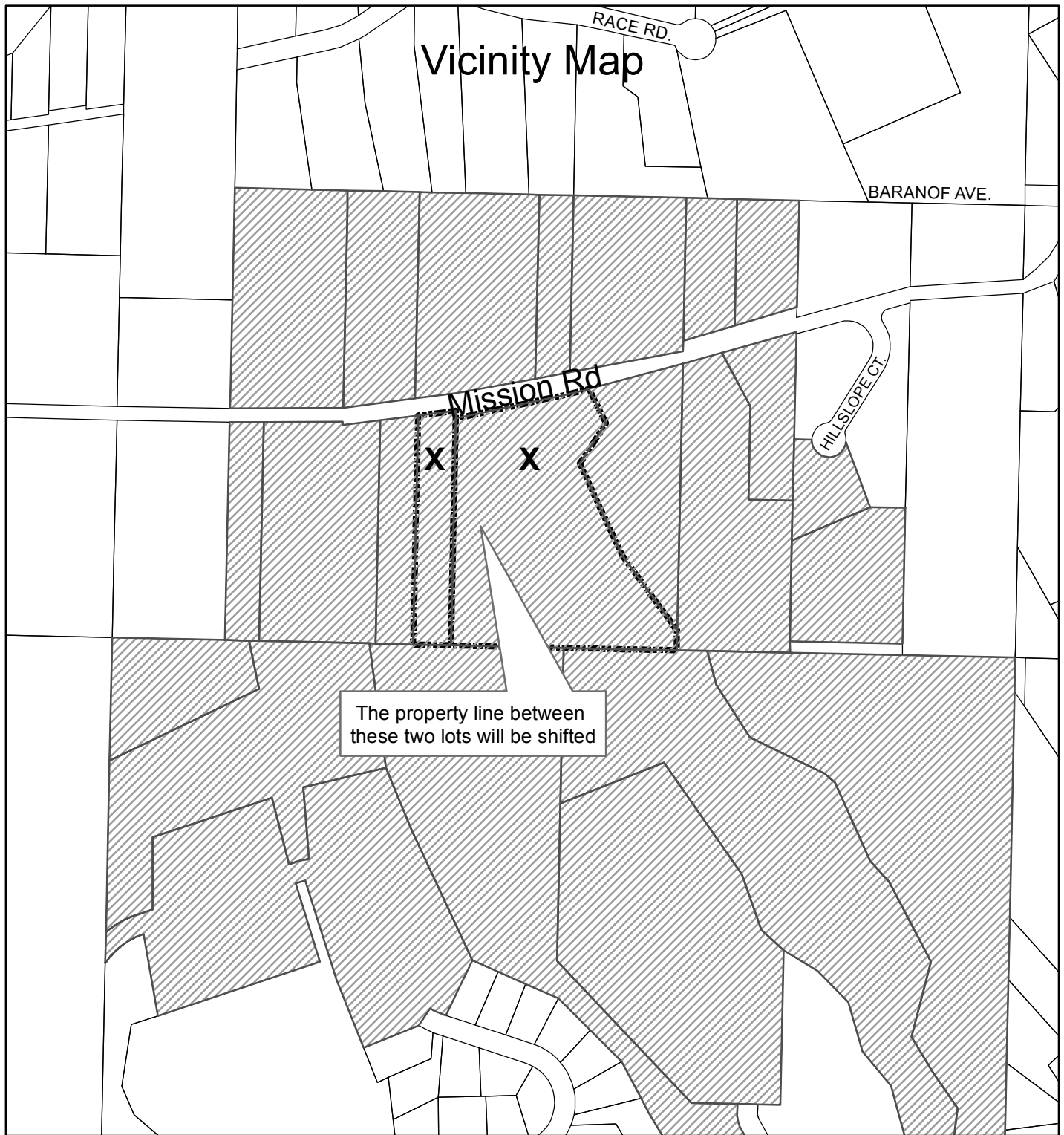
The complete proposal is available for review at the City of Homer Planning and Zoning Office located at Homer City Hall. For additional information, please contact Rick Abboud in the Planning and Zoning Office, 235-3106.

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

.....

VICINITY MAP ON REVERSE

Vicinity Map

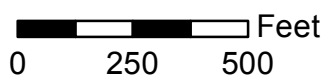


City of Homer
Planning and Zoning Department

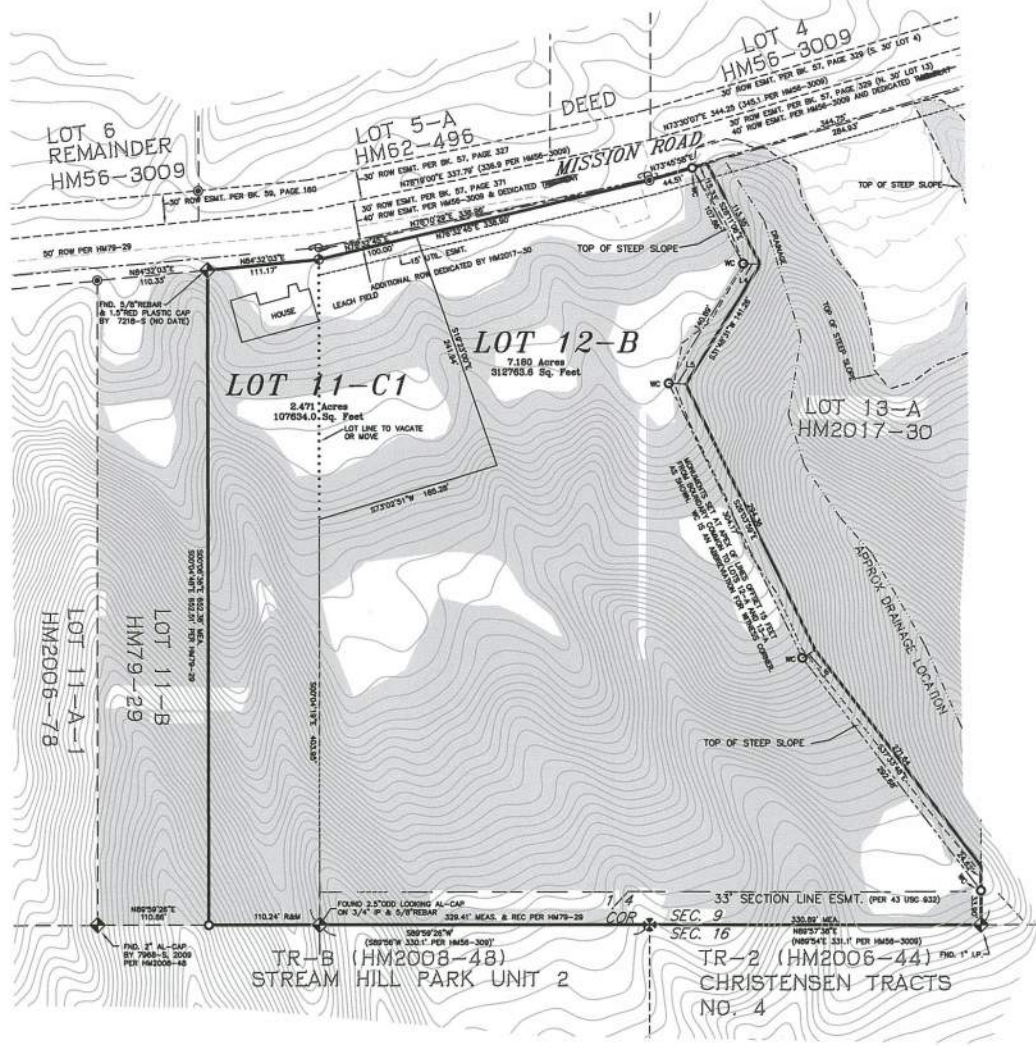
June 6, 2019

Lloyd Race 2019 Preliminary Plat

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



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



LEGEND

- FND. GLO BRASS CAP 1/4 COR. (1817)
- FND. 2.5" BRASS CAP BY 2234-S, 1978 PER HM79-29
- FND. 5/8" REBAR
- FND. 2" AL-CAP ON 5/8" REBAR 2017
- FND. MONUMENT AS DESCRIBED
- R&M = RECORD PER HM79-29 & MEASURED THIS SURVEY

NOTES

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P.O. Box 1950
Homer, AK 99603

M. CATHERINE ULMER (for former lot 11-B & 12-A)
P.O. Box 1950
Homer, AK 99603

NOTARY'S ACKNOWLEDGEMENT

Subscribed before me this _____ day of _____, 2018.

