

Session 19-26 a Regular Meeting of the Homer City Council was called to order on September 4, 2019 by Mayor Ken Castner at 5:30 p.m. at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska, and opened with the Pledge of Allegiance.

PRESENT: COUNCILMEMBERS: ADERHOLD, ERICKSON, LORD, SMITH, STROOZAS, VENUTI

STAFF: CITY CLERK JACOBSEN
CITY ATTORNEY WELLS
CITY ATTORNEY GOLDSMITH

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

The agenda was approved by consensus of the Council.

PUBLIC COMMENT ON MATTERS ALREADY ON THE AGENDA (3 minute time limit)

PENDING BUSINESS

- A. Vacation of a 10 foot wide drainage easement on Lot 24-A, AA Mattox Peggi's Addition granted by AA Mattox Peggi's Addition (Plat HM 99-64) within Section 17, Township 6 South, Range 13 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2019-048V.
 - i. Letter from Max Best KPB Planning Director
 - ii. KPB Planning Commission Packet Materials
 - iii. KPB Approved Minutes
 - iv. Correspondence from Echo Trading Company requesting Veto of KPB Approval of the vacation of a 10 foot wide drainage easement on Lot 24-A, AA Mattox Peggi's Addition granted by AA Mattox Peggi's Addition

Mayor Castner convened the hearing before the Homer City Council on the Petition to the Kenai Peninsula Borough Planning Director for Vacation of a Drainage Easement at 4510 Heidi Court. According to Kenai Peninsula Borough Code of Ordinance 20.70.110, vacation of a public easement within the City boundaries "may not be approved without the consent of the city council." Council has 30 days to veto the Kenai Peninsula Borough Planning Commission's consent to the vacation. If Council fails to issue a veto within that time period, Council is considered to have consented to the vacation.

ATTORNEY SCOPE DISCLOSURE

Mayor Castner disclosed that City Attorney Wells has advised the City regarding the veto process and conversed with members of the City Administration, including the City Manager, City Planner, and Public Works Director, as well as members of the Borough legal department, regarding this hearing. She has also corresponded with Robert Malloy, an attorney representing Echo Trading Post, regarding Council's veto power and the Borough's vacation process. That correspondence has been included in the hearing materials and distributed to the parties. Ms. Wells is here today to give Council recommendations regarding the hearing process, standards of review, and general procedures. Ms. Wells drafted a hearing agenda that was given to the parties and made publicly available as well as the Hearing Outline I am using to chair this hearing. However, Ms. Wells will not enter into deliberations with Council or advise Council regarding its substantive findings.

He asked if any party, or Council member objected to Ms. Wells' participation in this hearing.

No objection was expressed by Council or the parties.

GENERAL INTRODUCTION & ESTABLISHING STANDARD OF REVIEW

Mayor Castner provided an overview of the case, in which the Kenai Peninsula Borough Planning Commission granted the vacation request on June 24, 2019. Due to procedural matters outside the scope of Council's veto authority and this hearing, the Borough adopted August 12, 2019 as the date from which the 30-day period for veto/consent would run. As a result, Homer City Council must issue its veto or consent before September 11, 2019 or its silence will be seen as consent to the Borough Planning Commission's authorization of the vacation. This procedure is required under both the Kenai Peninsula Borough Code of Ordinances as well as Alaska Statute 29.40.140.

While the Kenai Peninsula Borough Code of Ordinances grants the City Council "veto authority" in this matter, it does not require Council to apply a specific standard of review when considering the vacation or to issue findings regarding Council's decision to veto or not veto. Further, the Borough, which is the platting authority authorized to act in this matter, has adopted a comprehensive procedure for reviewing and making findings regarding vacations. While the Homer Planning Commission is given an opportunity to comment during that process, and Council retains the right to veto the Borough's decision, neither the Commission nor this Council acts as a fact finder in the vacation process.

Mayor Castner asked for a motion from City Council to limit the scope of Council's review of the Borough's vacation consent to the following:

Council may only veto a vacation authorized by the Borough Planning Commission and deferred to Council by the Borough for its consent if the majority of Council members present

at a hearing on the matter find that the vacation may have a negative impact on real property or improvements within the City and no viable alternative option exists to mitigate the impact.

STROOZAS/LORD MOVED TO ACCEPT THAT STANDARD OF REVIEW.

There was brief discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

PRESENTATION OF EVIDENCE

Mayor Castner addressed Council's treatment of materials submitted to Council at or for consideration at this hearing and explained the City Attorney proposed Council adopt the following standard regarding evidence and supplemental materials during this hearing:

In determining whether or not to veto the Borough Planning Commission's decision, Council will rely upon the record that was before the Borough Planning Commission and any findings issued by the Borough Planning Commission.

Council may consider documents submitted to Council after the Borough Planning Commission's decision was issued so long as both parties and Council receive these documents before the hearing and the documents are demonstrative in nature and are not submitted to establish or contest facts. The City Council does not act as a fact finder in the vacation proceeding.

LORD/VENUTI MOVED TO ADOPT THE EVIDENCE STANDARD AS READ.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

THE HEARING SCHEDULE

Mayor Castner explained tonight's process. To reiterate, this hearing will begin with a staff overview that will be no more than 5 minutes with 5 minutes reserved for Council's questions of staff. Parties of record in the Borough proceeding will then each be given 15 minutes to

address Council. They may reserve a portion of their time before starting their presentations for rebuttal.

City Planner Abboud provided a brief overview of the City's process of the Planning Department receiving the materials from the Borough, requesting review from the City Engineer, and providing all information to the Homer Planning Commission for their review and for public comment.

There were no questions from the Council and Mayor Castner opened the floor to the parties.

AnnaLisa Cox commented that she followed the Boroughs process for requesting a drainage easement, cited excerpts from Borough Code regarding utility easements, explained adequate public space exists. She requests the Council not veto the vacation.

Susanna Webster, representative for Echo Trading, commented in support of vetoing the vacation explaining the process wasn't followed properly as Mr. Neal did not receive notice of the vacation before the City made recommendations to the Borough and the inadequate ditching in the right of way and needs to be dealt with properly.

Council had no questions for the parties.

LORD/STROOZAS MOVED TO AFFIRM THE VACATION OF THE EASEMENT.

Councilmember Lord commented that an alternative option exists to mitigate the impact, it appears the Borough did the fact finding for their decision on the easement, and the easement on the property is less than ideal.

Councilmember Smith commented he is uncomfortable affirming due to the claim that Mr. Neal didn't have an opportunity to interact on the municipal level. He would prefer they fall silent on the issue.

Councilmember Aderhold shared her discomfort with either decision to affirm or veto. Donna wholly uncomfortable with either decision.

There was discussion to clarify if the Council chooses not to support the motion they will neither be vetoing nor giving consent, but will remain silent on the issue.

VOTE: NO: VENUTI, ADERHOLD, SMITH, ERICKSON, LORD, STROOZAS

Motion failed.

There brief comments clarifying the Councils silence regarding the vacation means they neither affirm nor veto the Boroughs decision regarding the easement.

NEW BUSINESS

COMMENTS OF THE AUDIENCE

ADJOURNMENT

There being no further business to come before the Council Mayor Castner adjourned the meeting at 6:10 p.m. The next regular Meeting is Monday, September 9, 2019 at 6:00 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: September 23, 2019