

Session 11-12 a Special Meeting of the Homer City Council was called to order on March 24, 2011 at 5:37 p.m. by Mayor Pro Tempore Beth Wythe at the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska, and opened with the Pledge of Allegiance.

PRESENT: COUNCILMEMBERS: HOGAN, HOWARD, LEWIS, ROBERTS,
WYTHE, ZAK

STAFF: CITY CLERK JOHNSON
ATTORNEY LEVESQUE

AGENDA APPROVAL

(Only those matters on the noticed agenda may be considered, pursuant to City Council's Operating Manual, pg. 5)

Mayor Pro Tempore Wythe called for a motion to approve the agenda as presented.

LEWIS/ROBERTS – SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

PENDING BUSINESS

- A. Appeal to the Board of Adjustment – REFUGE CHAPEL – of the Planning Commission Decision of August 18, 2010. (from Hearing of December 8, 2010).

This is an appeal of an enforcement order dated March 10, 2010 by Darren Williams of Refuge Chapel. We have received a written brief from the Refuge Chapel and from Frank Griswold. We have not received a written brief from Rick Abboud, the Homer City Planner. All parties have standing pursuant to Homer City Code 21.93.060.

Mayor Pro Tempore Wythe asked the parties to identify themselves for the record.

Darren Williams, Refuge Chapel
Rick Abboud, City Planner
Frank Griswold

Mayor Pro Tempore Wythe asked City Clerk Johnson if all appropriate written notices were made. City Clerk Johnson answered yes, February 18th the notice of tonight's hearing was sent to the 47 property owners via certified mail. Three of those mailings were returned unclaimed.

PRELIMINARY MATTERS

(1) Conflicts of interest

Frank Griswold stated procedural issues were raised in his brief. The first conflict of bias is Chair Wythe who is related to Regan Romero, former Refuge Room resident who died on November 27, 2009. Mrs. Wythe is also related to Ray Kranich who is Mr. Romero's uncle. They live in separate dwellings on the same property. Kranich participated in the Refuge Chapel proceedings below and ex parte communications between Kranich and Wythe would have been inevitable. Wythe was determined to have a disqualifying bias at the July 23, 2007 BOA hearing based on her husband's status as stepson of Ray Kranich. The September 5, 2007 BOA Decision on Appeal was referenced. Mr. Griswold stated Wythe also has a longstanding bias against him. A previous decision was rendered and rescinded. Since all participated in the rescinded decision it would not constitute a bias on all parts. As a council person Beth Wythe issued public statements regarding Ordinance 11-03 (Homer Tribune, reference to meeting of March 14). Her strong statement about property rights and the Planning Department staff report indicating a councilmember was involved in a definition that would be favorable to the Refuge Chapel. The memorandum referencing hostels from the Planning Department was presented to the Planning Commission for their March 9, 2011 meeting. Mr. Griswold recalls Beth Wythe was involved along with another councilmember in the definition of dormitory. Mrs. Wythe's previous statement regarding hostels, her public statement about the City interfering with property owner rights, and her involvement in tailoring a definition have a strong bias.

Mayor Pro Tempore Wythe passed the gavel to Councilmember Roberts.

Councilmember Roberts asked Attorney Levesque if Mrs. Wythe's relationship to a person that once stayed in the Refuge Room was a conflict of interest.

Attorney Levesque answered the Homer City Code conflict of interest talks about a financial interest. There is also the interest of potential bias. The question raised is whether or not Councilmember Wythe was related by marriage to someone who resided at the Refuge Chapel. It does not make or break a potential bias and would not prohibit her from hearing the appeal.

Councilmember Hogan asked Attorney Levesque if the grounds for disqualification in 2007 was Mrs. Wythe's relationship to Mr. Kranich, is that a controlling precedent?