For : SCOTT A. ULMER

Notary public for Alaska _____ My Commission Expires _____

NOTARY'S ACKNOWLEDGEMENT

Subscribed before me this _____ day of _____, 2018.

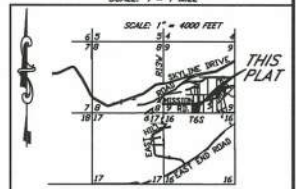
For : M. CATHERINE ULMER

Notary public for ALASKA _____ My Commission Expires _____

PLAT APPROVAL

This plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of _____, KENAI PENINSULA BOROUGH

BY _____
Authorized Official
VICINITY MAP
SCALE: 1" = 1 MILE



LLOYD RACE 2019

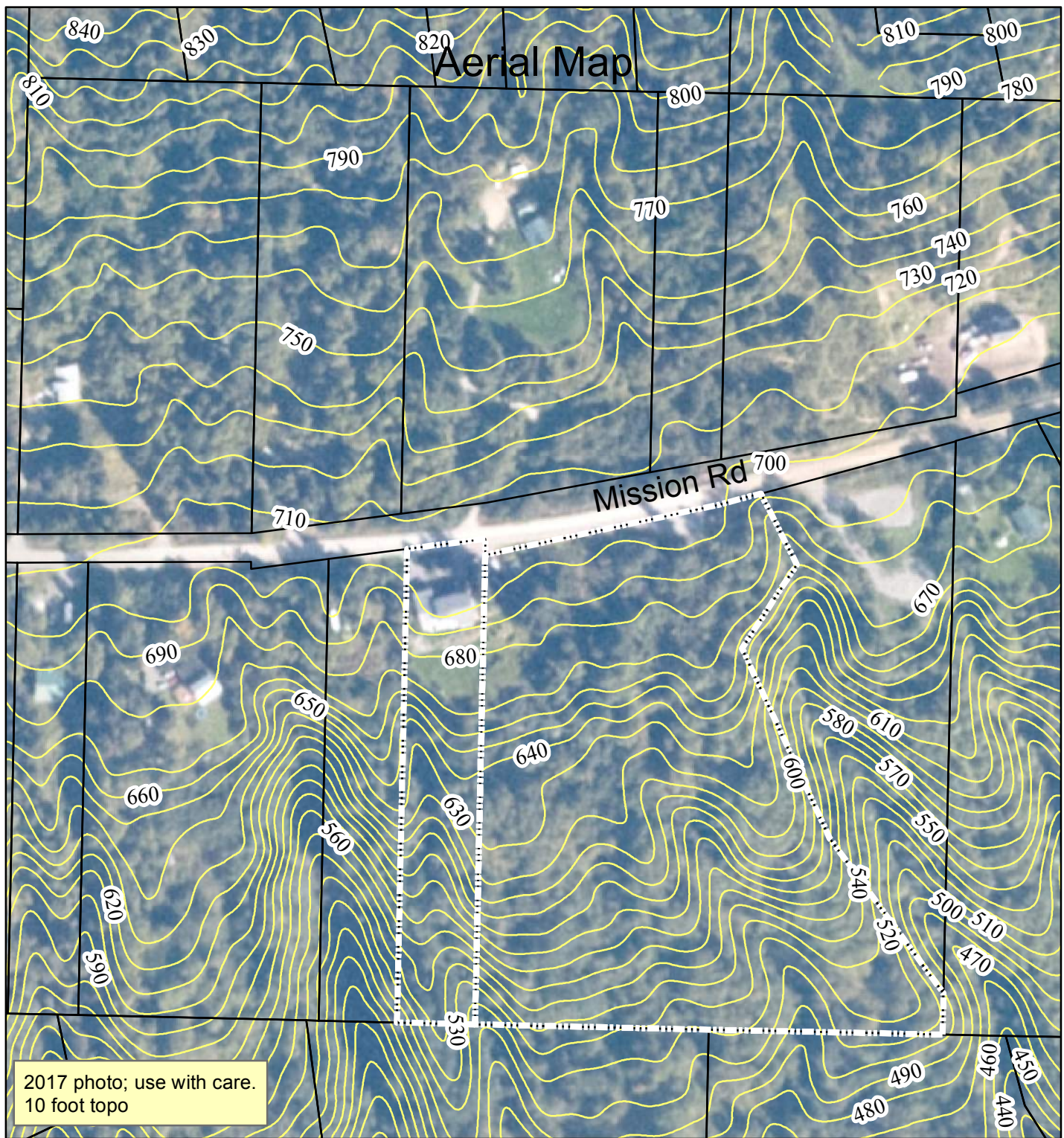
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OWNERS:
SCOTT A. ULMER, AND M. CATHERINE ULMER
P.O. BOX 1950
HOMER, AK 99603

ABILITY SURVEYS

DAVE NELSON, P.E.
(907) 235-8440
152 BERRY AVE., HOMER ALASKA 99603





City of Homer
Planning and Zoning Department

June 6, 2019

Lloyd Race 2019 Preliminary Plat

0 250 500 Feet



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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 19-58

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
FROM: Travis Brown, Planning Technician
DATE: June 19, 2019
SUBJECT: Zoning Permit & CUP Requirements

Introduction

At the last meeting, a motion was passed that made clear that the Commission's wishes to have property lines be staked by a licensed surveyor prior to construction for all improvements and to require an asbuilt be submitted upon project completion. Staff is working on recommendations to amend title 21 that will be presented and voted on at the July meeting.

The staff recommendations will be in consideration of current permitting procedures so that the resulting changes will be practical to implement and enforce. Title 21 will be reviewed so the recommended changes are clear and avoid creating conflicting rules.

Some of the things under consideration are:

- Which projects will trigger staking? All new construction? All new construction within a certain distance of the property lines? Only additions/remodels over a certain market value such as \$5,000?, \$10,000?, more or less? Only construction exceeding a certain building footprint area?
- Which projects will trigger an as-built submittal? All new construction? Only additions/remodels over a certain market value such as \$5,000?, \$10,000?, more or less? Only construction exceeding a certain building footprint area?
- What is the timeframe requirement for submitting asbuilts? Upon project completion? Prior to the expiration of the zoning permit, 18 months from start?
- At what phase of the project will staking be required? Prior to applying for a zoning permit? Prior to start of construction?
- How will our office verify that staking has been done? Require the applicant to provide a form filled out by a surveyor? What specific information will we need from the surveyor?
- How will our office process, file, and retain the additional paperwork?
- Will projects that required a CUP be treated differently?

Staff Recommendation:

While the administrative questions will need to be resolved by staff, additional commission discussion on some of these questions will be helpful. Please discuss the first two bullet points and, if a consensus is reached, make a motion.



