

Session 12-17 a Special Meeting of the Homer City Council was called to order on June 14, 2012 at 5:00 p.m. by Mayor James C. Hornaday 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: BURGESS, HOWARD (telephonic), LEWIS,
ROBERTS, WYTHER, ZAK

STAFF: CITY MANAGER WREDE
CITY CLERK JOHNSON
CITY ATTORNEY KLINKNER (telephonic)

Councilmember Howard has requested telephonic participation.

Mayor Hornaday called for a motion to allow Councilmember Howard to participate by phone.

WYTHER/LEWIS – SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

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

The agenda was approved by consensus of the Council.

City Clerk Johnson provided the following notification to property owners in the district: Public Announcement on KBBI aired twice daily from Tuesday through Thursday; included in the meeting notice of Wednesday’s newspaper; all property owners were emailed notice and called by phone or left a message with the exception of two, one who did not want to be notified and their was no answer on the other’s residence.

PUBLIC COMMENTS UPON MATTERS ALREADY ON THE AGENDA

John Szajkowski, city resident, expressed concern with how the City spends its time and money. The Seawall has been a nine-year issue. He referenced Resolution 12-051, line 28, where some property owners asserted the City was responsible for maintaining the Seawall. The Army Corps of Engineers’ (COE) permit declares the City is responsible for maintaining the Seawall. The COE issues and enforces permits; and is not subject to inducement or manipulation. Line 33 states the City will provide insurance. The City has declared they are not able to buy insurance. The spread sheet with properties and values is not accurate. The Szajkowski property assessment is inaccurate. He cautioned Council about voting on the resolution.

Findlay Abbott owns a lot with an unfinished building. The proposed mill rate will not take care of the problems that will come up. It is outrageous how much people will pay. There is damage all along the Seawall. Don't count on the COE changing the permit to put the problem over on to the landowners. It is a city project. The City put out the RFP, chose the engineer and chose the design. The neighbors were in favor of a different design from the engineers. The Department of Labor declared the Seawall as a city project for Davis/Bacon purposes. There is a solution already on the CIP: a coastal trail between Bishops Beach and Mariner Park. The trail will provide public access and a much loved new aspect for Homer. He advised Council to put armor rock on the city lots first instead of losing a lot of money.

Paul Hueper, city resident, referenced the letter to the COE. Four points were made to try to drop the Seawall completely. The Seawall is an LID (Local Improvement District) through and through. It started off as an LID, property owners signed on as an LID, and the City was never an agent for them. The City has never asked for extra taxation on a district. The LID goes in and the maintenance is taken care of by the City; no different than a sewer line or paved road. The Seawall is being taxed to property owners at various rates for the same exact wall. He will pay five times more than his neighbor. An LID is maintained by the City.

Don McNamara, city resident, recommended a trail on the beach and armor rock. Senator Begich said he would have some money if it could get on the CIP list. The COE said the City had to maintain the Seawall, not pay for it. The City could have drawn up a contract to fix the wall and taken it to the homeowners. Instead the City says it will throw some money in it and slap a bandaid on it and catch it the next time. The next time never comes. The City told the COE they would stay above the 19.5' tide line as that is what Fish and Wildlife demanded. Lot 40 was going to gain 20 ft. with the Seawall, but instead gained 40 ft. Horizontally the 2 ft. made a difference and put the Seawall at a greater risk for damage by letting it go lower in the tide line. Mr. McNamara showed Council pictures of the Seawall.

Mayor Hornaday called for a recess at 5:17 p.m. and reconvened the meeting at 5:21 p.m.

Janet Szajkowski, city resident, referenced the June 11 Action Agenda and Councilmember Wythe's comments expressing disappointment on reaching resolution on the mill rate that exposes the entire community to the expense of maintaining the Seawall. She asked if Council was under the impression that the money generated in the fall of 2012 be used for damages incurred November 2011. If so, she asked how far back the Council would go to recoup money for repairs that have already been made. The statement leaves it open as to how the money will be used and applied.