Attorney Levesque answered over the years Councilmember Wythe has been involved in the appeals of this case. One occurred at the end of 2009. Mr. Griswold challenged Councilmember Hogan, the Mayor, and other councilmembers, but he did not challenge Wythe. It is not a precedent. The matter was brought up in 2007 and presiding officer Mayor Hornaday suggested that she not sit. The BOA did not overturn the decision. Potential biases have to do with what the person feels. She could have a hard time because her husband's stepfather sat on the Planning Commission. Is her decision presumed to be made without looking at the evidence?

Councilmember Roberts asked Mayor Pro Tempore Wythe if she had any conflict of interest or bias issues that would preclude her from being on this appeal.

Mayor Pro Tempore Wythe answered she had no bias. Mr. Romero was her husband's cousin. She had no knowledge of him having a relationship with the Refuge Chapel. It was not a close relationship. Everyone here participated in decisions concerning the Refuge Chapel and if she is biased, everyone is. As to Mr. Griswold's comment on zoning we are not establishing zoning. It is her longstanding opinion. She is not privy to the staff report. Hostels are zoning description unidentified uses and she believes they should be defined where they can use it. It would not influence her hearing arguments and making a reasonable decision. She is not prone to tailoring definitions of the zoning code to benefit anyone. Outside of the four walls of this room, she has had no personal interaction with Frank Griswold and only knows him from being a member of the City Council for the last seven years.

Councilmember Roberts ruled that Mrs. Wythe has no bias. There was no objection from the Council.

Frank Griswold objected to Councilmember Roberts making the decision.

Councilmember Roberts returned the gavel to Mayor Pro Tempore Wythe.

Attorney Levesque stated the rules do provide the presiding officer gets to make the decision and the rest of the board can overrule the decision. The rules were being followed.

Frank Griswold stated in a quasi-judicial hearing the board makes the decision only if you are serving as a Council.

Mayor Pro Tempore Wythe called for a recess at 5:58 p.m. to review the code and determine the procedure. Mayor Pro Tempore Wythe reconvened the meeting at 6:00 p.m.

Mayor Pro Tempore Wythe stated Mr. Griswold is correct as HCC 1.18.048 procedures for declaring and ruling on partiality in a quasi-judicial manner. The determination shall be by a majority vote rule.

Mayor Pro Tempore Wythe passed the gavel back to Councilmember Roberts.

HOGAN/HOWARD - MOVED TO DISQUALITY COUNCILMEMBER WYTHE.

There was no discussion.

VOTE: NO. ROBERTS, ZAK, HOWARD, HOGAN, LEWIS

Motion failed.

Councilmember Roberts returned the gavel to Mayor Pro Tempore Wythe.

Frank Griswold stated Councilmember Howard owns and operates a women's fitness center called Curves located almost directly across the street from Refuge Chapel. Planning Technician Harness was disqualified in CUP 07-03 due to her ownership of property near Refuge Chapel and her husband Rick Foster recused himself or was declared to have a disqualifying bias.

Attorney Levesque advised Frank Griswold is not complaining about potential bias as much as financial interest. In the 2007 decision of the BOA Planning Technician Dottie Harness owned property close to the Refuge Chapel. The previous City Attorney Gordon Tans advised the City that could be a financial conflict of interest. We do not have on record if Mrs. Howard owns the property how that will impact her. Previous matters that came before the BOA no conflict of interest was declared except clientele. If she doesn't own the property will her sitting on the board give her some financial interest to disqualify her? Is there a chance Mrs. Howard will lose \$5,000 in her business as to how she will rule on the matter?

Councilmember Roberts commented the decision with Ms. Harness is that she was writing the advisory decision. She doesn't see Ms. Howard's business issues as one and the same.

Attorney Levesque stated the critical thing is that Ms. Harness' financial conflict was not disclosed. In her staff recommendation for the Planning Commission she had not disclosed she owned adjacent property to the Refuge Chapel. The BOA decision Frank Griswold included on page 6 indicates Ms. Harness' participation created an appearance of impropriety.

Mayor Pro Tempore Wythe asked Councilmember Howard if the Refuge Chapel's proximity to her business resulted in the loss of a financial benefit.

