

Session 14-05 a Regular Meeting of the Homer City Council was called to order on February 24, 2014 at 6:00 p.m. by Mayor Mary E. 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: BURGESS, HOWARD, LEWIS,  
ROBERTS, VAN DYKE, ZAK

STAFF: CITY MANAGER WREDE  
DEPUTY CITY CLERK JACOBSEN  
COMMUNITY AND ECONOMIC  
DEVELOPMENT COORDINATOR KOESTER  
FINANCE DIRECTOR LI  
PORT DIRECTOR/HARBORMASTER HAWKINS  
PUBLIC WORKS DIRECTOR MEYER  
CITY PLANNER ABOUD

Councilmember Howard has requested telephonic participation.

Mayor Wythe called for a motion to allow Councilmember Howard to participate by telephone.

BURGESS/LEWIS SO MOVED.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

Council met for a Worksession from 4:00 p.m. to 4:50 p.m. to discuss a New Intergovernmental Wastewater agreement Between the City of Homer and Kachemak City. From 5:00 to 5:40 p.m. as Committee of the Whole to discuss Consent agenda and Regular Agenda Meeting items.

Department Heads may be called upon from time to time to participate via teleconference.

## 2. AGENDA APPROVAL

(Addition of items to or removing items from the agenda will be by unanimous consent of the Council. HCC 1.24.040.)

The following agenda changes were made:

**ANNOUNCEMENTS/PRESENTATIONS/BOROUGH REPORT/COMMISSION REPORTS** - Report from Anderson Group, LLC dated February 19, 2014; **RESOLUTIONS -Resolution14-033**, A Resolution of the Homer City Council Disapproving the Decision to Approve the Barnett's South Slope Subdivision Quiet Creek Park Preliminary Plat by the Homer Advisory Planning Commission and asking the Kenai Peninsula Borough Planning Commission to Reconsider the Plat to Include all Documents that were Submitted. Roberts/Lewis, Written comments from Tony Neal and Memorandum from City Attorney Klinkner re: Participation by Councilmember's Roberts and Burgess.

Mayor Wythe called for a motion to adopt the agenda as amended.

LEWIS/BURGESS SO MOVED.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

### **PUBLIC COMMENTS UPON MATTERS ALREADY ON THE AGENDA**

Charles Davis, city resident, commented regarding Resolution 14-033. He said there seems to be conflicting information and someone in the City needs to straighten out what is and isn't factual so we can go with the facts and do it with due process of law.

Tony Neal expressed his disagreement with the opinion relating to conflict of interest and that the ethics portion in code isn't all there is to say about conflict of interest. He referenced his letter that was provided to Council and made comments to reemphasize his points relating to Councilmember Roberts having a conflict of interest and acting on her personal self-interests.

Ginny Espenshade, city resident, read from her written comments that she provided to Council supporting the adoption of Resolution 14-033. Her comments related to the Council's authority to review Planning Commission decisions, their ability to disapprove the plat, right for the public to be heard including written comments, minimal impact of their disapproval, and big picture concerns relating to process and plat approval.

Bill Walters, city resident, commented in support of Resolution 14-033 and referenced his letter that was provided as a laydown item. His objections include that the developers ACOE permit is in question, drainage issues are not properly addressed, cautionary notes on the plat are inadequate for addressing drainage issues. He expressed his concern of the City Clerk's action in which she inappropriately denied his opportunity to comment to the reconsideration at the Planning Commission.<sup>1</sup>

Kathryn George, city resident, read from her written comments provided as a laydown that support the adoption of Resolution 14-033. Her comments related to concerns that City Code has not been followed, procedural errors based on public comment and information not getting to the Planning Commission, the importance of elected officials examining issues brought to them by the community, failure to pay attention to Comprehensive Plan guidelines for promoting green infrastructure and protecting environmentally sensitive areas. She included articles from the Homer Tribune regarding stormwater issues.

Paul Gavenus, city resident, encouraged Council to vote yes on Resolution 14-033. The Planning Department neglected to include pertinent documents for the January 2 meeting. The Planning Commission also violated the public process by not reconsidering to address the information. He reference Alaska Statutes relating to public process proceedings.

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<sup>1</sup> Mr. Walter's is referring to Deputy City Clerk Jacobsen.

