

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE CITY OF HOMER**

In the Matter of)
)
MATTER OF CUP 23-04/23-01) OAH No. 23-0320-MUN
_____)

**ORDER GRANTING IN PART AND DENYING IN PART
APPELLANT’S MOTION TO FURTHER SUPPLEMENT THE RECORD**

On December 7, 2023, Frank Griswold filed a motion to supplement the record with the following: (1) a list of the owners of record on the Borough Assessor’s records of real property within a 300-foot periphery of the subject site, who were mailed a copy of the Notice of Public Hearing on CUP 23-04, (2) certificates of service showing to whom, from whom, and when the Notice of Public Hearing was mailed, (3) a list of persons who were mailed a copy of Mr. Griswold’s Notice of Appeal, and (4) certificates of service showing to whom, from whom, and when those persons were mailed the Notice of Appeal.

On December 14, 2023, the City of Homer responded that it opposed Mr. Griswold’s motion, claiming that it would be prejudicial to the City to add the materials to the record at this late stage in the proceedings. Regarding the specific items Mr. Griswold identified, the City indicated that it has a list of the property owners within a 300-foot periphery of the subject property who were mailed the Notice of Public Hearing, but a certificate of service was not required for that mailing, and none exists. That is also the case regarding a list of persons who were mailed a copy of Mr. Griswold’s Notice of Appeal and any related certificate of service, and the City contends those items are outside the scope of the record specified in Homer City Code (HCC) 21.93.520(a)(1) in any event, as the Notice of Appeal was necessarily submitted after the Commission decision Mr. Griswold is now appealing.

HCC 21.93.520(a) addresses the contents of the appeal record. The record is required to contain “all relevant documents involved in the original decision, including any staff reports, minutes, exhibits, notices, and other documents considered in making the original decision.” This necessarily includes any notices of public hearings. For a conditional use permit (CUP) application, notice of a public hearing is to be provided in accordance with Chapter 21.94 of the City Code¹, which in turn requires that the notice be mailed to all owners of record on the Borough Assessor’s records of real property within 300-feet of the subject property.²

¹ HCC 21.71.050(a).
² HCC 21.94.030; HCC.

Here, the appeal record contains the Planning Commission’s April 5, 2023 Notice of Public Hearing on the application for CUP 23-04, with the words, “NOTICE TO BE SENT TO PROPERTY OWNERS WITHIN 300 FEET OF PROPERTY.”³ The record also contains a map that shows which properties are within 300 feet of the subject property.⁴ But it does not currently contain a list of property owners who were mailed the notice, which the City contends it has. For clarity and completeness, the list of property owners who were mailed the notice – i.e., the list of owners within 300 feet of the subject property under the Borough Assessor’s records – should be included in the appeal record. Mr. Griswold’s motion to supplement the record is granted as to this list, but it is denied as to any certificates of service for the mailings, which apparently do not exist.

Mr. Griswold’s motion is also denied as to a list of persons who were mailed a copy of his Notice of Appeal and any associated certificates of services. The Notice of Appeal (dated May 8, 2023) was necessarily submitted after the Planning Commission’s decision (dated April 20, 2023) that Mr. Griswold is now appealing. Because these later-arising materials were not and could not have been considered by the Planning Commission in its April 20, 2023 decision, they are outside the scope of the items to be included in the record under HCC 21.93.520(a)(1).

Accordingly, no later than **January 10, 2024**, the Office of the City Clerk is directed to supplement the record in this case with the following: the list of owners on the Borough Assessor’s records of real property within a 300-foot periphery of the subject site, who were mailed a copy of the Notice of Public Hearing for the Commission’s April 5, 2023 public hearing on CUP 23-04.

DATED: January 5, 2024.

By: *Lisa M. Toussaint*
Lisa M. Toussaint
Administrative Law Judge

Certificate of Service: I certify that on January 5, 2024, a true and correct copy of this order was distributed as follows: Frank Griswold (by mail and email); Michael Gatti (by email); Max Holmquist (by email); Melissa Jacobsen (by email).