City of Homer

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Planning

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(f) 907-235-3118

Staff Report PL 19-59

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
FROM: Julie Engebretsen, Deputy City Planner
DATE: June 19, 2019
SUBJECT: Building height in the East End Mixed Use Zoning District

Introduction

The HAPC continues the conversation on building height. At the last meeting, the commission made the following comments:

- ~ Residential units should not exceed the current 35 foot height limit
- ~ A CUP should be required for buildings over 35 feet, up to the 75 foot height maximum
- ~ Access and sprinklers would be a potential requirement of the State Fire Marshal

Analysis

Staff is still researching if there are any concerns about taller buildings in the vicinity of the airport. The currently developed areas of the EEMU district are well out of the airport flight path. However, aviation rules can change over time, and this is an area of the city designated for commercial/industrial growth. Some types of structures such as buildings over 200 feet and telecommunications towers all require FAA review, regardless of proximity to an airport. These regulations could change over time, as could Home building height standards. Staff provides some language on line 46, so airport concerns are considered in the request for taller buildings, or, a statement that the buildings are not located in an area under any airport purview.

Draft language is included on the next page. Staff will work with the attorney to make any corrections and incorporate any suggestions from DOT Aviation Division.

Draft ordinance language – HCC 21.27.040

c. Building Height.

1. The maximum building height is 35 feet, except as provided in subsection (c)(2) of this section.

2. If approved by conditional use permit, commercial buildings up to 75 feet in height may be allowed. No dwelling units or residential occupancy is allowed within the structure. A statement from the Alaska Department of Transportation and Public Facilities that there is no objection to the building height or that state airport or FAA regulations do not apply to the structure.

Does the Commission have any other conditions? Additional setbacks? Anything else related to dimensional requirements that the Commission has questions or concerns about?

Staff Recommendation

1. Review the Draft ordinance language and make any suggestions or changes
2. Move the draft ordinance to public hearing. (Anticipated for July meeting)



City of Homer

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Office of the City Manager

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citymanager@cityofhomer-ak.gov

(p) 907-235-8121 x2222

(f) 907-235-3148

Memorandum

TO: Mayor Castner and Homer City Council

FROM: Katie Koester, City Manager

DATE: June 5, 2019

SUBJECT: June 10 City Manager's Report

Vessel Assist

On May 26, the Homer Port and Harbor responded to a vessel in distress call. Four individuals were clinging to the bottom of an overturned 17' skiff; luckily one was able to place a 911 call with a cell phone. 911 Dispatch called the Troopers who then called Homer Harbor because they were not able to make a timely response. Coast Guard put out a PanPan notice on Channel 16 VHF to which three other small boats responded to. Dispatch was able to help with a location of the vessel by pinging the cell phone's signal, which helped narrow the area for the search to a location approximately 3 miles north of the Homer Spit.

Harbor Officer II Mike Lowe responded after going through proper incident protocol and contacting his Supervisor, Deputy Harbormaster Clarke. A second harbor officer (Rick Borland) was arriving to begin his shift and was able to provide shore support, communications, and response coordination while Harbor Officer Lowe was responding to the incident. Officer Lowe departed the harbor at 2200 and was the second vessel to arrive on scene. One person was removed from the overturned vessel by the landing craft that had responded. Officer Lowe recovered the other three from the water, who were clinging to the bottom of the overturned skiff. Officer Lowe then transferred the patients from his boat to a Good Samaritan fishing vessel where they could be taken into the cabin. While en route to the harbor, the landing craft lost power and the decision was made to transfer the patient to the fishing vessel. Once the patient was transferred Officer Lowe put a line on the landing craft and towed it the remaining two miles back to the safety of Homer Harbor. The fishing vessel transported the 4 patients to the load and launch ramp where they were met by HVFD EMS services.

This incident highlights the need for maritime response in Kachemak Bay waters and is by no means a new conversation. Harbor staff have been in communications with United State Coast Guard (USCG) to review the incident. I am hoping to continue the conversation with USCG, Troopers, and other government and nongovernment agencies to be able to provide a coordinated approach to afterhours search and rescue responses in Kachemak Bay. Goals include both a short term and term plan for community response of equipment and personnel on standby when the next call goes out. This is especially paramount during peak times, such as Memorial Day weekend when this incident occurred.

Exemption to Underground Utilities

GCI initiated a project to extend fiber optic cable from the center of town up the bluff to their cell phone tower on Skyline Drive. This improvement is expected to significantly improve cell phone service to the community. All work was successfully completed underground, except for a portion of the cable extension running up the steep portion of the bluff face in a utility easement above Anderson Street. GCI's contractor attempted to bore the last 600 foot section. The boring equipment hit refusal. GCI requested an exemption from the Homer City Code requirement that all new cable be placed underground. Public Works suggested that they try again. The Contractor tried twice more (along two different alignments) to bore this section and failed. As stated in the letter granting an exemption, HCC 22.10.55(e)(10) gives the City Manager the authority to grant an exemption if good cause can be shown. In this case, since it was not practical to construct the cable extension underground, an exemption was granted to allow overhead installation between two existing power poles carrying HEA transmission lines.

Homer Steps it UP

The community walking challenge Homer Steps Up! 2019 has come to an end. This community wide steps challenge (organized by the South Peninsula Hospital Health and Wellness Department) promotes wellness by encouraging participants to get out and walk more every day. The challenge, and its weekly and end-of-challenge awards, provide a fun incentive for everyone to get more active. This year, community participants surpassed the cumulative goal of 100 million steps together in the month of May – together we reached over 110 million steps! The City of Homer Team won the Large Team challenge with a score of 311,756. Mayor Castner accepted the trophy on behalf of the City at the Farmers market on May 29th. Fifty-four team members accumulated a total of 16,835,327 steps! The M&M&M's, a team of staff and families from Paul Banks Elementary School, won the Small Team Challenge with a score of 347,125 (actual total steps of 3,818,374 between 11 members). Thank you to all the teams who participated, and everyone who participated as an individual stepper – hope to see you out stepping again next year!

Peninsula City Manager Meeting

On Friday, May 31, the City of Homer hosted the Peninsula City Managers and Kenai Peninsula Economic Development District for our quarterly Peninsula Manager meeting. Unfortunately I was in quarantine and had to call in, but lots of valuable ground was covered. Some of the topics included what each community is doing with taxes, cost shifting to municipalities, borough wide tourism marketing, and health insurance. We discussed the Borough approach to the online taxes and the potential impact for municipalities. I also got some good leads on a new federal port and harbor grant and we shared tips on negotiating with providers for both health insurance and general liability insurance. The date of the next Industry Outlook Forum was announced, which will be in Seward on January 8th – so save the date for that important Peninsula wide event.



Aspen Hotel Grand Opening

On Thursday, May 30th, the Aspen Hotel held a ribbon cutting to announce the opening of its doors for the 2019 summer season. The hotel has 73 rooms and can accommodate 45 people in an onsite meeting room. Mayor Castner was asked to say a few words; he welcomed the new business to town and applauded them for their engagement in the community including dedicating the lower portion of the lot to a public trail.

Certified Property Tax Values for 2019

Attached are the certified values of property in City limits. As a reminder, the tax rolls don't provide us with the amount of money received in property tax collection. Instead, these numbers illustrate the total property value that is to be assessed. Property Tax (Taxable Value) increased 3.42% between 2018 and 2019.

How we budget property taxes:

- We utilize a statistical regression model that currently incorporates seven years of historical data. We calculate a line of best fit using the least squares method. The closer the r-squared value is to 1 the better the line fits with the data and gives us confidence in the budgeted figure. For 2019, the r-squared was 0.89. The assessing model for the Kenai Peninsula Borough changed drastically in 2017 and we are now starting to see trends level out. As we move into the future, this statistical model should bring our r-squared value closer to 1 (in 2017 it was 0.97), and thus giving us a more accurate budgeted property tax value.

Sales Tax First Quarter Data

Attached is the first quarter sales tax data for the Borough. Taxable sales have increased roughly 7.53% between the first quarter of 2019 and 2018 for the City of Homer. Most sectors that conduct business within the City experienced an increase in taxable sales. The most notable increases include Agriculture/Forestry, Rental Commercial Property, Water Guiding, Manufacturing, Transportation and Warehouse, and Retail Trade. In specific, the retail trade industry saw an increase in taxable sales of approximately 10.82% between the first quarter of 2019 and 2018.