Gwen Neal commented in opposition of Resolution 14-033. She clarified Quiet Creek Park received a wetlands permit from ACOE. They held 2 neighborhood meetings on their own accord, prior to Planning Commission review. Planning Commission held two hearings and chose not to reconsider after the vote. All necessary approvals were in place. The developer did what was required of him in the process, and now his rights are being challenged. She is an owner of Quiet Creek Park.

Ray Kranich, city resident, commented in opposition of Resolution 14-028 and encouraged maintaining the requirement for 5 yes votes to pass a CUP as they deserve a higher degree of approval. He encouraged the Council to vote no on Resolution 14-033. During his time on Council he doesn't recall a time they moved to overrule the decision made by the Planning Commission. He thinks there is a conflict with the resolution coming from a Councilmember who lives in the immediate area. He also noted that the Quiet Creek Plat was approved in 2005 after significant review; then it was approved again after review of the current Planning Commission.

## RECONSIDERATION

## CONSENT AGENDA

(Items listed below will be enacted by one motion. If separate discussion is desired on an item, that item may be removed from the Consent Agenda and placed on the Regular Meeting Agenda at the request of a Councilmember.)

- A. Homer City Council unapproved Regular meeting minutes of February 10, 2014. City Clerk. Recommend adoption.
- B. **Memorandum 14-031**, from Mayor, Re: Appointment of Larry Slone to the Library Advisory Board and Glen Carroll to the Vessel Haul-out Task Force.
- C. **Ordinance 14-11**, An Ordinance of the City Council of Homer, Alaska, Amending the FY 2014 Operating Budget by Appropriating \$11,331.48 From the Homer Volunteer Fire Department Reserve Account for the Replacement of Laptop Computers Compatible With Windows 7 for Data Collection, Analysis, and Reporting Requirements. City Manager/Fire Chief. Recommended dates: Introduction February 24, 2014, Public Hearing and Second Reading March 10, 2014.

Memorandum 14-035 from IT Manager as backup.

- D. **Resolution 14-032**, A Resolution of the Homer City Council Awarding the Contract for the Airport Terminal Underground Fuel Tank Removal Project to the Firm of Paul's Service of Anchor Point, Alaska, in the Amount of \$4,700 and Authorizing the City Manager to Execute the Appropriate Documents. City Manager/Public Works Director. Recommend adoption.

Memorandum 14-032 from Project Manager as backup.

- E. **Resolution 14-034**, A Resolution of The Homer City Council Awarding the Contract for the Operation and Maintenance of the Port and Harbor Fish Grinding Facility to The Fish Factory of Homer, Alaska, Under the Terms Outlined in the Memorandum of Agreement for Calendar Years 2013 to 2016 and Authorizing the City Manager to Execute the Appropriate Documents.

City Clerk/Port and Harbor Director. Recommend adoption.

Memorandum 14-033 from Port and Harbor Director as backup.

Councilmember Burgess moved Ordinance 14-11 to Ordinances A.

Mayor Wythe called for a motion to adopt the consent agenda as amended.

LEWIS/ZAK SO MOVED.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

## **VISITORS**

## **ANNOUNCEMENTS/PRESENTATIONS/BOROUGH REPORT/COMMISSION REPORTS**

- A. Borough Report
- B. Commissions/Board Reports:
  - 1. Library Advisory Board
  - 2. Homer Advisory Planning Commission
  - 3. Economic Development Advisory Commission
  - 4. Parks and Recreation Advisory Commission

Parks and Recreation Advisory Commission Chair Matt Steffy updated the Council on the Commission's work and other areas of parks and recreation including

- Parks staff is getting flowers started in the greenhouse for summer planting.
- Received updates from Public Works Director Meyer of Spit Trail and interpretive signage.
- Continued discussion of Hornaday park drainage and upgrades, parking issues, and filling the camp host space.
- Endorsed a speed limit reduction at Jack Gist Park entrance and remain at 35 past the entrance for safety of cars turning in and out.
- PARC group is meeting weekly on the parks and recreation needs assessment and the group will be giving regular presentations to Council on their progress.
- Parks & Trails group has put together a phenomenal brochure that will be a great resource for all.
- Recreation programs are doing great.
- They are anxious to fill the Student Representative seat on the Commission.

- 5. Port and Harbor Advisory Commission

C. Lobbyist Report of February 16, 2014

**PUBLIC HEARING(S)**

A. **Ordinance 14-08**, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 21.71.050(d), "Commission Hearing and Procedures", to Permit Four Instead of Five Members of the Homer Advisory Planning Commission to Approve a Conditional Use Under the Homer City Code. City Manager/Planning. Introduction February 10, 2014, Public Hearing and Second Reading February 24, 2014.