Councilmember Howard answered no, she is not the owner of the property and did not receive notification.

ROBERTS/HOGAN - MOVED THAT MRS. HOWARD HAS A CONFLICT OF INTEREST.

There was no discussion.

VOTE: NO. LEWIS, ROBERTS, WYTHE, ZAK, HOGAN

Motion failed.

Frank Griswold stated in the decision it is not what the person thinks their gain would be, it is the potential.

Mayor Pro Tempore Wythe asked the Board if there have been any ex parte communications regarding this hearing. There were none presented.

Doug Dodd, Refuge Chapel, stepped forward.

Frank Griswold objected to Mr. Dodd's standing, as he did not file a brief or notice of appearance.

Attorney Levesque advised the Refuge Chapel appealed the decision and an entry of appearance was signed by Darren Williams. Mr. Dodd is part of the Refuge Chapel. It is the Refuge Chapel vs. the HAPC decision that was appealed. The code is clear. Someone who appeals a decision

gets to participate in an appeal. There is an entry of appearance. BOA precedence has allowed other members to speak.

Councilmember Wythe asked Mr. Dodd if he was a member of the Board of Directors.

Mr. Dodd answered he was a member of the Board of Directors and participated in other hearings. He has not always had his name on the brief, but has been accepted and allowed to participate. His function as a boardmember is to provide some hands on experience for the operation of the entity that provides low cost housing. His experience with people with addictions and homeless shelters would be valuable.

Frank Griswold interjected.

Mayor Pro Tempore Wythe advised Mr. Griswold she had tried to give him opportunities to speak and he will only be allowed to speak when he has been recognized. Robert's Rules of Order identify that an individual only speaks when they are given the right to speak. Mr. Griswold has the right to object, but does not have the right to object and then begin speaking.

Frank Griswold objected and requested an opportunity to speak.

Frank Griswold objected on the grounds it is inconsistent and contrary to HCC 21.93.500(b) and HCC 21.93.570.

Councilmember Lewis asked if the property is owned by the Refuge Chapel and you are on the Board of Directors does that make you one of the owners of the property.

Attorney Levesque answered it is probable the entity owns the property and as a board member he makes decisions that run the entity. Refuge Chapel is proposing Darren Williams and Mr. Dodd be allowed to speak; the BOA could limit it to one.

Councilmember Hogan commented a lot would hinge on whether the Refuge Chapel is an entity in good standing with the State of Alaska as a non profit corporation.

Mr. Dodd answered it was, but Mr. Williams could speak directly to it.

Mayor Pro Tempore Wythe stated in the absence of a clear code identifying representation of an entity, the appeal is filed by the Refuge Chapel. It is signed by Mr. Williams. She asked for a motion to recognize Mr. Dodd as a member of the board.

LEWIS/ZAK - MOVED THAT WE RECOGNIZE MR. DODD AS AN ENTITY SPEAKING FOR THE REFUGE CHAPEL.

There was no discussion.

VOTE: YES. HOGAN, LEWIS, WYTHE, ZAK, HOWARD
VOTE: NO. ROBERTS

Motion carried.

Frank Griswold asked if HCC 21.93.500(a) would be considered.

Mayor Pro Tempore Wythe asked Mr. Dodd if he participated at the Planning Commission level.

Mr. Dodd answered he did participate at the Planning Commission level and has provided some of the written documents within the record. He attended their meetings, specifically the August 18th meeting.

Mayor Pro Tempore Wythe called for a recess at 6:24 p.m. to research the record to review Mr. Dodd's participation. Mayor Pro Tempore Wythe reconvened the meeting at 6:28 p.m.

Mayor Pro Tempore Wythe found in reviewing the minutes of the Planning Commission Mr. Dodd was a participant, therefore is allowed to participate in this proceeding.

Doug Dodd commented it is hard to determine bias and it would be a shame if people that are just trying to do a good job are prevented from doing it due to some potential bias. He has no issues of bias or conflict of interest from the Board.