Donna Rae Faulkner, city resident, saw the LID as a great idea to buy a portion of the Seawall. They invested in 100 lineal ft., over a \$15,000 investment. They never allowed or expected the City to come on their property for repairs or expected the City to bill them for repairs to other people's private property. She is hoping for the good faith transfer of the COE permit to formalize their responsibility. The special service district is unfair and discriminatory.

Charles Davis, city resident, hopes Council takes the time to fix it right. From day one the project was screwed up. City government ignored knowledgeable people in the community and installed

a design that will not work. There must be a means to break up the ocean; the Seawall is not the way to solve it. We need a city-wide solution as there are all kinds of erosion and washing going on.

Angie Newby, city resident, commented all members of the LID should participate and none should be exempted. There may be a conflict with HCC Chapter 9 that ties the level of sales tax to the property tax levy not to exceed 6 mill. It was adopted by an election, not a governing body. Title 29 does allow the special service district tax differentiation. If Seawall property owners are taxed over 6 mill does that mean they will be sales tax exempt or does the electorate need to approve a higher mill levy? If there is a legal opinion regarding the taxation it should be shared with all property owners. The argument that the whole city would be subsidizing our property ignores that throughout the city there are examples of similar situations, including non-profits and port and harbor. Private enterprise has benefitted from these subsidies. They have paid their way to include a major court case that resulted in a big benefit to the City. Individually their assessments were over \$100,000, many people have paid it in full. Additionally, they incurred an additional \$40,000 as there was a significant cut into their property requiring them to build a secondary seawall. The COE permit stated the purpose was to protect private residential land and public roads and facilities. Many properties and facilities are at risk if the Seawall fails.

Councilmember Roberts commented on the lawsuit with Phukan and the City benefitting \$550,000. It is her understanding the settlement was divided among property owners to lower assessments.

Mrs. Newby answered the court settlement funds were applied to the \$100,000 assessments. The City gained through the property owners' lawsuit, not having to expend legal funds since they were not a participant in the suit. They were able to hold the engineers feet to the fire. The money went to the City in advance of the normal 20 years for a LID.

Councilmember Lewis asked if all the people along the Seawall were part of the suit. Mrs. Newby answered they were not. People chose not to participate in the legal expenses. It was their position the City should move quickly in the errors and omissions, but the City chose not to. The neighborhood got together in funding the legal effort with two properties choosing not to participate. The two properties did not get the benefit of the settlement. They were willing to risk both time and money on the legal action. They are not getting an extra special benefit from the two properties that did not. They did not recoup any legal expenses. They received a settlement from the original contract professional liability insurance policy.

Doug Alaniva, city resident, noted there were good points made that he hopes Council reviews. The City has been a part of the problem by things they have done during construction. When they got to Larry Goode's property the contractor was running out of materials. They went to Spenards and bought stuff that wasn't designed for the wall. They picked up and pulled in survey stakes 10 – 15 feet. Carey Meyer said he had to make the decision or the project would stop. He did not get a bill for 4 years after the wall was built. Brad Dickey and he have the two smallest sections. Although he thought his cost would be minimal he will pay twice as much. The plywood and rock used to fix the Seawall is already sinking in. The City needs to look at the fairness of the problems they have helped create.

RECONSIDERATION

Reconsideration issued by Councilmember Burgess - Resolution 12-051, A Resolution of the City Council of Homer, Alaska, Establishing a 2012 Mill Rate of 10.0264 Mills for the Ocean Drive Loop Special Service District. City Manager.

Mayor Hornaday called for a motion for the reconsideration of Resolution 12-051.

WYTHE/BURGESS – SO MOVED.

Councilmember Burgess commented we need a more long term solution to the Seawall. The City needs to bring in a larger group of people and identify the Seawall protects a larger group of people or say it is not our problem. The special service district is not the most appropriate tool. It does not equitably distribute the costs, which should be by linear footage of seawall.