Mayor Wythe opened the public hearing.

Ginny Espenshade, city resident, commented in support of maintaining that five members approve a CUP as they need a more significant review.

Larry Slone, city resident and Planning Commissioner, stated he is commenting on his own behalf and not on that of the Planning Commission. He agreed with Mr. Kranich's statement that five Commissioners makes a more conservative cast to addressing restrictions, however, as a Planning Commissioner he doesn't have the allowance to participate by telephone when he has to be absent.

Charles Davis, city resident, commented in support keeping it a five. He thinks a lot of deals that have gone through the Planning Commission are done behind closed doors.

Jan Jager, city resident, agrees with maintaining CUP approval at 5 votes. Having recently gone through the process she thinks it best to leave it as it is.

There being no further comments Mayor Wythe closed the public hearing and called for a motion for the adoption of Ordinance 14-08 by reading of title only for second and final reading.

ZAK/BURGESS SO MOVED.

Councilmember Burgess commented that if something is allowed conditionally it is allowed based on reasonable review. He wonders with a six member Planning Commission if people are being deprived of a review process and the flexibility to do what they want with their property. This presumably makes the CUP process easier.

Councilmember Roberts commented her understanding of the change was to accommodate times when Commissioners are absent. She thinks it should be kept at five.

City Manager Wrede noted that it becomes a problem for the applicant at those times when the Commission has members absent. There is an expectation that you will have a timely action from the government.

Councilmember Burgess said that when he hears complaints about the City 7 out of 10 times it's a planning and zoning issue and that they are being restricted. It seems to be about things we would want people to be able to do with their property. If we have a code that is only one no vote away from allowing someone to do something reasonable with their property, we are placing the burden in the wrong place. We should err on the side of personal freedoms, unless there is a strong reason not to. He encourages them to think along those lines. Perhaps we need to add a 7<sup>th</sup> person to the Commission.

Mayor Wythe noted that she can think of no circumstance where Council requires a super majority to do anything. Having that requirement on a Commission seems like an odd state of affairs.

VOTE: YES: BURGESS, HOWARD, ZAK  
NO: LEWIS, ROBERTS, VAN DYKE

Mayor Wythe voted YES to break the tie.

Motion carried.

B. **Ordinance 14-09**, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 21.12.020, "Permitted Uses And Structures", to Expand the Permitted Uses in the Rural Residential District to Include the Addition of a Detached Dwelling Unit as an Accessory to a Single Family Dwelling on a Lot Served by City Water and Sewer Services. City Manager/Planning. Introduction February 10, 2014, Public Hearing and Second Reading February 24, 2014.

Mayor Wythe opened the public hearing.

Charles Davis, city resident, questioned why we have to have this complicated governmental process at the end of the road. He doesn't see why we have to have all these zoning rules. Central Business District is fine the way it is and Old Town is developing nicely. He wishes we would do something different with our tax dollars.

There being no further comments Mayor Wythe closed the public hearing and call for a motion for the adoption of Ordinance 14-09 by reading of title only for second and final reading.

LEWIS/BURGESS SO MOVED.

Councilmember Burgess noted that the intention of the ordinance is to do what Mr. Davis suggests by further eliminating an item that would go through the permitting process.

BURGESS/ZAK MOVED TO AMEND LINE 65 TO ADD ITEM T. ALLOW AN ACCESSORY DETACHED FAMILY DWELLING ON ANY RURAL RESIDENTIAL LOT OVER ON ACRE WITHOUT WATER AND SEWER.

Councilmember Burgess commented that he understands the logic of allowing an accessory structure outright in the higher density areas serviced by city water and sewer. He feels they need to take into account the people in the annexed areas with larger rural residential properties who still have to get a CUP for an accessory dwelling. Even though they don't have city water and sewer they should be allowed to utilize their property as fully.

City Planner Abboud was given the opportunity to weigh in. He commented that they would still have to meet requirements in code for water and sewer service. He noted the area with city water and sewer is outlined in the Comp Plan as going denser.

Mayor Wythe questioned if there would be a higher level of review required on a lot that is serviced by well and septic. City Planner Abboud agreed that there would and noted issues with follow through in

some case to get adequate water supplies and challenges in chasing down the final documents, but that it could be dealt with.

There was discussion that this needs to go back to the Planning Commission for their consideration.