By: *Sarah Marshall*
Office of Administrative Hearings

³ R. 52.

⁴ R. 53.

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List of owners of real property within a 300-foot periphery of the subject site who were mailed a copy of the Notice of Public Hearing for the Planning Commission’s April 5, 2023 Public Hearing on CUP 23-04 **Page 165-OAH**

Certificate of Service: I certify that on January 9, 2024, this document was sent to: Office of Administrative Hearings (by email); Frank Griswold (by email and mail); and Attorneys Michael Gatti & Max Holmquist (by email)

by: 
Melissa Jacobsen, MMC, City Clerk

PARCEL_ID	OWNER	ATTENTION	ADDRESS	CITY	STAT	ZIP	COI	COUNTRY	parcel
17516021	AJS INVESTMENTS LLC		135 W BUNNELL AVE	HOMER	AK	99603			17516021
17516024	AWS INVESTMENTS LLC		135 W BUNNELL AVE	HOMER	AK	99603			17516024
17516033	SAUGSTAD JOHN & YVONNE		9633 ATELIER DR	ANCHORAGE	AK	99507			17516033
17516033CO01	RANDLE NORMAN L		166 W BUNNELL AVE APT 1	HOMER	AK	99603			17516033
17516033CO02	PERZECHINO JAMES J		PO BOX 82010	TYONEK	AK	99682			17516033
17516033CO03	SPRAGUE FAMILY TRUST	C/O ROBERT & KATHARINE SPR	1525 CHELTEN WAY	SOUTH PASADENA	CA	91030			17516033
17516033CO04	RYCKMAN MICHAEL A		1325 BELUGA CT	HOMER	AK	99603			17516033
17516033CO05	JONES JAMES T & DUKE DAVID L		166 W BUNNELL AVE APT 9	HOMER	AK	99603			17516033
17516033CO06	CHOUINARD MARY & THOMAS		13683 SUNSET VIEW ST	ANCHORAGE	AK	99515			17516033
17516033CO08	KOHAL RICHARD L		166 W BUNNELL AVE APT 202	HOMER	AK	99603			17516033
17516033CO09	CHEEVES KATHERINE & HANS CLUGSTON		3127 ANGUS DR	PRESCOTT	AZ	86305			17516033
17516033CO10	SMALL JULIEANN MARIE		166 W BUNNELL AVE APT 204	HOMER	AK	99603			17516033
17516033CO11	WESTBROOK PATRICIA MARIE LIVING TRUST		166 W BUNNELL AVE APT 10	HOMER	AK	99603			17516033
17516033CO12	PAYNE SKYWALKER		166 W BUNNELL AVE APT 12	HOMER	AK	99603			17516033
17516046	AJS INVESTMENTS LLC		135 W BUNNELL AVE	HOMER	AK	99603			17516046
17516051	ALASKA USA FEDERAL CREDIT UNION		PO BOX 196020	ANCHORAGE	AK	99519			17516051
17516052	INLET TRADING POST LLC		106 W BUNNELL AVE STE A	HOMER	AK	99603			17516052
17516052CO02	LIVINGSTON MELODY		106 W BUNNELL AVE STE B	HOMER	AK	99603			17516052
17516054	SCOTT ETHEL & JOHN		GENERAL DELIVERY	HOMER	AK	99603			17516054
17516055	WILLS ANDREW & SALLY		PO BOX 382	HOMER	AK	99603			17516055
17516056	OLD TOWN COTTAGES LLC		3459 MAIN ST APT 4	HOMER	AK	99603			17516056
17516056CO01	MARQUARDT KAREN ANN LIVING TRUST		3459 MAIN ST APT 1	HOMER	AK	99603			17516056
17516056CO02	MEARES INVESTMENT COMPANY LIMITED PARTNERSHIP		PO BOX 9	ESTER	AK	99725			17516056