VOTE: YES. ROBERTS, WYTHE, HOWARD, BURGESS, LEWIS

VOTE: NO. ZAK

Motion carried.

RESOLUTIONS

Resolution 12-051, A Resolution of the City Council of Homer, Alaska, Establishing a 2012 Mill Rate of 10.0264 Mills for the Ocean Drive Loop Special Service District. City Manager.

Motion on the floor from June 11: MOTION FOR THE ADOPTION OF RESOLUTION 12-051 BY READING OF TITLE ONLY.

WYTHE/ROBERTS - MOVED TO AMEND ALL REFERENCES TO THE MILL RATE OF 10.0264 TO READ 9.9893.

Amendments were made to the assessment roll to include the correct property assessment for the Szajkowski property and to add the Dickey property.

Mayor Hornaday called for a recess at 5:46 p.m. and reconvened the meeting at 5:56 p.m.

Finance Director Mauras made the revisions to the assessment roll.

Mayor Hornaday called for a recess at 5:58 p.m. and reconvened the meeting at 6:03 p.m.

WYTHE/ROBERTS - MOVED FOR A FRIENDLY AMENDMENT OF A MILL RATE OF 9.6283.

There was reconfiguration and the amended mill rate reflects the amendments.

Councilmember Zak will vote no as it is putting an assessment against property tax. This is like comparing apples to ball bearings. It is putting a bigger burden on people that have upgraded their lots. It shouts unfairness and he will vote no for anything that ties it to assessed value.

Councilmember Burgess echoed Councilmember Zak's comments; it is inequitable unless tied to maintenance based on linear footage.

Councilmember Roberts commented the City has contributed valiantly to many costs of the wall, including 14% for the original costs of the wall. The City has absorbed \$117,000 of the original cost of the wall (16%) because of two lots that have never paid any of their assessment. The City has paid for various maintenance items over the years, some costs not passed on to the owners. She has a hard time faulting the City and will be voting yes.

VOTE: (secondary amendment) YES. LEWIS, ROBERTS, WYTHER, HOWARD

VOTE: NO. ZAK, BURGESS

Motion carried.

Councilmember Lewis commented since he came on the City Council in 2008 he has heard nothing but the Seawall. People could not agree on their LID and he has heard what should have been done. Walt had a big meeting at the college with everyone but nothing seemed to come of it. A trail would be great if someone could come up with some money. For now it is the best solution for a bad problem.

VOTE: YES. LEWIS, ROBERTS, WYTHER, HOWARD

VOTE: NO. BURGESS, ZAK

Motion carried.

COMMENTS OF THE AUDIENCE

Charles Davis, city resident, told Council they are good at kicking the can down the road, but we still have the problem. Nothing has been solved. Now we are rushing the gas line project through. We better make sure all the details are worked out in the gas line project. None of the current council had anything to do with the Seawall; they took that on when they signed on to be our representatives. It is not the only neighborhood that has a problem; others will have the same problem. We need a solution.

Findlay Abbott commented when the Seawall was proposed he had calculated armor rock coverage. We could have had 7-10 ton rock delivered on the beach with \$30,000 to cover his lot. He built his building 75 ft. back from the cliff and it eroded 80 ft. The problem will get worse and there will be a major breakout. If the City would put armor rock on city land it would help everyone and would help to save the gravel. For \$100,000 we could stabilize the situation. Then go after highway funds for the coastal trail. He has offered to relinquish more than half of his land to the City for no cost if they will stabilize that shore. It will add to the amenities. The rock field on the hard pan is stable and goes way out. It starts at the Seawall at the 10 ft. tide land.

You put an armor rock protected trail and reclaim 5 or 10 acres for a public park at the corner of Lake Street and Ocean Drive Loop. Denying it and thinking the project is all right is wrong.