VOTE (Amendment): YES: HOWARD, VAN DYKE, ZAK, BURGESS, LEWIS  
NO: ROBERTS

Motion carried.

BURGESS/HOWARD MOVED TO REFER THIS BACK TO THE PLANNING COMMISSION FOR THEIR INPUT TO UPDATING THE ORDINANCE.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

Mayor Wythe called for a break at 7:07 p.m. and the meeting resumed at 7:14 p.m.

#### **ORDINANCE(S)**

- A. **Ordinance 14-11**, An Ordinance of the City Council of Homer, Alaska, Amending the FY 2014 Operating Budget by Appropriating \$11,331.48 From the Homer Volunteer Fire Department Reserve Account for the Replacement of Laptop Computers Compatible With Windows 7 for Data Collection, Analysis, and Reporting Requirements. City Manager/Fire Chief. Recommended dates: Introduction February 24, 2014, Public Hearing and Second Reading March 10, 2014.

Memorandum 14-035 from IT Manager as backup.

Mayor Wythe called for a motion for the introduction of Ordinance 14-11 by reading of title only.

BURGESS/ROBERTS SO MOVED.

Councilmember Burgess commented that since we are not actively funding the reserves as well as we should, he would like to have this come from the general fund balance.

BURGESS/ROBERTS MOVED TO TAKE THE FUNDS FOR THIS EXPENDITURE FROM THE GENERAL FUND BALANCE.

Councilmember Zak added that they discussed this at Committee of the Whole and recognized the need, and they are used in life safety issues, and the fire department has minimal reserves at this time.

Councilmember Van Dyke noted that he shared lower cost information with the City Manager, and asked that it be taken into consideration.

City Manager Wrede and IT Manager Poolos confirmed they would review Councilmember Van Dyke's information.

VOTE (Amendment): NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

There was no further discussion on the main motion as amended.

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

Motion carried.

## **CITY MANAGER'S REPORT**

### **A. City Manager's Report**

1. Ramp 7: The Seldovia Village Tribe has paid a contractor to remove the ramp from the water. City Port and Harbor Staff provided an assist by removing the damaged section of the float extension so that the ramp could be lifted cleanly. It was quite an operation. This takes care of the immediate safety concerns and prevents further damage to the ramp and float system. Analysis and discussion on why there was a failure and who is responsible for fixing it is on-going.
2. Parks and Recreation Needs Assessment: The third meeting of the Needs Assessment Steering Committee took place on Thursday evening, February 13th. The focus of this meeting was discussion regarding the questions the consultant should ask and what he or she should attempt to measure in terms of public attitudes on funding, public desires and use patterns with respect to parks, recreation, and culture, and a 'gap analysis'. There was a lot of discussion about how much background and qualitative information can be gathered internally and when to engage the Parks Commission. Also, there were several items which the group asked me to make you aware of so Council can weigh in if necessary. First, the committee is going to recommend that the surveys and other research methods include people from outside of the City limits. A service area that ran basically from Anchor Point to McNeil Canyon was suggested. The Committee is aware that this might be controversial. The reason for doing this is twofold. First, many of the users of City parks and recreation facilities and programs are from outside the City limits. Including them and measuring their willing to contribute financially could result in better overall facilities and programs for all, including Homer residents. Second, this information could be very useful if the effort to create a broader Borough Service Area gains traction. At the Last Council meeting, a member of the Parks and Recreation Commission reported that the committee was reviewing the Soldotna Parks and Recreation Needs Assessment and Master Plan. The Committee wanted to clarify for Council that what they are working on is a Needs Assessment only. There is no master plan component. A master plan would be very premature at this point and it is not what Council provided funding for. Please let me know if there are further questions about this process.
3. Citizens Academy: The Citizens Academy is scheduled to begin this week, on February 20. An overview of the program and a focus on the City Manager's office, the City Clerk's office, and a presentation by City Attorney Holly Wells will comprise the first session. We were a little disappointed with the low enrollment but are looking forward to the opportunity and a successful academy. A memorandum from Katie on this topic is attached.