KPB Online Sales Tax Pre-Meeting

Peninsula Municipal Staff met with Kenai Peninsula Borough Mayor Piccere and his administration to discuss online sales tax collection in advance of the state wide meeting on June 6th. As one of the largest collectors of sales tax in the State, the Borough will have a lot to say on the topic. The June 6th meeting will hopefully generate consensus on definitions and begin discussions on governance structure. Juneau is the other large volume sales taxing entity in the state, so determining how the two municipalities align will be very important. Definitions I will be watching include food/prepared food, point of delivery, and nexus. Scenarios that illustrate how complex defining some of these terms become include how do you tax online streaming services? Is the point of sale considered the Post Office box the item is shipped to or the residential address? How do you deal with the broad reach of zip codes in Alaska where many communities can have the same zip code (answer: expensive mapping). To put some context to the conversation, the consultant AML has hired to work on this project, Larry Persily, estimates the State of Alaska's 100 plus taxable jurisdictions are leaving an average of \$20 million on the table in sales tax revenue.

In addition to coming up with alignment on a state wide basis, the Borough will need to amend their sales tax code to facilitate the collection of online sales tax. Because we adopt the Borough's code by reference, it will be important for the City of Homer to understand these changes.

Joint Worksession with KPB Assembly and Peninsula Municipalities

I won't go into too much detail as all Councilmembers were able to attend the joint worksession between the city councils and managers of Kenai, Soldotna, Seward, Homer and the Assembly regarding KPB Ordinances 2019-09 and 2019-11 regarding putting a 12% bed tax before the voters and allowing the Assembly to set the sales tax cap, respectively. Kenai and Soldotna both had resolutions supporting putting the bed tax before voters. Assembly members requested formal input from the Homer and Seward City Councils as neither body had taken up the question and proposed postponing final vote on the ordinance. The Borough also discussed an amendment to the budget (which was funded later that evening) to hire a firm to audit borough vacation rentals to ensure proper sales tax collection. There was discussion on whether to request that member municipalities contribute to this cost (a \$50,000 annual expenditure borough wide). It was a fruitful conversation and it is always good to remind the central peninsula that Homer is paying attention. I am pleased that so many members were able to make it and appreciate them taking the time out of their busy schedules to do so.

Seafarers Memorial Parking

Attached is a memo from Harbormaster Hawkins updating the Council on the Seafarers memorial parking project. Please let me know if you have any follow up questions; this project will be before the Planning Commission next month for a CUP and I want you to have the information you need to respond to questions from the public. The timeframe for the project has changed with the immediate need for the use of the available dredge materials to combat erosion damage on the Spit.

Seawall Mil Rate

At the May 28, 2019 City Council meeting, the question was raised on how the mil rate for the Ocean Drive Loop Special Service Area was established. In a 2013 memo, former City Manager Walt Wrede shared that the 2012 mil rate for the Ocean Drive Loop Special Service Area was set at 9.6283 in order to establish a healthy balance for the fund. This rate however was only able to generate two-thirds of what was anticipated due to factors like senior exemption and the removal of what was then the McNamara property from the Service Area. It was for these reasons Council increased the mil rate to 9.962541 in 2013, which

21 HOMER ODLSA

20 Homer	4.50
21 Homer ODLSA	9.9625
50 Borough	4.70
52 So. Hospital	2.30
	21.4625

has remained at to this day. The State of Alaska's Assistant State Assessor Joseph Cassie said there is a 30 mil cap for a service area. Currently, the Service Area (known as TAG21 by the Borough's Assessor Office) is at 21.4625, leaving the City with the option to increase the rate. However, if a bond was issued to the Service Area, the mil rate could be set as high as the City and property owners agree to as authorized by *Alaska Statute 29.45.100*. The coastal engineer's report and analysis of the Seawall will be finalized hopefully by the end of this month. This report will detail preventative maintenance work to extend the life of the Seawall.

Enc:

June Employee Anniversaries
2019 Certified Values Property Taxes
2019 First Quarter KPB Taxable Sales
2019 First Quarter KPB Taxable Sales by Line of Business
Letter to GCI RE:HCC 22.10.55(e)(10)
Memo from Harbormaster Hawkins
Seafarers Memorial Parking CIP page
Seafarers Memorial Parking Footprint Image
Seafarers Memorial Parking Site Plan
Memo on Seawall Mil Rate from City Manager Wrede
KPB Mil Rates



City of Homer

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Office of the City Manager

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citymanager@cityofhomer-ak.gov

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(f) 907-235-3148

Memorandum

TO: MAYOR CASTNER AND CITY COUNCIL
FROM: Katie Koester
DATE: June 10, 2019
SUBJECT: June Employee Anniversaries

I would like to take the time to thank the following employees for the dedication, commitment and service they have provided the City and taxpayers of Homer over the years.

Levi Stradling,	Public Works	17	Years
Melissa Jacobsen,	Clerks	15	Years
Mike Illg,	Admin	13	Years
Rachel Tussey,	Clerks	8	Years
Manfred Kirchner,	Public Works	7	Years
Mike Szocinski,	Public Works	7	Years
Brandon Moyer,	Public Works	3	Years
Jessica Poling,	Police	2	Years
Jessica Roper,	Police	1	Year



Assessing Department

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2230 • (907) 714-2393 Fax

Charlie Pierce
Borough Mayor

May 28, 2019

Ms. Katie Koester, City Manager
City of Homer
491 East Pioneer Avenue
Homer, AK 99603

RE: 2019 Certified Main Roll Property Values

Dear Ms. Koester,

Following are the 2019 certified main roll taxable values for the **City of Homer (TAG 20)** as of May 28, 2019:

	Assessed	Taxable
REAL PROPERTY	\$ 1,299,073,100	\$ 744,715,500
OIL & GAS PROPERTY	\$ -0-	\$ -0-
PERSONAL PROPERTY	\$ 47,328,455	\$ 40,353,274
TOTAL 2019 CERTIFIED MAIN ROLL VALUE	\$ 1,346,401,555	\$ 785,068,774

If you have any questions, please do not hesitate to contact this office.

Sincerely,

Melanie Aeschliman
Director of Assessing



Assessing Department

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2230 • (907) 714-2393 Fax

Charlie Pierce
Borough Mayor

May 28, 2019

Ms. Katie Koester, City Manager
City of Homer
491 East Pioneer Avenue
Homer, AK 99603

RE: 2019 Certified Main Roll Property Values

Dear Ms. Koester,

Following are the 2019 certified main roll taxable values for the **City of Homer ODL (TAG 21)** as of May 28, 2019:

	Assessed	Taxable
REAL PROPERTY	\$ 3,604,600	\$ 3,016,500
OIL & GAS PROPERTY	\$ -0-	\$ -0-
PERSONAL PROPERTY	\$ -0-	\$ -0-
TOTAL 2019 CERTIFIED MAIN ROLL VALUE	\$ 3,604,600	\$ 3,016,500

If you have any questions, please do not hesitate to contact this office.