Doug Alaniva, city resident, asked Council to clarify if the money collected this year will pay for the break last year. There is only a temporary fix on the wall now and he wonders what will happen to the wall that was on last year's breakout. He wants to know what his responsibilities are. According to the COE the City is responsible for fixing it. There is no sheet metal, plastic, or steel in town in the event of a breakout. The City should have something set aside if something happens. The City let last year's repairs go so long it affected his property even more and cost him money out of pocket to repair his landing and stairs. He would like clarification on what his responsibilities are.

Donna Rae Faulkner, city resident, commented it is more than disappointing. They understood their maintenance responsibilities were lined out in 2001/2003 and they took them seriously. The COE has a decision to make too. It is the City's choice to make repairs just as it is their choice to do what they thought was the agreement. The City chose to make repairs to peoples properties and is charging her. They are trying to bill it through assessments and it is patently unfair and discriminatory in its application. The City chooses the repairs and then charges everyone. It was not their business to be involved in other people's property. An LID is shorter than a rental agreement. The SSD has so many unclarities. She hopes for a good faith transfer from the COE for their section of the wall and wished for clarity and peace.

John Szajkowski, city resident, expressed his disappointment that Council and the city management will continue to kick the can down the road. It has cost the City huge amounts of money with a recurring theme of saving the taxpayers at large from paying for this privately owned Seawall. It has been in the works for nine to ten years and is consuming hours of city time, dollars of city budgets, and personal time and we are no further now. He suggested the City Manager be given the task of coming up with a long-term solution on the Seawall. Since he is tripling his property tax to the City he asks for an accounting of the money. Property owners should get a monthly statement via email. His assessment is wrong, and all assessments are wrong to leave out the \$20,000 exemptions from the Borough for living in your home, \$150,000 exemptions for senior citizens. The \$30,000 target will not be met.

COMMENTS OF THE CITY ATTORNEY

City Attorney Klinkner had no comment.

COMMENTS OF THE CITY CLERK

City Clerk Johnson had no comment.

COMMENTS OF THE CITY MANAGER

City Manager Wrede had no comment.

COMMENTS OF THE MAYOR

Mayor Hornaday had no comment.

COMMENTS OF THE CITY COUNCIL

Councilmember Wythe commented Council is making decisions with the tools they have available. Council recognizes they are not perfect tools, but that is what they have to work with. There are timelines to meet with notification to the Borough required by June 15. The refund referenced was made to property owners when the district went away the first time. Council is trying diligently to arrive at the appropriate place for the City to be in this LID that constructed the wall. There has been a lot of time and energy with staff and Council trying to reach that place. We have to do every appropriate measure to protect the interests of the City as a whole. She does not want the property owners to feel Council is ignoring what they have said to them.

Councilmember Zak thanked the citizens that came out tonight. A lot of really good points were made about a future long term solution for the Seawall.

Councilmember Roberts reiterated Councilmember Wythe's remarks. There is a timeline for tomorrow for the tax assessment. She doesn't feel that the Seawall issue is resolved; a lot of things will come in the future.

Councilmember Burgess commented as many mistakes were made on both sides, Council is trying to address them with the tools they have. He does not support what Council did tonight. He hopes to solve this problem once and for all and put it behind us.

Councilmembers Howard and Lewis had no comment.

ADJOURNMENT

There being no further business to come before the Council, Mayor Hornaday adjourned the meeting at 6:25 p.m. The next Regular Meeting is Monday, June 11, 2012 at 6:00 p.m., Committee of the Whole 5:00 p.m., and Special Meeting 4:00 p.m. All meetings scheduled to be held in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

JO JOHNSON, CMC, CITY CLERK

Approved: _____

JO JOHNSON, CMC, CITY CLERK

7. ADJOURNMENT

There being no further business to come before the Council, Mayor Hornaday adjourned the meeting at 6:25 p.m. The next Regular Meeting is Monday, June 25, 2012 at 6:00 p.m., Special Meeting at 4:00 p.m. and Committee of the Whole 5:00 p.m. All meetings scheduled to be held in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.