4. Critical Habitat Legislation: The legislation that would remove the Homer Port and Harbor from the critical habitat area is on the move. It has already passed the Senate and has been referred to the House. House Rules Committee had a hearing on it yesterday, (February 18) and then voted to send it to the floor. I testified at hearings before House Resources, Senate Resources, and was available for questions yesterday. Thanks to Speaker Chenault, Senator Micciche, and Representative Seaton for their effort and strong support. Also, thanks to Katie for all of her background work and coordination and to Linda Anderson for all of her important work in Juneau on this legislation.
  5. Traffic Calming: As you know, there is great interest in some neighborhoods about traffic calming. As I reported earlier, the Planning Commission has taken a real interest in this topic and has agreed to take it on as a project. The Commission has begun its work. For those folks in the community who want to get involved, now is the time to get in on the ground level. Contact Planning staff if you want more information about the Commission work schedule on this topic.
  6. Lake Clark National Park Management Plan. Many Homer residents have long standing ties to the Lake Clerk Area. Lake Clark National Park is of interest to many for historical, family, recreation, economic, or other reasons. Lake Clark NP is amending its Management Plan. Attached is a notice about a public meeting in Homer on this topic on February 24.
  7. Loss Control Award. The City has been working very hard to control or limit its insurance losses. I would be happy to talk about some of those efforts if you are interested. Attached is a notice that the City received a Loss Control Award (Gold Status) for fiscal year 2012. Gold status means that the City kept its losses to less than ten percent of the insurance premium. AML/JIA covers general liability, property, vehicles, professional liability, and workers comp.
  8. Intergovernmental Agreement with Kachemak City. This meeting contains a workshop on the Intergovernmental Agreement for Wastewater Services between Homer and Kachemak City. The Council requested that Mayor Morris be invited and we expect him to be present unless he is called for jury duty in Anchorage. If that happens, other members of the City Council will attend on his behalf. We had a consultation meeting with Mayor Morris on February 13 to review options as requested by the Council.
  9. Library/ Youth Service Outreach Activities. Recently, KBBI did a story on the Library Youth Service Outreach Program. Part of the story was that the Children's Librarian was making trips to locations outside of the City to conduct story time and other children's library activities. This story generated some questions so attached is a report and other information from Ann Dixon, the City Librarian on this program. I hope you find it informative. Ann will be at the Committee of the Whole and possibly the regular meeting if you have questions.
1. Memorandum 14-034 from Port and Harbor Director, Re: Report on Alaska Abandoned and Derelict Vessel Task Force.
  2. Memorandum 14-036 from Community and Economic Development Coordinator, Re: First City of Homer Citizens Academy Underway.
- B. Games Report
1. Homer Society of Natural History, Inc.

City Manager Wrede commented that the first session of the Citizens Academy was well attended and received good reviews from the participants. The next session will be held at the Port and Harbor.

He reported that the City had positive meetings with Blue Crest Energy, the company who purchased the Cosmo well off Anchor Point from Buccaneer. Blue Crest had a lot to say about commitment to the project, community and environmental safety, and their plans for the the near future.

Lastly, he advised the Council about an increase in the cost of calcium chloride and the budgetary effect. They budgeted the same amount of money as last year and said if the Council wants to amend the budget he can bring back an ordinance. Public Works Director Meyer commented to the Council and recommended that they leave the budget as it is and Public Works will work with what they have.

Mayor Wythe acknowledged the AML award for Loss Control Containment and thanked staff for their efforts to achieve this award.

## **CITY ATTORNEY REPORT**

### **COMMITTEE REPORT**

- A. Public Arts Committee
- B. Transportation Advisory Committee
- C. Permanent Fund Committee
- D. Lease Committee
- E. Port and Harbor Improvement Committee
- F. Employee Committee Report
- G. Port and Harbor Building Task Force

### **PENDING BUSINESS**

- A. **Resolution 14-028**, A Resolution of the City Council of Homer, Alaska, Amending the Homer Advisory Planning Commission Policies and Procedures Manual Review Policies for Conditional Use Permits "Review Standards" and Policy for Review of Zoning Variances "Determination" to Permit Four Instead of Five Members of the Homer Advisory Planning Commission to Approve a Conditional Use Permit and a Variance. City Manager/Planning. (Postponed from February 10, 2014 to follow Ordinance 14-08.)

The following motion is on the floor from February 11, 2014.

ROBERTS/BURGESS -MOVED TO ADOPT RESOLUTION 14-028.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

## NEW BUSINESS

## RESOLUTIONS

- A. **Resolution 14-033**, A Resolution of the Homer City Council Disapproving the Decision to Approve the Barnett's South Slope Subdivision Quiet Creek Park Preliminary Plat by the Homer Advisory Planning Commission and Asking the Kenai Peninsula Borough Planning Commission to Reconsider the Plat to Include All Documents That Were Submitted. Roberts/Lewis.

