

HOMER CITY COUNCIL
491 E. PIONEER AVENUE
HOMER, ALASKA
www.cityofhomer-ak.gov



SPECIAL MEETING
5:00 P.M. WEDNESDAY
APRIL 8, 2015
COWLES COUNCIL CHAMBERS

MAYOR BETH WYTHE
COUNCIL MEMBER FRANCIE ROBERTS
COUNCIL MEMBER DAVID LEWIS
COUNCIL MEMBER BRYAN ZAK
COUNCIL MEMBER BEAUREGARD BURGESS
COUNCIL MEMBER GUS VAN DYKE
COUNCIL MEMBER CATRIONA REYNOLDS
CITY ATTORNEY THOMAS KLINKNER
CITY MANAGER MARVIN YODER
CITY CLERK JO JOHNSON

EMERGENCY
SPECIAL MEETING AGENDA

1. CALL TO ORDER, 5:00 P.M.

Councilmember Zak has requested excusal.

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

3. Memorandum 15-047, from City Clerk, Re: Request for Executive Session Pursuant to AS 44.62.310(A-C)(1&5) Matters, the Immediate Knowledge of Which Would Clearly Have an Adverse Effect Upon the Finances of the Government Unit and Attorney/Client Privilege (Order Compelling Compliance With Decision and Order Re: Castner v. City of Homer, Special Assessments on Condominium Unit Owners: Natural Gas Special Assessment District).

4. COMMENTS OF THE AUDIENCE

5. ADJOURNMENT

Next Regular Meeting is Monday, April 13, 2015 at 6:00 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.



City of Homer

www.cityofhomer-ak.gov

Office of the City Clerk

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Homer, Alaska 99603

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Memorandum 15-047

TO: MAYOR PRO TEMPORE ROBERTS AND CITY COUNCIL

FROM: JO JOHNSON, MMC, CITY CLERK

DATE: APRIL 7, 2015

SUBJECT: REQUEST FOR EXECUTIVE SESSION PURSUANT TO AS 44.62.310 (A-C)(1 & 5) MATTERS, THE IMMEDIATE KNOWLEDGE OF WHICH WOULD CLEARLY HAVE AN ADVERSE EFFECT UPON THE FINANCES OF THE GOVERNMENT UNIT AND ATTORNEY/CLIENT PRIVILEGE (ORDER COMPELLING COMPLIANCE WITH DECISION AND ORDER RE: CASTNER V. CITY OF HOMER, SPECIAL ASSESSMENTS ON CONDOMINIUM UNIT OWNERS: NATURAL GAS SPECIAL ASSESSMENT DISTRICT).

Pursuant to Council's Operating Manual – "Any Councilmember, the Mayor or City Manager may place consideration of an executive session on the agenda..."

City Manager Yoder has requested an Executive Session regarding "Order Compelling Compliance With Decision and Order Re: Castner v. City of Homer, Special Assessments on Condominium Unit Owners: Natural Gas Special Assessment District" for the Special Meeting of April 8, 2015. This has been publicly and internally noticed since that time.

City Attorney Klinkner will participate by telephone.

RECOMMENDATION:

Approve the request for Executive Session and conduct immediately in the Conference Room.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT HOMER

KENNETH W. CASTNER III,

Plaintiff,

v.

CITY OF HOMER, *et al.*,

Defendants.

Case No. 3HO-13-38 CI

ORDER COMPELLING COMPLIANCE WITH DECISION AND ORDER

Plaintiff, Kenneth Castner III, filed an *Ex Parte Motion* with the court on February 6, 2015, seeking an order requiring Defendants ("the City") to show cause why it should not be held in contempt for their decision not to comply with the *Memorandum Decision and Order* entered by the court on January 6, 2014 ("the Order"). The City filed a response on February 25, 2015, and Mr. Castner replied on March 5, 2015. The City then filed a *Notice of Compliance* on March 16, 2015, to which Mr. Castner filed an objection on March 18, 2015.

Background

The Order found that the City's natural gas distribution system special assessment was disproportionate to the benefit conferred upon condominium unit owners compared to other assessed properties. The assessment method was arbitrary and unreasonable — unlawful. The City issued a press release stating that it would not appeal the Order, and the City did not appeal. The Order is therefore final. Mr. Castner now alleges that the City has decided to disregard the Order and its own public announcements, and impose assessments on condominium units using the same method that this court determined to be unlawful.

The City contends that it is adhering to the Order because Mr. Castner's Kachemak Bay Title Building ("Kachemak Building") condominium, and two others, are exempted from the assessment method found to be unlawful by this court. The City also claims Mr. Castner has never had standing in this issue with respect to assessments of condominiums other than the Kachemak Building and thus, has no standing to seek a broader application of the Order now.

Discussion

Mr. Castner challenged the legality of the assessment method applied to all condominium unit owners.¹ The City clearly recognized that the legality of the assessment method was the focus of Mr. Castner's original suit, and the City addressed the legality of the assessment method in its summary judgment memorandum.² The court determined that "[t]he city's assessment with respect to condominium owners is arbitrary and unreasonable." The Order applies to all condominiums and is not limited solely to the Kachemak Building, or Mr. Castner's condominium at the Kachemak Building.

The City seems to be arguing that because Mr. Castner did not file a class action, Mr. Castner does not have standing to challenge arbitrary and unreasonable assessments of other condominiums. The court concluded in the Order that Mr. Castner had standing to challenge the assessment roll, and the City did not appeal. The Order is now a final decision, and Mr. Castner has standing to seek enforcement of an order entered in his favor.

As Mr. Castner points out, the City's logic suggests the executive branch of the government could nullify a judicial declaration striking down a statute or ordinance merely by not enforcing it against individual plaintiffs. Every condominium owner would

¹ Plaintiff's Complaint, p. 2, ¶¶ 9,10.

² Defendants' Memorandum in Support of Motion for Summary Judgment, at 2, 6-7.

be forced to litigate an already settled issue. The City is precluded from relitigating the assessment method's legality under the doctrine of res judicata. Offensive nonmutual collateral estoppel is a component of the broader doctrine of res judicata and precludes defendants from relitigating an issue that the defendant previously litigated and lost against a different plaintiff if certain requirements are met.³ Here, collateral estoppel could be asserted against the City because it was a party to this first action, the issue of the assessment of condominiums would be identical, and the issue has already been resolved by the Order — a final judgment on the merits.⁴

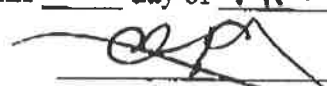
The City's assessment methodology with respect to condominiums was challenged and declared unlawful. This issue has already been resolved by a final judgment on the merits.

Conclusion

It is hereby ordered that the City fully comply with the Order and immediately cease using the method for imposing special assessments on condominium unit owners that was ruled unlawful by the Order.

The court will separately consider the question of whether contempt sanctions should be imposed on the City and any culpable City officials. It will defer a decision whether to conduct further proceedings with respect to any such sanctions, pending its determination that the City has fully complied with this order.

Dated at Kenai, Alaska, this 3rd day of April, 2015.


CHARLES T. HUGNELET
Superior Court Judge

I certify that a copy of the foregoing was
mailed to _____
placed in court box to _____
faxed to Cashier 335-2121
Klinkner 276-3680
Date 4-3-15
Judicial Assistant AC

³ *United States v. Mendoza*, 464 U.S. 154, 159 n. 4 (1984).

⁴ *See State v. United Cook Inlet Drift Assoc.*, 895 P.2d 947, 950-54 (Alaska 1995).