Frank Griswold commented at the onset of the meeting parties identified themselves, including the City Planner. Doug Dodd did not file a brief, notice of appearance, is not an appellant, or affiliated with the Refuge Chapel. Per HCC 21.93.500(b) he is not a party to this appeal and has no right to present testimony or oral argument.

Attorney Levesque advised HCC 21.93.500 talks about parties eligible to appeal to the Board of Adjustment. HCC 21.93.060 says who has standing; it clearly states the City Manager, City Planner, or governmental agency have standing. The question is if the City Planner has to file an entry of appearance when a city planning commission decision is appealed. He concluded Frank Griswold is reading the section far too broad. The intent of the entry of appearance is to give the City Clerk notice of who will be participating. The Clerk and City Planner know the City Planner is involved. The section does not state the City Planner needs to file an entry of appearance.

Frank Griswold referenced HCC 21.93.500(b). It is clear any person so qualified who desires to participate in the appeal as a party other than the appellant must file a written and signed notice of appearance, stating they would be qualified under HCC 21.93.060.

Councilmember Hogan asked if the planning commission is a party and if the City Planner is an ex-officio member of the commission.

Attorney Levesque answered the City Planner is representing the Planning Department in upholding the decision of the Planning Commission. He is staff defending the commission's decision. That is his role.

Frank Griswold argued not every decision of a board needs defense. It is not absolutely necessary that Rick Abboud defend the Planning Commission's decision. Why would it not be the chairman of the Planning Commission?

Mayor Pro Tempore Wythe asked Mr. Rick Abboud if he planned to participate and to use the allowed 30 minutes. Mr. Abboud answered he planned to use a short amount of time to review the events and allow the Board of Adjustment a chance to ask questions.

Mayor Pro Tempore Wythe recommended the hearing continue with oral arguments for each party up to 30 minutes.

Frank Griswold asked for a vote.

Mayor Pro Tempore Wythe called for a motion that the hearing continue with oral arguments for each party up to 30 minutes.

ROBERTS/ZAK – SO MOVED.

There was no discussion.

VOTE: YES. HOWARD, HOGAN, LEWIS, ROBERTS, WYTHE, ZAK

Motion carried.

ORAL ARGUMENTS

Mayor Pro Tempore Wythe reminded the parties that this is not the time to offer new evidence to the Board, pursuant to HCC 21.93.510.

Darren Williams, Refuge Chapel, opted to share his time with Doug Dodd. He stated he is appealing the City's enforcement order that he cease operations or get a conditional use permit as a homeless shelter. He does not feel they are or have been a homeless shelter, nor want to be defined as one. The Refuge Room is a small portion of the chapel. They don't want the building to be classified as a homeless shelter as it puts them in a different categorization with fire codes and zoning. It will draw more homeless people to Homer, appearing on the websites. When the Refuge Room started it was a bunk house. Residents have always paid. They don't run it as a homeless shelter. They would like to be identified as a rooming house without needing a conditional use permit to operate. Mr. Williams stated there is misrepresentation on page 3 of Frank Griswold's brief. The reference made to their illegal operation of a men's homeless shelter is just his opinion. He has been invited to the shelter to see how they operate, but has never been to the Refuge Chapel. The brief says the Refuge Chapel moved to Pioneer Avenue and constructed an addition to the existing structure, when they actually decreased the size of the building. Part of that building was already there, they just remodeled it.