Councilmember Roberts disclosed that she lives in the area noticed by the Planning Department for this subdivision. She attended the December 4, 2013 and January 15, 2014. She did not attend the January 2, 2014 Planning Commission meeting but provided written comments.

Mayor Wythe noted the legal opinion from Attorney Klinkner and they talked about this at the Committee of the Whole. She noted that in the past she has recused herself for less of a conflict and holds a pretty high standard on it so she deferred to the Council for to weigh in and vote. She noted since Councilmember Burgess may also have a conflict he will not vote.

Mayor Wythe restated the question is "Should Councilmember Roberts be recused." A yes vote recuses her and a no vote is not recusing her.

VOTE: YES: HOWARD, ZAK, VAN DYKE  
NO: LEWIS

The vote failed.

Mayor Wythe called for a short break at 7:33 p.m. to discuss how to proceed. The meeting resumed at 7:36 p.m.

LEWIS/VAN DYKE CALLED FOR IMMEDIATE RECONSIDERATION OF THE LAST VOTE.

There was no discussion.

VOTE: YES: LEWIS, HOWARD, ZAK, VAN DYKE

Motion carried.

Mayor Wythe advised that they had proceeded incorrectly. She clarified that she should have made a ruling relating to Councilmember Roberts conflict and the Council could vote to overrule her.

Mayor Wythe ruled that Councilmember Roberts has a conflict and should be excused from participating.

After discussion of the voting process Deputy City Clerk Jacobsen said that a Yes vote agrees that Councilmember Roberts should be excused and no vote disagrees and should be allowed to participate.

VOTE: YES: HOWARD, ZAK, VAN DYKE  
NO: LEWIS

Mayor Wythe acknowledged there was confusion in the voting process and clarified that the vote did not overturn her ruling.

Councilmember Roberts left the table.

Councilmember Burgess disclosed that he owns a lot that is along a thoroughfare that would see a difference in traffic as a result of the proposed subdivision development. Based on the narrow interpretation of the conflict of interest guideline, he doesn't believe there is evidence that he would incur a direct gain or loss to trigger the threshold of the guidelines. He has never stated an opinion as to the development or anything thereto.

Mayor Wythe commented that in this case she doesn't believe there is the perception of a conflict from the community related to Councilmember Burgess and would not consider him recused. She asked the Council if they had opposition to her ruling.

There was no objection.

Mayor Wythe called for a motion for the adoption of Resolution 14-033 by reading of title only.

LEWIS/BURGESS SO MOVED.

Councilmember Lewis commented that he co-sponsored this resolution with Councilmember Roberts mainly because there was material that was not presented at the meeting on January 2<sup>nd</sup> that had been presented to the Planning Department in a timely manner. Because of this people weren't able to speak to it. He thinks they are always being accused of not hearing what the people are saying and we should give them the chance to be heard. He is neither for nor against the development, but feels that the evidence should be taken under consideration.

Councilmember Burgess commented that his understanding is that they are not trying to slight the Planning Department but making sure the decision is reconsidered with all information that should have been presented in the public process. The other side of it though, he read the Planning Commission minutes, it appeared after the reconsideration it was presented to the Commission there had been this oversight and the information was brought to their attention, and still after the opportunity to reconsider still made the same determination. He doesn't think sending this back to the Planning Commission will result any differently.

City Manager Wrede clarified this doesn't send the action back to the Planning Commission; it only makes a recommendation to the Borough Platting Board to consider that information as they deliberate.

Mayor Wythe added that Council's only authority is to send a recommendation subsequent to the Planning Commission's recommendation.

Councilmember Burgess queried Councilmember Lewis if his intention is to ask the Borough to deny the plat or to ask them to simply consider the information that was not considered as part of public process.

Councilmember Lewis responded he is asking the Borough to consider the information and they should be able to be heard back here in Homer, have their chance to present, and be heard. He doesn't view this as a slap in the Commissions face or anything like that, but people have a right to be heard.

Councilmember Zak noted the resolution says it's "disapproving the decision to approve". If we send that to the Borough Planning Commission, he is concerned they are sending a message to disapprove the plat. He recognized Mr. Kranich's comments and acknowledged that platting is done at the Borough level, so there another series of checks and balances for those worried about government giving fair consideration. Councilmember Zak further noted that in relation to the application going through this process, it has been through the process in years past and presently been addressed over three meetings. He is reluctant to for the City Council to take action and send this type of message to the Borough, especially when they haven't seen the packet themselves.