17516056CO03	DELTA 3459 LLC		3397 HOLLYWOOD OAKS DR	FORT LAUDERDALE	FL	33312			17516056
17516056CO04	MALL ALISON		3459 MAIN ST APT 4	HOMER	AK	99603			17516056
17516056CO05	BROCK ANGELA		3459 MAIN ST APT 5	HOMER	AK	99603			17516056
17516056CO06	NOLLEY LORRAINE JUNE		PO BOX 226	HOMER	AK	99603			17516056
17516056CO07	PALMGREN MICHAEL T DISCLAIMER CREDIT TRUST	SHERRY THOMPSON, TT	12662 SHORE ST	LEAVENWORTH	WA	98826			17516056
17516056CO08	MILLER GARY & SUSAN		9578 E VENTASO CIR	TUCSON	AZ	85715			17516056
17516058	IE DEVELOPMENT LLC		4937 ALDER LN	HOMER	AK	99603			17516058
17520007	BLUFFVIEW LLC		135 W BUNNELL AVE	HOMER	AK	99603			17520007
17520008	SWEENEY ADRIENNE & ALEXANDER		135 W BUNNELL AVE	HOMER	AK	99603			17520008
17520010	ALASKA STATE D N R		550 W 7TH AVE STE 650	ANCHORAGE	AK	99501			17520010
17520011	LAUKITIS LIVING TRUST		41630 GLADYS DR	HOMER	AK	99603			17520011
17715447	SORENSEN KENT		PO BOX 15127	FRITZ CREEK	AK	99603			17715447
17715447	SORENSEN PARKER JAY		128 HANSEN AVE	HOMER	AK	99603			17715447
17716101	SANDPIPER LLC	C/O CARY GRAVES	327 RUSTIC PL APT 32	EUGENE	OR	97401			17716101
17716102	MCCOY KEVIN		3106 51ST AVE	GREELEY	CO	80634			17716102
17716102	MONTOYA ASHLEY & MARCO		11897 STATE HIGHWAY 12	WESTON	CO	81091			17716102
17716103	MULTZ KARI L		106 W BUNNELL AVE STE C	HOMER	AK	99603			17716103
17716104	LAYLAND-GONSALVES COMMUNITY PROPERTY TRUST		PO BOX 531	HOMER	AK	99603			17716104
17716108	MARQUARDT ORMAN		3459 MAIN ST APT 1	HOMER	AK	99603			17716108
17716108CO01	SEA GLO LLC		3430 MAIN ST STE A	HOMER	AK	99603			17716108
17716108CO02	NORTH GULF OCEANIC SOCIETY		3430 MAIN ST STE B1	HOMER	AK	99603			17716108
17716108CO03	SEA GLO LLC		1340 RACE RD	HOMER	AK	99603			17716108
17716108CO04	VOELLER PAMELA J		PO BOX 3144	HOMER	AK	99603			17716108
17716108CO05	BOCHENEK LYRA & ROBERT BOCHENEK		2010 SHORE DR	ANCHORAGE	AK	99515			17716108
17716201	CATERINICHIO FAMILY TRUST	C/O NINA CATERINICHIO	PO BOX 770651	EAGLE RIVER	AK	99577			17716201
17716244	POOLE MICHAEL A & LAFRINIERE MICHELLE M		PO BOX 2186	HOMER	AK	99603			17716244
17716247	BAUGHER TINA M		209 W DIMOND BLVD STE 4	ANCHORAGE	AK	99515			17716247
17716301	SONNEBORN DAVID & ALEXANDRA		2548 DISCOVERY CT	ANCHORAGE	AK	99517			17716301
17716303	SPENCER J A		1930 E END RD # B	HOMER	AK	99603			17716303
17716304	SPENCER JAMES A & DOLLY N		3005 BAY CREEK DR	DICKINSON	TX	77539			17716304
17716307	MILLER DONALD STAFFORD		PO BOX 1000	HOMER	AK	99603			17716307
17716402	UBU LANDING LLC		PO BOX 561	KASILOF	AK	99610			17716402
17716403	BAUGHER TINA M		209 W DIMOND BLVD STE 4	ANCHORAGE	AK	99515			17716403
17716454	PORTER JEANNE N		3758 FAA RD STE B	HOMER	AK	99603			17716454

40 Parcels
56 Owners