Mr. Williams stated the City Planner determined the Refuge Room met the definition of a rooming house. That is what the City Planner is hired to do, define city code. He is a professional. His professional opinion it that is was a rooming house and both of the City's lawyers agreed. The Planning Commission voted against the City Planner. Mr. Williams believes Frank Griswold intends to draw it out until it ends in litigation. He asked Frank Griswold to let him know what they could do outside of ceasing their operation to satisfy him to the point of stopping the harassment to the Refuge Chapel and City. Frank Griswold sends emails harassing

him. He proposed to have a worksession with Frank Griswold, the City, and other parties. Mr. Williams appealed to Frank Griswold to reconsider a plan of action to the City and the Refuge Room. He appealed publicly to Frank Griswold to stop this. They have people willing to hire local lawyers and lawyers on the east coast monitoring the situation. He appealed to interested parties to resolve this without attracting national attention. They don't want to come into opposition with Frank Griswold and the City. These issues touch on their religious rights to operate and help underprivileged people to get on their feet. They have a great track record of being a help to the City and intend to continue. They are not operating a homeless shelter, but rather helping men and women that find themselves in unfortunate circumstances. He again appealed to Frank Griswold to stop his barrage.

Doug Dodd added the Planning Commission decision of August 18, 2010 rested on findings that were not supported by substantial evidence. The Board on January 7, 2011 overturned that decision. A breakdown in the notification procedure resulted in rescinding the Board's action. The reasoning the Board used is unaffected and remains valid. The Board found the Refuge Room is a small building primarily used for other purposes, ie. religious.

Asked by Council if the evidence from the Board's rescinded decision was allowed, Attorney Levesque answered it was all argument. It has already been submitted. There is a lot of flexibility for oral argument.

Doug Dodd stated the evidence clearly shows:

1. The Refuge Room is not the primary use of the building.
2. Unlike a traditional homeless shelter, all guests at the Refuge Room are screened for criminal offenses.
3. There is a daily \$10 fee per day charged.
4. They are not homeless when they first arrive.

Mr. Dodd stated the Board found the Refuge Room should be a hostel, although some say it is a homeless shelter. Frank Griswold is not familiar with how a homeless shelter operates. Mr. Dodd has over two years experience with a homeless shelter in Yakima, Washington. The Union Gospel Mission there operated a 54-bed shelter. There was no charge for a bed and no screening for criminal or sexual offenses. Guests could not come and go as they pleased. Beds were available first come basis and the dorm was locked during the night except for an alarm equipped emergency exit. If the men left through that door they could not return. In the morning breakfast was served and the men left. They had to repeat the process to stay another night. At the Refuge men obtain their own food, have freedom to come and go throughout the day, alcohol and drugs are not allowed, and theft and violence are not allowed. Over 75% of men at the Refuge Room pay \$300 rent per month, about 30% of their take home pay. The U.S. Census sets 30% as the maximum portion of wages that should be spent on housing. Unlike homeless shelters their clients are low income, not no income.

Councilmember Roberts asked about Exhibit 3, Refuge Room bunkhouse rules, in Mr. Griswold's brief. Hours indicate they are open 8:00 p.m. to 8:00 a.m.

Darren Williams answered the rules have been changed as it is open 24 hours a day. People can come and go as they want. Men have their own bunks and storage area. They rent the beds.

Councilmember Lewis asked Darren Williams why they did not want to apply for a CUP.

Darren Williams answered they didn't want to apply for a CUP to operate a homeless shelter as they didn't want it to be a homeless shelter. When they first applied for the CUP they asked the Planning Department to keep the language of the homeless shelter out of it, but it was added at the last minute. A CUP will put conditions on how they can operate their facility. Anything they do Frank Griswold will appeal anyway.

Councilmember Roberts referenced the statement by Mr. Dodd regarding housing people with low income rather than no income. It is her understanding there are some people with low income that use homeless shelters.

Mr. Dodd answered he wanted to point out they have low income rather than no income people since homeless shelters don't charge.

Councilmember Lewis asked Mr. Dodd if he ever heard of homeless shelters charging or allowing people to stay continuously and not moving out during the day.

Mr. Dodd answered at the Yakima shelter they had a fenced courtyard where people could sit and smoke and use the restroom. They provided a holding pen, but showers and laundry were not available.

Councilmember Zak asked Mr. Dodd if he was aware of churches providing overnight accommodations where people can cook food and spend one or more nights and charge a low fee.