Sincerely,

Melanie Aeschliman
Director of Assessing

Kenai Peninsula Borough

SUMMARY BY JURISDICTION

Period Range: 1st QTR 1/31/2019 to 3/31/2019

	1st Quarter	2nd Quarter	<u>Taxable</u> 3rd Quarter	4th Quarter	Totals
	Year 2019				
Seldovia	\$830,808	\$0	\$0	\$0	\$830,808
Homer	\$30,290,138	\$0	\$0	\$0	\$30,290,138
Kenai	\$50,823,559	\$0	\$0	\$0	\$50,823,559
Seward	\$13,900,292	\$0	\$0	\$0	\$13,900,292
Soldotna	\$51,451,509	\$0	\$0	\$0	\$51,451,509
Borough	\$182,998,159	\$0	\$0	\$0	\$182,998,159

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Totals
	<u>Gross Sales</u>				
Seldovia	\$1,347,885	\$0	\$0	\$0	\$1,347,885
Homer	\$83,194,333	\$0	\$0	\$0	\$83,194,333
Kenai	\$117,682,969	\$0	\$0	\$0	\$117,682,969
Seward	\$35,062,045	\$0	\$0	\$0	\$35,062,045
Soldotna	\$96,524,278	\$0	\$0	\$0	\$96,524,278
Borough	\$722,545,271	\$0	\$0	\$0	\$722,545,271

City of Homer

Taxable Sales by Line of Business

For the Period January 1 - March 31

	Δ 19-18	2019	2018	2017	2016
ADMINISTRATIVE, WASTE MAN	(18,532)	136,996	155,528	207,412	214,519
AGRICULTURE, FORESTRY, FI	606,538	640,248	33,710	14,600	4,143
ARTS AND ENTERTAINMENT	4,188	253,475	249,287	249,016	253,949
CONSTRUCTION CONTRACTING	17,706	333,640	315,934	484,978	372,572
EDUCATIONAL SERVICES	(3,371)	58,316	61,687	71,272	66,901
FINANCE AND INSURANCE	890	28,275	27,385	19,204	15,710
GUIDING	108,306	187,753	79,447	36,497	104,823
HEALTH CARE AND SOCIAL AS	(1,932)	78,958	80,890	77,243	45,037
HOTEL/MOTEL/BED & BREAKFA	52,861	1,543,084	1,490,223	1,532,096	1,789,574
INFORMATION	11,871	984,852	972,981	1,020,993	1,127,408
MANUFACTURING	32,060	281,903	249,843	225,385	237,863
PROFESSIONAL, SCIENTIFIC	(42,083)	648,929	691,012	698,422	654,874
PUBLIC ADMINISTRATION	13,912	829,928	816,016	1,100,933	644,546
RENTAL COMMERCIAL PROPERT	127,315	196,565	69,250	58,558	42,061
RENTAL NON-RESIDENTIAL PRO	(6,006)	138,064	144,070	128,347	128,148
RENTAL OF SELF-STORAGE &	(15,146)	217,415	232,561	201,259	249,716
RENTAL PERSONAL PROPERTY	(7,655)	141,046	148,701	138,081	132,816
RENTAL RESIDENTIAL PROPERT	(69,139)	1,077,295	1,146,434	1,035,396	1,020,110
RESTAURANT/BAR	78,176	3,179,549	3,101,373	2,787,404	3,145,686
RETAIL TRADE	1,381,564	14,151,272	12,769,708	12,505,192	12,275,910
SERVICES	(145,017)	1,749,725	1,894,742	1,799,351	1,675,348
TELECOMMUNICATIONS	(48,630)	401,613	450,243	409,187	387,875
TRANSPORTATION AND WAREHO	19,237	196,800	177,563	190,285	141,573
UTILITIES	58,024	2,503,521	2,445,497	2,322,217	2,070,114
WHOLESALE TRADE	(29,073)	296,494	325,567	262,379	231,382
OTHER	(4,295)	34,422	38,717	33,666	33,232
Total	2,121,769	30,290,138	28,168,369	27,609,373	27,065,890



City of Homer

www.cityofhomer-ak.gov

Public Works

3575 Heath Street
Homer, AK 99603

publicworks@cityofhomer-ak.gov

(p) 907- 235-3170

(f) 907-235-3145

June 3, 2019

Rebecca Colton
Manager, Statewide OPS Construction
General Communication Inc.
3541 Greatland Street
Homer, AK 99603

RE: Request for Exemption - Homer Underground Ordinance

Ms. Colton;

As the City Manager's designee in this matter, this letter is to document that the City of Homer is granting an exemption to the underground ordinance that requires all new cable to be installed underground, as requested in your letter of May 29, 2019. This exemption applies only to the specific situation/location described in the request. Any exemptions for other locations will need to be requested separately.

This exemption will allow for the cable in question to be routed overhead on existing poles (approximately 600 LF) as allowed for under HCC 22.10.55(e)(10) – "Exceptions to the requirement of this section that utility cable facilities be placed underground may be approved by City Manager or designee for good cause shown including, but not limited to, the following:

10. Future users of existing pole lines when the host utility is overhead; provided, however, the future user must agree to vacate the pole line when the host utility vacates the pole line".

Please respond in writing that you agree to vacate the pole line when the host utility vacates the pole line. This exemption becomes effective upon the City's receipt of this vacation agreement statement.

We appreciate the effort your company has made to make every reasonable attempt to install the cable in question underground. Your laudable efforts weighed heavily in our decision.

Yours Very Truly;

CITY OF HOMER

Carey S. Meyer, P.E., MPA
Public Works Director



Memorandum

TO: HOMER CITY COUNCIL

THRU: KATIE KOESTER, CITY MANAGER

FROM: BRYAN HAWKINS, PORT DIRECTOR / HARBORMASTER

DATE: JUNE 4 2019

SUBJECT: MEMORANDIUM ON SEAFARER'S MEMORIAL PARKING LOT PROJECT

This memo is to provide background and current information regarding the Seafarer's Memorial Parking Lot expansion project. The Port Commission discussed and recommended this expansion in July of 2013. Staff wrote the CIP and council approved the project in November of 2013 and dedicated HART funding for engineering. Staff has been working on and off on the design for this project, and after further input from the Port and Harbor Commission in 2016 and the firm hired for the engineering scope of this project, we now have 95% plans for the improvement.

Project Goals and Requirements:

- **Goals-** The goals listed for the Port and Harbor Advisory Commission, when considering this project, are to create as much parking space in the ramp 1-3 area as possible, to set up a fee collection system to help pay back the expense of construction, and to create safer pedestrian walkways and traffic patterns.
- **Permits-** The land is City owned and is designated as conservation land, requiring a CUP in order to change the use of the property, and will include public recreation areas, beach access and green corridors. An Army Corps of Engineers permit will also be required for this improvement.
- **Materials-** The current plan includes utilizing fill material from our annual dredging program for leveling and site fill for the project. At this time, working with the Army Corps of Engineers, we are using any created dredging material on a separate beach re-nourishment project that will help protect the Homer Spit from storm damage due to erosion. As beach nourishment, and protection of current assets, takes precedent to this expansion project I am unsure when we will have product available, but I'm confident that once all permitting and construction ready plans are in hand we'll find a source of suitable materials. There are other concurrent projects that have potential to generate the needed material (e.g. harbor entrance and fishing lagoon maintenance dredging and future harbor expansion).
- **Grant Requirements-** A requirement of the Ramp 2 restroom project, in order to take advantage of the land water conservation funding grant, is to provide access to the beach. This access is included in the Seafarer's memorial parking lot expansion and will be built in between the East end of the Hillstrand boardwalk and the parking lot. This will be an improved gravel ADA Pathway to the beach.
- **Future Fund Allocation/Use Requirements-** We designed the lot to both maximize the number of spaces and safe traffic patterns while using those spaces. Designating off street entry and exit points into the lot and turning the entire square footage into off street parking brings great safety benefits to the area by eliminating the diagonal parking where motorists have to back out onto the highway. As much of this property is in

AK Department of Transportation Right of Way (ROW) the Tora agreement we have with the State applies, which means any funds generated from fees will have to be used for parking improvements.

Questions Posed:

The current plan creates 195 parking spaces in a congested high traffic area, with the addition of ADA access to the public beach/recreation area, green corridors and the current memorial park. Current use of this area is 7 day free parking, with an allowed use of longer term parking with the purchase of a long term parking pass. General planned use for the lot after improvements is a fee lot with short term turn over.