Councilmember Burgess agreed in that having read through the meeting minutes it seems that to the best of their ability, they followed their process and there is no doubt there was public input that may have been overlooked. He thinks there's a way to restructure the resolution to recommend the Borough Planning Commission to allow for the input to be included and more thoroughly considered. He doesn't think they should make a negative recommendation to the Plat Review Board as it seems they would be overstepping their bounds.

Mayor Wythe noted the resolution states that Council disapproves the decision to approve the subdivision, and then asks for the additional information to be considered at the Borough level. It's two parts, but does say they disapprove the plat as it was sent forward.

LEWIS/BURGESS MOVED TO ADD EVERYPLACE WHERE THERE IS DISAPPROVING IT WOULD READ NEITHER APPROVING OR DISAPPROVING THE DECISION TO APPROVE THE BARNETT SOUTH SLOPE SUBDIVISION QUIET CREEK PARK PRELIMINARY PLAT BY THE HOMER ADVISORY PLANNING COMMISSION ASKING THE KENAI PENINSULA BOROUGH PLANNING COMMISSION TO RECONSIDER THE PLAT TO INCLUDE ALL DOCUMENTS THAT WERE SUBMITTED.

Councilmember Howard said she can't support the amendment. There is no reference to what documents are missing, and she thinks they have no business doing this. If it's true what the speakers have said, there were two hearings at the developer's level, plus the Planning Commission's meetings. She doesn't know what important game changing documents were left out that would cause all of this to change.

Councilmember Lewis commented his understanding that the documents dealt with the water and water flow in the area, and a lot of them were done by Soil and Water Conservation. He thinks its important based on events in recent history. It was not presented to the Commission in their packet and people couldn't talk about it for the reconsideration. He just think it should be there.

VOTE (Amendment): YES: VAN DYKE, BURGESS, LEWIS  
NO: HOWARD, ZAK,

Motion failed.

Councilmember Burgess commented that in this instance there is confusion of the intention of the public and the Council, and the process to arrive at this point. His understanding from reading the minutes is that the developer, for the most part was fairly diligent and accommodating in going through the process as outlined in code by adhering to and taking into consideration some of the reasonable and unnecessary option recommendations of the Planning Commission. However, there is also the consideration that our code isn't as good as it could be in addressing many of the considerations relating to runoff and other issues in this area. It's a situation where if the code were different and took a view more in line with some of the very informed environmental things that were brought forward we might do something different. But he questioned if a judicial is instance the appropriate point to argue what the code should and shouldn't be. Whether we like what he's doing or not, it appears that the developer followed the rules, and therefor deserves a fair shake. If people come forth later with good ideas to amend the code, we can look those changes.

Mayor Wythe asked City Planner Abboud up to offer clarification of the plat review and approval process. She asked at the point of actual development and construction if there would be drainage regulations that would come in to ensure that it was taken care of at the time of construction. City Planner Abboud said there are some and they are regulated at the time of development.

Councilmember Lewis commented that the developer follows the rules, but at the same time we have to make sure those who disagree get to play by the same rules. Leaving out information at the time is not playing by the same rules.

Councilmember Burgess asked City Planner Abboud what happened with the material provided that was or was not included and if the Planning Commission was made aware of the documents at the time of reconsideration. City Planner Abboud explained that staff got a lot of information for this plat and there isn't an excuse for the oversight. There was a lot coming in at the last minute and it was coming in through different channels. The public notice has a phone number and a particular email that goes to the Planning Clerk. Some information was submitted in another direction and didn't make it in the packet. It was two items about overall drainage of the area. At the time the plat was up for reconsideration, the information was part of the packet, there was open discussion that it was the missing information, and people spoke of it.

Councilmember Howard thinks the Borough Planning folks are pretty good at asking questions at their level as well. She appreciates the point that the development actually takes place, that's when these other things come into play. She is satisfied that enough information has been forwarded to the Borough for them to make an educated and wise decision.

VOTE: YES: LEWIS

NO: VAN DYKE, HOWARD, ZAK, BURGESS

Motion failed.

Councilmember Roberts returned to the table.

#### **COMMENTS OF THE AUDIENCE**

Ginny Espenshade, city resident, commented to set the record straight there was no reconsideration of this plat. So January 15<sup>th</sup> packet was including these documents, they weren't clearly marked, and she

has copies if they are interested in what they just decided was unimportant. They filtered public comment; there was no public hearing at which these documents were included. The public was just asking was for them to send comments that the Borough make sure to look at these documents and consider them part of the public hearing record. Council failed to do that. She is disappointed they failed to make findings about the conflict of one of their colleagues in spite of the ruling of the City Attorney. This whole thing is being rushed, and it doesn't have to be. She is just really disappointed.