Mr. Dodd answered the Anchorage Assembly passed a resolution last summer saying in cold weather churches had permission to let people in so they didn't freeze. In Homer Father Dean used to let people sleep in the basement of the Catholic Church. He has never heard of churches charging a fee to the homeless for shelter.

Councilmember Zak referenced the Refuge Chapel's application for a CUP, HCC 21.48.030. The Refuge Chapel was doing their best to define what they are and called it a dormitory style.

Mr. Dodd answered he tried to define it best by what they did.

Councilmember Hogan asked about the remodeling and if there was a building permit.

Darren Williams answered they made a mistake with that and there was no building permit. He forgets how that went.

Councilmember Howard asked what the resistance to a CUP with conditions and restrictions would be.

Darren Williams answered they would be willing to comply with conditions. It would be basically putting up fences and planters. The CUP could be reviewed on a regular basis by City

Council or the Planning Commission putting more conditions on them. He would rather not give the City the power to put random conditions on them.

Councilmember Zak asked if there were any other organizations in town that provide a similar service with the ability to spend an evening at the church.

Darren Williams answered the housing initiative provides vouchers for people to stay in hotels. There are many times the Refuge can't house people.

Councilmember Zak stated the Methodist Church has a parsonage, a residence on the lot at the church where people stay.

Mayor Pro Tempore Wythe called for a recess at 7:03 p.m. and reconvened the meeting at 7:08 p.m.

Frank Griswold read the definition of oral argument from Wikipedia. He has heard a lot of evidence that was not in the record. The Board of Adjustment must make their decision based solely on the record per HCC 21.93.510(a). Factual information provided tonight that was not already in the record is stuff that gets presented at the evidentiary hearing before the Planning Commission. Pages 35-36 of the Record on Appeal, in the corrected letter/notice of appeal dated September 22, 2010 and resubmitted on October 1, 2010, Darren Williams states "The Refuge Room provides a guest room. We consider the men who choose to stay with us as guests of the Refuge Room." Later in the same letter he states if the applicants are not homeless they are at least needy. Mr. Williams claims the \$10 per night fee is not nominal. The Planning Commission in Finding 10 of their August 10, 2010 decision, "There is a substantial difference between providing shelter for the homeless or the needy for nominal compensation and providing guest rooms that are used, rented, or hired out to be occupied for sleeping purposes by guests. A guest has quite a different connotation than a homeless or needy person." Finding 14 the commission states "Pastor Williams also states that many applicants are not homeless when they first arrive at the Refuge Room, however, it is important to consider that the definition of shelter for the homeless includes individuals who are not only homeless, but needy." In Finding 21 the commission states "This evidence establishes that the Refuge Room provides services to the needy on a non permanent basis for a nominal fee."

Mr. Griswold stated the Refuge Room's position has changed dramatically over the last five years even though the activities have not. The January 18, 2006 Planning Commission minutes, specifically Eric Scott, Charlie Gains, and Darren Williams remarks, Exhibit 5, were quoted. The January 25, 2006 Homer News quotes of John Williams and Beth McKibben, Exhibit 7, were referenced. A letter to Darren Williams dated November 9, 2006 Code Enforcement Officer Dottie Harness stated "Refuge Room is a homeless shelter and requires a CUP to operate in the central business district." (Exhibit 14) At the June 24, 2010 Planning Commission meeting John Williams stated "there are people that need help and don't have a lot of money", record 32. At the same hearing Jim Pastro made question on a CUP, record 32. A letter to Mr. Abboud, September 22, 2010, Darren Williams stated "Refuge Chapel desires that the BOA recognize the Refuge Room as rooming house as defined in HCC21.03.040 and is permitted to operate in the central business district without a CUP. Previous records, Exhibits 2-4 statements were read. Additional statements of the Refuge Room's mission statements were read regarding criminal

behavior, no firearms, knives, or weapons, check in by 9 p.m., and attendance at evening devotions. The Refuge Room's mission is to provide shelter and provide temporary and emergency housing at low cost. Not all guests have the same needs, some are between jobs or food and shelter.