The question moving forward is how will these parking spaces be used? If all 195 spaces were to be turned into short term fee parking at the \$5 per day rate, numbers based on current paid parking and annual generated income from those spaces gives us a general estimate of approximately 12 years for payback on investment for the improvement project. However, when considering not just congestion and traffic patterns, but the possible needs of surrounding businesses, the City Enterprise, the boat owners, public recreation use, and tourism, designating the whole parking lot as a single type of use may not be the proper solution. With weight given to all these different use types, again, the question for the future is: how do we want to use these spaces?

Recommendation:

Informational Only.



Seafarers Memorial Parking Expansion

Project Description & Benefit: This project would use materials from dredging the harbor to build up a parking lot between Seafarers Memorial and the east end of the nearby boardwalk complex. The additional parking will be a welcome improvement as it is often hard to find parking during peak summer months on this section of the Spit. The project has the added benefit of replenishing the beaches on the east side of the Spit and protecting infrastructure from erosion. The material will be placed on the beaches as part of the Army Corps of Engineers' dredging/disposal operations. Funding is needed to supplement hauling costs, compact material, cap with gravel and pave the lot. A Corps permit will be needed to accomplish this work.

Plans & Progress: The City has appropriated \$15,000 for the Homer Area Roads and Trails (HART) fund for preliminary engineering design and permitting. 95% of engineering design work was completed in 2015. A phased approach to construction will be used.

Total Project Cost: \$635,000

Schedule:

2017: Design and Permitting at 95% complete: \$8,000

2019: Dredged Material Placement by Corps: In kind

2020: Install drainage, riprap protection, paving/stripping and all parking lot delineation: \$627,000

Priority Level: 1



This project would fill in, level and pave the grassy area pictured above between the Seafarer's Memorial and the nearby boardwalk.



Public Works Dept. May 16, 2019

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.



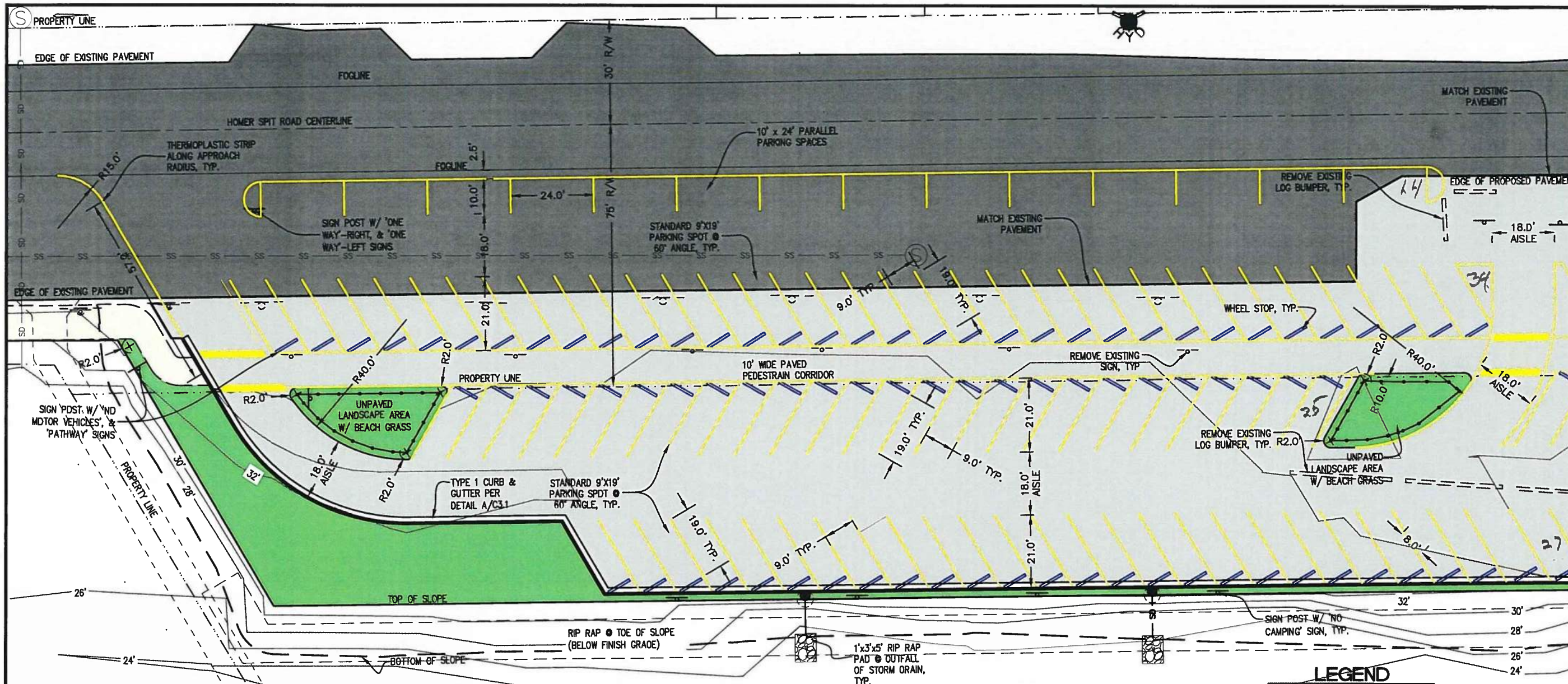
Legend

- Stormdrain_Outfall
- Parcels
- Project_Boundary
- ▨ Rip_Rap
- Landscaped_Area
- ▨ Paving_Footprint
- Existing_Vegetation



Seafarer's Memorial

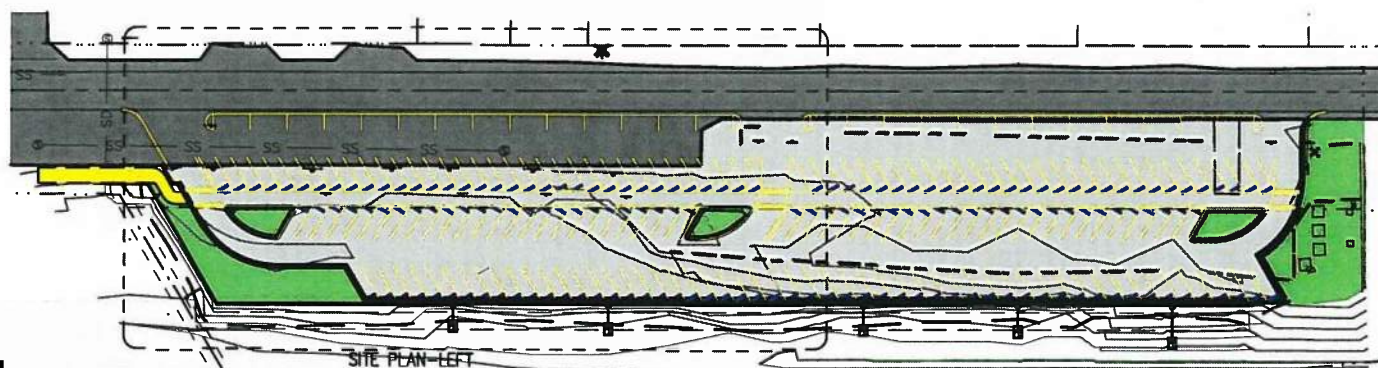
Seafarer's Memorial Paving Project Footprint



A
C11
CIVIL SITE PLAN - LEFT - OPTION #2
GRAPHIC SCALE: 1" = 15' (22X34), 1" = 30' (11X17)

