

Session 19-07 a Special Meeting of the Homer City Council was called to order on March 11, 2019 by Mayor Ken Castner at 4:00 p.m. at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska, and opened with the Pledge of Allegiance.

Mayor Castner asked for a motion to allow Councilmember Stroozas to participate telephonically.

ERICKSON/VENUTI MOVED TO ALLOW COUNCILMEMBER STROOZAS TO PARTICIPATE TELEPHONICALLY

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

PRESENT: COUNCILMEMBERS: ERICKSON, LORD, SMITH, STROOZAS (telephonic), VENUTI

ABSENT: ADERHOLD (excused)

STAFF: CITY MANAGER KOESTER
CITY CLERK JACOBSEN
CITY PLANNER ABBODD
CITY ATTORNEY WELLS

AGENDA APPROVAL (Only those matters on the noticed agenda may be considered, pursuant to City Council's Operating Manual, pg. 6)

LORD/VENUTI MOVED TO APPROVE THE AGENDA

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

PUBLIC COMMENT ON MATTERS ALREADY ON THE AGENDA

NEW BUSINESS

- A. Griswold v. City of Homer, 3HO-14-00243CI; Griswold v. City of Homer, 3HO-15-00009CI; Griswold v. City of Homer, 3HO-15-00021; and Griswold v. Homer Planning Commission, 3HO-18-00240CI

City Attorney Wells provided an overview of Griswold cases that are pending in the Alaska Supreme Court and Superior Court.

She explained a common theme in several of these cases as well as prior cases relates to whether the Planning Commission has the authority to issue conditional use permits (CUP) and whether the Commission has authority to issue a CUP regarding setbacks. The setback issue is repetitive throughout a lot of the proceedings and she understands his argument to be that a setback is a hard line and the argument is it's a variance from standard law to allow a change in the setback and it shouldn't be taken up using a CUP. The City's argument has been that a CUP is a list of things allowed to happen so long as you have a conditional use, and this is on the list and doesn't require a variance because it's allowed subject to a permit. A variance is varying from the law on the books and the Courts are strict about what criteria warrants a variance, and there's more flexibility and discretion in determining what justifies a CUP.

The issue of standing is often raised in cases if Mr. Griswold isn't close to the property or raises public interest issues shared in common with all Homer residents and visitors. There is a case where the city didn't raise standing but the Judge did, despite the City not doing so, and dismissed the case on standing. The Supreme Court has sent it back to the Superior Court.

Another issue often raised by Mr. Griswold is conflicts of interest, and bias by various City Councilmembers and Planning Commission members. Generally these have not been successful in the latest versions.

The biggest issue pending now in most of the cases are concerns with the way the City exercises its authority through a Planning Commission. Without declaring code and the City in violation of it, which she doesn't believe is the case, leaves the City in the position to defend against the allegations. There isn't the situation where the allegations are only based on fact specific analysis of a CUP or a variance. One of her tasks is too look at the cases and what the challenges are, how best the City can address them, but the outstanding issues are fundamental principles of authority to govern and make laws regarding land use.

City Attorney Wells explained there may be substantial litigation fees associated with the most recent Planning Commission appeal currently pending before the Superior Court.

There is a public records act decision which was predominantly decided and the City was found to have conducted itself properly, but there were some records that weren't reviewed that have been sent to the Judge to apply the Supreme Court's findings, and should take very little input from her office. There is also a pending case that went through oral argument and was

dropped by Judge Bauman when he found there was no standing, so there should also be little argument on that.

City Attorney Wells continued to give a general review of the pending cases. Questions were posed by Council regarding length of time and cost. She explained there is a constitutional right to due process and cases typically last three to four years, sometimes they move more quickly depending on the issue, and others may take longer. As far as cost, win or lose, these cases are extremely expensive for the the City because of the cost of litigation. She briefly explained how recovery of fees might play out, but couldn't address specific instances due to Attorney/Client privilege. She wasn't prepared to talk about specific costs, but based on a recent breakdown of cost she prepared before, a rough total is around \$140,000 from 2012-2015.

COMMENTS OF THE AUDIENCE

Larry Slone, city resident, commented that the ordinance tonight for the treatment center in Homer would give rise to questions that haven't been resolved through the current cases that were just presented. It seems there may be some similarity in this proposal that have been brought up in these cases.

Former Mayor Jack Cushing, city resident, commented against water being provided outside city limits. He's opposed for various reasons but in the case of the pending ordinance to provide it to a lot with a proposal to build low income housing, it needs to be built in Homer. He sees people who use low income housing and they need to be close to services because typically they are walking all the time. To be fair to them they shouldn't be that far out of town. Regarding a past case the Attorney commented on, he remembers being on the zoning commission with Margaret Pate when a Councilmember testified they'd like to see the zoning go through because it would increase the value of his property. He said to Margaret, I guess that Councilmember just took themselves out of the final vote at the Council table, but when it went to Council that person voted. Mr. Griswold won that case at the Supreme Court. He touched on some of the processes of an appeal to the court and encouraged members to be conscious in their deliberations.

Scott Adams, city resident, commented regarding ordinance 19-07 that when you asked the voters for a certain amount of money for the police station, that's what they intended the funds to go to and not skim off to put toward something else. He doesn't think that sits well with the voters. He doesn't support extending water to Kachemak City, and agrees that maybe they should build their structure in town. He was annexed by the City, stating we were going to have water run across the ridge and gravity feed down and everyone would eventually have water. That was in 2004, and people are still putting in expensive wells or cisterns and it doesn't seem right that someone outside city limits is going to get water because they are throwing money at the project.

ADJOURN

There being no further business to come before the Council Mayor Castner adjourned the meeting at 4:52 p.m. The next Regular Meeting is Tuesday, March 26, 2019 at 6:00 p.m., Worksession 4:00 p.m., Committee of the Whole at 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.

Melissa Jacobsen, MMC, City Clerk

Approved:_____