Mr. Griswold added the Refuge Room clearly provides shelter at a nominal cost to the homeless and needy. It constitutes a shelter for the homeless and it is not a rooming house or any other use, except possibly a flop house. If that use is considered it would require remand to the Planning Commission and the BOA does not have the authority to make a use determination. The Refuge Chapel does not want conditions applied. They come to the Planning Commission and promise a litany of policies and procedures are in place to protect the neighbors in a primarily residential neighborhood. The Planning Commission would then make them conditions of the permit. Refuge Chapel doesn't want to be required to do them, as they have no intention of following those conditions.

Over the years the following people have said the Refuge Chapel is operating as a homeless shelter:

In 2005 Darren Williams applied for a conditional use permit (06-01) for a homeless shelter.
City Planner Beth Mckibben
Dotti Harness
The current Planning Commission
Current City Planner Abboud

The Planning Commission decision on appeal should be confirmed.

Councilmember Lewis asked Mr. Griswold to define flophouse.

Frank Griswold answered flophouse is not defined in Homer City Code. The definition is in Wikipedia. A homeless shelter that is not regulated and provides cheap housing is a flophouse. Generally a flophouse is bare bones housing with very few services. Most communities would rather not see flophouses in their city.

Councilmember Lewis asked Mr. Griswold if he knew of any homeless shelters that charge.

Mr. Griswold answered it is irrelevant; he is no authority. The question is that the Refuge Chapel charges a nominal fee. He doesn't know of any rooming house, B&B or motel where he could stay for \$10 per night. A hundred dollars is the going rate in Homer. It is what the Planning Commission thinks. To overturn the Planning Commission the BOA will have to make a finding that their reasoning was faulty. The Planning Commission decision was written by Attorney Michael Gatti who has a lot of experience in the field of planning and zoning. It is a very well written and well substantiated decision. The BOA can only challenge it on findings of law. One of the findings of law is whether a decision was supported by financial evidence. You would have to find their reasoning completely erroneous.

Councilmember Zak asked Mr. Griswold for his opinion on HCC 21.48.030 which authorizes other uses similar to and more objectionable than permitted use for the district.

Frank Griswold answered he is not a lawyer and does not give opinions on code. That code is obsolete and no longer in city code.

Councilmember Zak asked if there was no room at the inn and Joseph and Mary stayed at the stable, would they be considered guests or homeless people.

Frank Griswold stated he was not going to answer the riddles.

City Planner Rick Abboud stated we are here because of an enforcement letter he sent. He made a determination with legal assistance the Refuge Chapel was a rooming house. The subject came to appeal, it was a hazy vote, people didn't know what it meant, and it sat with non decision. After that it was found that vote did turn over his decision. There was no document made and findings made that refuted anything he said. Mr. Griswold has put all the information with history since 2004. It is not part of the record; it is new evidence. It is about the enforcement order. Past records have nothing to do with this action. There are letters that were accepted as part of the record. These are things the BOA has to make a decision on. In Mr. Abboud's education he was never allowed to use Wikipedia as a reference. It can be hacked and anybody can put it on. It is a place to go look for other evidence from an open internet source. We had the enforcement letter and it was determined they weren't a rooming house. Mr. Abboud chose not to challenge it. There is a decision from the Planning Commission and we can't add or take anything away.

Councilmember Roberts asked Attorney Levesque if the City Planner was correct that we disregard Mr. Griswold's packet.

Attorney Joe Levesque advised anything cited by Frank Griswold that is not in the record on appeal is not officially in the record on appeal. It can be accepted as part of oral argument. It is not part of the record and was not before the Planning Commission when they made their decision.

Frank Griswold asked to speak, stating he had a right to rebut.

Mayor Pro Tempore Wythe stated Mr. Williams had the right to reserve time for rebuttal and Mr. Griswold had the right to use up to 30 minutes. Mayor Pro Tempore Wythe asked the pleasure of the BOA regarding Mr. Griswold's ability to rebut Mr. Abboud's comments as they are not established in the procedure.