GENERAL NOTES

1. THE CONTRACTOR IS RESPONSIBLE FOR DETERMINING THE EXACT LOCATION OF ALL SITE FEATURES. IF THE CONTRACTOR ENCOUNTERED CONDITIONS OTHER THAN THOSE SHOWN ON THE PLANS, HE SHALL IMMEDIATELY CONTACT THE ENGINEER FOR DIRECTIONS.
2. ALL CONSTRUCTION METHODS AND MATERIALS USED FOR THIS PROJECT SHALL CONFORM CITY OF HOMER STANDARD CONSTRUCTION SPECIFICATIONS, 2D11 EDITION.
3. LOCATION OF UNDERGROUND UTILITIES ARE APPROXIMATE. ACTUAL DEPTH, NUMBER AND LOCATION UNKNOWN. BURIED UTILITIES OTHER THAN THOSE SHOWN ON THE PLANS MAY BE PRESENT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR LOCATION, IDENTIFYING, AND WORKING AROUND ALL UTILITIES WITHIN THE PROJECT LIMITS AT NO ADDITIONAL COST TO THE OWNER. CALL FOR LOCATES PRIOR TO EXCAVATION.
4. ALL PARKING SPACE LINES TO BE PAINTED AND ALL LANE LINES TO BE THERMOPLASTIC STRIPPING.
5. NORTHING AND EASTING FOR ALL LAYOUT POINTS ARE LISTED ON PAGE C1.3.
6. ALL BENCHES AND PICNIC TABLES SHALL BE PROVIDED AND INSTALLED BY THE CITY OF HOMER.



B
C11
OVERALL SITE PLAN
GRAPHIC SCALE: 1" = 60' (22X34), 1" = 120' (11X17)

CONCEPT PLAN

NO.	REVISION	DATE

CONSULTING ENGINEERS
STRUCTURAL/CIVIL
155 BIDARKA ST
KENAI, AK 99611
TEL. (907) 283 - 3583
NELSONENGINEER@ALASKA.NET



SEAFARER'S MEMORIAL PARKING LOT
CITY OF HOMER
HOMER, AK
CIVIL SITE PLAN (LEFT) - OPTION #2

PROJECT NO.
1445
DRAWN BY:
ZSR
CHECKED BY:
WJN
DATE: 08/08/18
SCALES: NOTED
HORIZ. NOTED
VERT. NOTED
SHEET
C1.1
3 OF 11

Memorandum 13-072

TO: Mayor Wythe and Homer City Council

FROM: Walt Wrede

DATE: May 28, 2013

SUBJECT: 2013 Mil Rate / Ocean Drive Loop Special Service District

Ordinance 11-49(S) created the Ocean Drive Loop Special Service District (ODLSSD). HCC 15.10.020 provides that the Mil Rate for a Special Service District shall be set pursuant to Section 9.04.040 of the City Code. HCC 9.04.040 establishes that the Mil Rate must be adopted no later than June 15 of each year. Resolution 12-051(A) set the 2012 MIL Rate for the ODLSSD at 9.6283. The Mil Rate for 2012 was set at 9.6283 because the Special Service District beginning Fund Balance was zero and a healthy balance needed to be established. The City attempted to raise \$30,000 from property taxes based upon prior seawall repair experience. Unfortunately, this Mil rate only raised \$19,166.82 in 2012, in part, because the City did not fully account for the impact of senior exemptions. So, at the time this memorandum was drafted, the Fund Balance in the ODLSSD maintenance and repair account at the close of 2012 was \$19,166.82. This account contains only the property tax revenues collected. In addition, the City has established a Seawall Depreciation Account to which the Council has made regular transfers. The 2013 budget year transfer of \$10,000 has already been made. The Depreciation Reserve presently has a total balance of \$30,639.58. So, at this point in time, there is \$49,806.40 available for seawall maintenance and repair.

This was a very good year for the seawall. We survived the storm season with little or no damage. The wall is in good shape and at this point, no repairs are anticipated this summer. Given this situation, property owners have asked if the Council would consider lowering the Mil rate this year. I would not recommend doing so, at least not substantially.

There are several factors that enter into this recommendation. First, we were lucky this year that the wall sustained no damage. We cannot assume this will be the “new normal.” Experience has shown us that particularly bad storms can result in damage that easily exceeds the amount of funds currently available. It would be wise and prudent to continue to build the fund balance. Second, the Finance Department made another exhaustive search to see if insurance could be obtained for the wall. The result was disappointing once again. Only one company would even discuss insuring it and all they would provide was “catastrophic” insurance related to things like earthquakes and tidal waves. Even then, the premiums and deductibles were unacceptably high. In short, there is no insurance in place,

another reason to have a healthy fund balance. Third, the Mil Rate established last year only generated about two thirds of what was anticipated. We must fully account for the senior exemption and also for the fact that the Council removed the McNamara property from the ODLSSD last year. The recommended Mil Rate (9.962541) is expected to generate about \$25,000 after adjustments are made for exemptions and deletion of the McNamara property.

RECOMMENDATION: Adopt Resolution 13-049 and set the ODLSSD Mil rate at 9.962541.

From: Caissie, Joseph A (CED) <joseph.caissie@alaska.gov>

Sent: Tuesday, January 22, 2019 4:28 PM

To: Rachel Friedlander <rfriedlander@ci.homer.ak.us>

Cc: McGee, Marty (CED) <marty.mcgee@alaska.gov>

Subject: Tax cap limitation

Hi Ray! Your question a month or so ago was the beginning of a series of issues we were dealing with that involved us here at OSA checking on the tax cap, and how it's calculated. It's a complicated set of statutes and regulations with a lot of sort-of illogical interpretations that are nonetheless correct by dint of them being what people have always done. So I'm going to clarify what we said to you earlier this January, since my understanding of it has changed since then:

- Basically, the limitation on a tax jurisdiction is that it ***in general*** has to have uniform tax rates. Of course, you can have a special district within that jurisdiction with a higher rate, as long as that rate is justified by providing an extra service.
- The other limit is that the sum of those layers of taxes (borough, muni, special service area) ***in general*** cannot be more than 30 mills (AS 29.45.090). The exception to ***that*** is that if there's a tax to pay off bonded debt, it can be as high as you want (AS 29.45.100).
- The 20 mill limitation on oil and gas property might be ***effectively*** true, but it isn't in statute—and having oil and gas property somewhere in the Kenai Peninsula Borough doesn't stop Homer, or a service area within Homer, from having a mill rate up to 30 (or more, with bonded debt).

Let me know if you have any questions on this or anything else!

Joseph Caissie

Assistant State Assessor

Joseph.caissie@alaska.gov

907-269-4565

TAF	TAG	
	10 SELDOVIA	
10	Seldovia	7.50
11	Seldovia RSA	0.75
50	Borough	4.70
		12.95
	11 SELDOVIA RSA	
11	Seldovia RSA	0.75
50	Borough	4.70
67	Road Maint.	1.40
		6.85
	20 HOMER	
20	Homer	4.50
50	Borough	4.70
52	So. Hospital	2.30
		11.50
	21 HOMER ODLA	
20	Homer	4.50
21	Homer ODLA	9.9625
50	Borough	4.70
52	So. Hospital	2.30
		21.4625
	30 KENAI	
30	Kenai	4.35
50	Borough	4.70
51	Cent. Hosp.	0.01
		9.06
	40 SEWARD	
40	Seward	3.84
43	Sew/Bear Cr. Flood	0.75
50	Borough	4.70
		9.29
	41 SEWARD SPECIAL	
41	Seward Special	3.84
43	Sew/Bear Cr. Flood	0.75
50	Borough	4.70
		9.29
	43 SEWARD-BEAR CREEK FLOOD SA	
43	Sew/Bear Cr Flood	0.75
50	Borough	4.70
67	Road Maint.	1.40
		6.85
	52 SOUTH HOSPITAL	
52	So. Hospital	2.30
50	Borough	4.70
		7.00
	53 NIKISKI FIRE	
53	Nikiski Fire	2.70
50	Borough	4.70
51	Cent. Hosp.	0.01
54	No. Pen Rec.	1.00
67	Road Maint.	1.40
		9.81
	54 N. PENINSULA RECREATION	
54	No. Pen. Rec.	1.00
50	Borough	4.70
51	Cent. Hosp.	0.01
58	Cent. Emer. Ser.	2.85
67	Road Maint.	1.40
		9.96