Kathryn George, city resident, said she is really disappointed, some of those documents came from her and to have them sit there and say what she has to say isn't as important as what someone else says, she thinks that's wrong.

Charles Davis, city resident, said he wished they wouldn't talk so freely of public input and due process and then vote against it. He thinks they are just inviting legal challenge. If the people who know about the water and drainage are correct, we have another big rain storm and the hillside comes down, who's going to pay the damages? He thinks he'll sell out quickly before the damages occur. He is disappointed too.

Paul Gavenus, city resident, thanked the Council for letting him come talk to them before they take something else away. He commented in support the recommendation of the Parks and Recreation Commission to lower the speed limit in the area of Jack Gist Park. He hopes they will work with DOT on that.

#### **COMMENTS OF THE CITY ATTORNEY**

City Attorney Klinkner was not present.

#### **COMMENTS OF THE CITY CLERK**

Deputy City Clerk Jacobsen had no comment.

#### **COMMENTS OF THE CITY MANAGER**

City Manager Wrede had no comment.

#### **COMMENTS OF THE MAYOR**

Mayor Wythe commented to the concerns expressed of due process. As processes go, this was not a standard, easy to interpret, or easy to understand process. It is a situation where the Council really has no jurisdiction, other than this small window where they could potentially object. The opportunity they have is to object to the plat, not send it back to the planning commission, nor to say we don't object but want you to consider further information. The opportunity the Council has is to object, and they chose not to. She doesn't feel it was a bad decision on their part, as this process doesn't fit in to the box of the rules they have to work with. She feels the Council did what they could with what they have to work with.

#### **COMMENTS OF THE CITY COUNCIL**

Councilmember Howard said she is looking forward to returning and will see them next meeting.

Councilmember Lewis commented that this coming Thursday there is a public hearing with the arts committee on the Asaiah Bates statue. Not this weekend but the following weekend there will be a Bantam State Hockey Tournament in Homer bringing a lot of people to town and games all weekend at the rink.

Councilmember Van Dyke thanked everyone for showing up and said that the Council does the best job they can with the information they have. He encouraged people to keep coming and feeding them as much information as they can.

Councilmember Roberts reminded everyone if they have nothing to do in the next hour it's the last home basketball game of the year.

Councilmember Zak wished the Mayor and Community and Economic Development Coordinator Koester safe travels to Juneau to advocate on behalf of the City. It's going to be an important year for the budget at the state level. Port and harbor is a big deal for us this year. There are a couple bills to meet with the lobbyist on to help people know that Homer is open for business and that our port and harbor is an important piece to the future of Alaska.

Councilmember Burgess thanked everyone. This was a difficult meeting and he wanted to reiterate to the public that he is disappointed that they couldn't find a way without objecting to the Planning Commission's decision to make a reasonable appeal for public input to the Borough; he thinks they could have done a better job with that. He expressed his understanding that when presenting your point of view to the Council it is easy to personify and objectify councilmembers as people who are somehow less than human or have a thicker skin because of the job they do. While you do have to be a glutton for punishment to sit at the council table, he thinks the way a person chooses to make their point or write about a councilmember, whether or not you are in the right factually, says a lot about your character as a person and how you choose to make it. He thinks it informs Council's decision as to how well they should consider what you have to say. There were some things written to them about Councilmember Roberts' conflict and the position she takes that he thinks were probably uncalled for and he would have felt better about considering the person's comments if they had made their point by sticking to the issues and without attacking her character. Mr. Burgess said he likes to hear the facts, to explore them, and hear people based on the merit of their arguments. Bringing people's character into play to get your point across does not do you as good here as it may in a Rush Limbaugh-esque environment of public discussion. He encouraged people to keep in mind that we all try to be courteous and listen and if they can do the same, it's appreciated.

## **ADJOURNMENT**

There being no further business to come before the Council, Mayor Wythe adjourned the meeting at 8:09 p.m. Next Regular Meeting is Monday, March 10, 2014 at 6:00 p.m., Committee of the Whole 5:00 p.m. and Worksession 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.

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MELISSA JACOBSEN, CMC, DEPUTY CITY CLERK

Approved: \_\_\_\_\_