ROBERTS/LEWIS - MOVED TO ALLOW MR. GRISWOLD TO REBUT THE COMMENTS OF MR. ABBOUD.

Councilmember Lewis asked if there was a limit of 3 to 5 minutes on the rebuttal.

Attorney Joe Levesque advised the rules provide that the appellant gets to reserve time and the appellees do not. Mr. Griswold is making a request that he be allowed to rebut. If the Board were to allow that they would be relaxing the rules. If the BOA does allow rebuttal it is limited solely

to what Mr. Abboud said and cannot bring up any additional issues. A time could be imposed if the BOA chose.

Councilmember Hogan stated if the BOA was to make exceptions it should have been done at the front end, not in the middle.

VOTE: YES. LEWIS, ROBERTS

VOTE: NO. ZAK, HOWARD, HOGAN, WYTHE

Motion failed.

REBUTTAL

Darren Williams stated Frank Griswold says they don't intend to uphold the City's conditions. He objects, that is ridiculous. When conditions were put on them with the original CUP they followed them even though the CUP was denied. Frank Griswold refers to us as he knows how we operate, but he has no knowledge. There have been no legal problems in their neighborhood due to the Refuge Room. They have a good relationship with the neighbors. The only vacillating they have done is to try to get along with the City and their neighbors. They have been in it for six years. There have been times they have operated in different ways to facilitate their service to the City. They would apply for a homeless shelter if it would satisfy Frank Griswold and he would stop harassing them. They would do whatever it takes to operate as a service to the City. If the City makes them get a CUP to be a homeless shelter Frank would appeal that just as he has already done. There has to be a time when the City makes a stand and says they are not going to budge on this no matter what Frank says.

Darren Williams challenged Frank Griswold if there was anything they could do to operate in the city so he would stop harassing them and the City. He would like a response at some point from Frank himself. Darren Williams stated they would like to operate without being harassed. For six years they have been harassed. It gets old and takes a lot of time and resources. They are just trying to provide a service for the people of Homer and he thinks they do a good job at it. Darren Williams does not know why Frank Griswold wants them to become a homeless shelter even though they have said to the City Council many times "tell us what to do as a rooming house because we don't want to be a homeless shelter." There is no response. They are trying to provide a service to the City of Homer. Nobody is making any money, but it does help pay for the cost of the facility. They believe they are making a huge impact in the City and the lives of the men they serve. It is unfortunate that Frank would use the tragic death of one of their residents for his agenda. It is low class.

Mayor Pro Tempore Wythe told Mr. Williams in regard to his request to Mr. Griswold to respond that will need to happen independently from this time.

Mayor Pro Tempore Wythe stated deliberations of the Board will now commence and continue from time to time as necessary until completed. She called for a motion from the Board to go into executive session for the purpose of deliberating and deciding this appeal.

ZAK/HOGAN – SO MOVED.

There was no discussion.

VOTE: YES. WYTHER, ZAK, HOWARD, HOGAN, LEWIS, ROBERTS

Motion carried.

Council adjourned to Executive Session at 7:30 p.m.

Council reconvened at 8:25 p.m.

Councilmember Roberts stated they met with the attorney and provided him with direction. More information will be forthcoming in the future.

Mayor Pro Tempore Wythe called for a motion to adjourn.

LEWIS/ZAK – SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

ADJOURNMENT

There being no further business to come before the Council, Mayor Pro Tempore Wythe adjourned the meeting at 8:27 p.m. The next Regular Meeting is scheduled for Monday, April 11, 2011 at 6:00 p.m. The next Committee of the Whole is scheduled for Monday, April 11, 2011 at 5:00 p.m. A Worksession is scheduled for Monday, April 11, 2011 at 4:00 p.m. All meetings scheduled to be held in the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

JO JOHNSON, CMC, CITY CLERK

Approved: _____