TAF	TAG	
	55 NIKISKI SENIOR	
55	Nikiski Sen.	0.20
50	Borough	4.70
51	Cent. Hosp.	0.01
53	Nikiski Fire	2.70
54	No. Pen Rec.	1.00
67	Road Maint.	1.40
		10.01
	57 BEAR CREEK FIRE	
57	Bear Creek Fire	3.25
43	Sew/Bear Cr. Flood	0.75
50	Borough	4.70
67	Road Maint.	1.40
		10.10
	58 CENTRAL EMERGENCY SERVICES	
58	Cent. Emer. Ser.	2.85
50	Borough	4.70
51	Cent. Hosp.	0.01
67	Road Maint.	1.40
		8.96
	61 CENTRAL HOSPITAL WEST	
50	Borough	4.70
51	Cent. Hosp.	0.01
67	Road Maint.	1.40
		6.11
	63 CENTRAL HOSPITAL EAST	
50	Borough	4.70
51	Cent. Hosp.	0.01
64	Cent. Pen. EMS	1.00
67	Road Maint.	1.40
		7.11
	64 CENTRAL PEN. EMERGENCY MEDICAL	
64	Cent Pen. EMS	1.00
50	Borough	4.70
52	South Hosp.	2.30
67	Road Maint.	1.40
		9.40
	65 SOUTH HOSPITAL/ROADS	
50	Borough	4.70
52	South Hosp.	2.30
67	Road Maint.	1.40
		8.40
	67 KPB ROAD MAINTENANCE	
50	Borough	4.70
67	Road Maint.	1.40
		6.10

TAF	TAG	
	68 ANCHOR POINT FIRE/EMERGENCY	
68	Fire/Emergency	2.75
50	Borough	4.70
52	South Hosp.	2.30
67	Road Maint.	1.40
		11.15
	70 SOLDOTNA	
70	Soldotna	0.50
50	Borough	4.70
51	Cent. Hosp.	0.01
58	Cent. Emer. Ser.	2.85
		8.06
	80 KACHEMAK*	
80	Kachemak	1.00
50	Borough	4.70
52	South Hosp.	2.30
		8.00
	81 KACHEMAK EMERGENCY SERV.	
81	Kachemak EMS	2.60
50	Borough	4.70
52	South Hosp.	2.30
67	Road Maint.	1.40
		11.00

50K Borough TAF's and Homer 20K
All other City TAF mills do not apply

EMS VOLUNTEER 10,000 EXEMPTION
ALL BOROUGH TAF's
HOMER (20) & SEWARD (40)

*Kachemak City TAG 80-No tax on
personal property/boats/aircraft

100,000 PERSONAL EXEMPTION
ALL BOROUGH TAF's
HOMER (20) & SOLDOTNA (70)

AIRCRAFT TAX:
FLAT TAX FOR ALL BOROUGH TAF'S,
SELDOVIA (10) & SOLDOTNA (70)
Borough Flat Portion + City Flat Portion
TAG'S 20,40 & 41
Full value X TAF Millrate
Plus (+) Borough Flat Portion

BOAT TAX:
FLAT TAX FOR ALL BOROUGH TAF'S
HOMER(20),SOLDOTNA(70),SELDOVIA(10)
Borough Flat Portion + City Flat Portion
TAG'S 40 & 41 (Seward)
Full value X TAF Millrate **PLUS (+)**
Borough Flat Portion
TAG 30 Class 1 & 2 Exempt and
Class 3-7 Full value X TAF Millrate
PLUS (+) Borough Flat Portion

Senior Exemptions:
Borough 300,000 exempt unless Variable
10,20,30,40,41,70,80 upto 150,000 exempt
over is Taxed at City TAF Rate

Disability Tax Credit
TAF 30 Kenai \$250.00
Borough TAF'S \$500.00

From: Anne Brooks <anne@brooks-alaska.ccsend.com> on behalf of Anne Brooks <anne.brooksalaska@gmail.com>
Sent: Tuesday, June 11, 2019 5:27 PM
To: Department Planning
Subject: Homer 6 in 1 Open House: Construction Kickoff & Project Updates

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hi, just a reminder that you're receiving this email because you have expressed an interest in a Homer-area Brooks & Associates project.

You may [unsubscribe](#) if you no longer wish to receive our emails.



6 in 1 Open House: Construction Kickoff & Project Updates

When: Tuesday, June 25, 2019, Stop by anytime between 4 and 7 pm

Where: City Hall Cowles Council Chambers, [491 E Pioneer Ave, Homer](#)

This meeting will provide information on projects in Homer. Southcentral Construction, Inc. submitted successful bids for three of the projects and began work on the following projects. The Construction Project Manager for these three projects is

Jacob Gondek, DOT&PF, 907-269-0450, jacob.gondek@alaska.gov.

Pioneer Avenue Pavement Preservation: Sterling Highway to Lake Street

Project Number: CFHWY00148/0414015

The purpose of this project is to extend the life of Pioneer Avenue pavement. The project will grind, reshape, and pave the roadway to remove ruts, cracks and potholes, and protect the underlying structural materials. Additional work includes curb ramp upgrades and storm drain repairs. Southcentral Construction Inc. may begin minor work this year. The 2019 work will focus on the storm drain cleaning.

For information during construction:

<http://www.alaskanavigator.org/projects/pioneer-avenue-pavement-preservation>

Homer Airport Safety Improvements

Project Number: CFAPT00144

The airport project will improve safety by reconstructing taxiway safety areas for Taxiway B and Taxiway E; replace perimeter security fence; relocate primary wind cone and segmented circle; and relocate supplemental wind cone.

For information during construction:

http://dot.alaska.gov/projects-status/wrapper.cfm?project_id=70006

Sterling Highway & Main Street Intersection Improvement

Project Number: Z559840000/0211060

Southcentral Construction will begin work this year to install a traffic signal with right-turn lanes on the Sterling Highway to improve the function of the intersection. The signal is expected to reduce crash rates and the delay times.

For information during construction:

<http://www.alaskanavigator.org/projects/hsip-sterling-highway-and-main-street-intersection-improvements>

Information will also be available on the following projects currently in the design and/or right-of-way acquisition phase.

Lake Street Rehabilitation: Sterling Highway to Pioneer Avenue/East End Road

Project Number: Z524610000/0001422

The project will extend the life of the roadway, improve conditions for walking and biking, and improve drainage. The project will widen the road to the west and add bike lanes to both sides; reconstruct curb/gutter and sidewalk on the east side and replace failing culverts. Construction to begin in 2020 pending completing of ROW acquisition and availability of funding.

For more information: <http://dot.alaska.gov/creg/hlsr/index.shtml>

Project Manager: Clint Adler, DOT&PF, 907-269-0544, clint.adler@alaska.gov

West Hill Road Pavement Preservation: Sterling Highway to Skyline Drive

Project Number: CFHWY00300/0001599

The West Hill Road project includes signing, striping, drainage, pavement, dig-outs, curb ramps, guardrail, lighting, and utility relocation. Construction is slated for 2020.

Project Manager: Aaron Hughes, DOT&PF, 907-269-0523,
aaron.hughes@alaska.gov

East Hill Road Pavement Preservation: East End Road to Skyline Drive

Project Number: CFHWY00297/0001600

The East Hill Road project will resurface the entire length of East Hill Road, extend the road's service life, repair drainage facilities, and improve safety. The project includes signing, striping, drainage, pavement, dig-outs, curb ramps, guardrail, and utility relocation. Construction is slated for 2021.

Project Manager: Clint Adler, DOT&PF, 907-269-0544, clint.adler@alaska.gov

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