Michael R. Gatti, Esq.
Max D. Holmquist, Esq.
JERMAIN, DUNNAGAN & OWENS, P.C.
3000 A Street, Suite 300
Anchorage, AK 99503
Telephone: (907) 563-8844
Facsimile: (907) 563-7322
mgatti@jdolaw.com
mholmquist@jdolaw.com

Attorneys for City of Homer

BEFORE THE HOMER BOARD OF ADJUSTMENT

In the Matter of

APPEAL OF ZONING PERMIT 1020-782

CITY OF HOMER'S BRIEF

FACTS

On September 10, 2020, Scott and Stacy Lowry (the "Applicants") applied to Homer City Planning ("HCP") for a zoning permit for their property at 541 Bonanza Avenue (the "Property") in Homer's Central Business District ("CBD"). [R. 18-20] The property has an existing residential single family home. [R. 24-25; 262] The Applicants applied for a zoning permit to construct an additional 360 square foot single family dwelling (the "Dwelling" or "Accessory Dwelling") on the Property.[1] [R. 18] HCC 21.70.010(a)(1) requires a zoning permit for the construction of any building or structure. The Application included a site plan, a map of the property, information about exterior

[1] The Applicants previously applied for a conditional use permit ("CUP") to allow the Accessory Dwelling as a mobile home under HCC 21.18.030(c), but the Homer Planning Commission (the "Commission") denied the application. [R. 34-37] Homer City Planning ("HCP") later determined that a zoning permit, rather than a CUP, was required for the Accessory Dwelling. [R. 259] HCP worked with the Applicants to complete their zoning permit application. [R. 259]

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JERMAIN DUNNAGAN & OWENS
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ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

lighting, photographs of the property, and a design rendering of the anticipated completed Dwelling. [R. 18-26] The Applicants also obtained a water/sewer permit for the Dwelling. [R. 28-29] HCP ensured that the Property has the necessary driveway permit from the Homer Public Works Department ("PWD"). [R. 18; 30-31; 261]

During the application process, Planning Technician Travis Brown visited the Dwelling and observed that it contained appliances, furniture, cooking facilities, sleeping areas, and two entrances and exits. [R. 259] Brown also confirmed with PWD that the Dwelling is connected to utilities. [R. 259] While the Dwelling was once used as a shipping container, HCP determined that it had been converted to a single family dwelling. [R. 260]

On October 5, 2020, HCP approved and issued Residential Zoning Permit 1020-782 (the "Permit").[2] [R. 17] HCP found that the Dwelling is permitted in the CBD under HCC 21.18.020(ii) because it is an accessory dwelling unit to a principal single-family dwelling on the Property. [R. 259-260] The Accessory Dwelling is smaller than and subordinate to the principal home on the property. [R. 24; 262] Pursuant to its standard practice and the City's fee schedule, HCP charged the Applicants a fee of $300, comprised of the ordinary permit fee of $200 for a single family unit and an additional fee of $100 for commencing construction without a permit. [R. 17-18; 260]

Appellant Frank Griswold appealed HCP's issuance of the Permit to the Homer Planning Commission (the "Commission"). [R. 15-16] The City was represented by the City Attorney in the appeal. [R. 198] In advance of the appeal hearing, the Commission

[2] Under the supervision of City Planner Rick Abboud, Brown signed and issued the Permit. [R. 259; 261]

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ANCHORAGE, ALASKA 99503
(907) 563-8844
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promulgated a hearing procedure discussing the submission of written briefs, the order in which the hearing would proceed, the time allotted for each party to present argument, evidence, testimony, and to cross-examine witnesses, and other issues (the "Procedural Order"). [R. 168] Pursuant to the Procedural Order, the parties filed written briefs and witness lists prior to the hearing. [R. 169-197; 199] The City Clerk provided written notice of the hearing to Griswold, the Applicants, HCP, the City's counsel, and the owners of all properties within 300 feet of the subject Property. [R. 242-243] The hearing notice included the date and time of the hearing, the subject matter of the appeal to be discussed, and Zoom videoconference information. [R. 242]

On March 11, 2021, the Commission held the hearing on Griswold's appeal. The duration of the hearing was three hours and sixteen minutes. [R. 244-265] Pursuant to the Procedural Order, Griswold and the City were each given 30 minutes to present testimony, other evidence, and oral argument. [R. 257-264] Griswold was provided an additional 10 minutes to cross-examine the City's witnesses. [R. 262-264] The Commission allowed Griswold to reserve 10 minutes of his initial 30-minute period for cross-examination and Griswold cross-examined the City's witnesses for over 20 minutes. [R. 262-264] Griswold attempted to call Brown, Abboud, and the Applicants as witnesses, but each declined to testify on Griswold's behalf and the Commission correctly determined that it lacked authority to compel witnesses to testify. [R. 253-257]

Following the appeal hearing Griswold moved to disqualify Commission Chair Scot Smith from participating in the appeal and permanently remove him from the Commission. [R. 267-268] Griswold alleged that at a subsequent unrelated Commission

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3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

meeting, Smith commented that he learned a lot in the appeal hearing, that some of the procedural issues presented a steep learning curve for him, and that he "giggled" after the hearing was over. [R. 267] On April 15, 2021, the Commission held a special hearing to address Griswold's allegation at which it declined to disqualify Smith. [R. 280-281]

On May 7, 2021, the Commission issued detailed written findings and decisions on each of the issues raised in Griswold's notice of appeal. [R. 6-11] The Commission upheld HCP's issuance of the Permit. [R. 10] Griswold now appeals the Commission's decision to the Homer Board of Adjustment ("BOA"). [R. 3-5]

STANDARD OF REVIEW

In reviewing the Commission's decision, the BOA will exercise independent judgment on the legal issues raised by the parties, including the interpretation or construction of the Homer zoning code, ordinances, or other provisions of law.[3] The BOA shall defer to the findings of the Commission regarding disputed issues of fact.[4] Findings of fact adopted expressly or by necessary implication by the Commission shall be considered as true if they are supported by substantial evidence in the record.[5] "Substantial evidence" means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[6] The BOA will make its decision based on the record and will not consider new evidence or changed circumstances.[7]

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ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

[3] HCC 21.93.540(d).
[4] HCC 21.93.540(e).
[5] *Id*.
[6] *Id*.
[7] *Id*.

ARGUMENT

HCP's grant of the Permit was in accord with the Homer Zoning Code and appropriate in all respects. HCC 21.18.020(ii) expressly allows the construction of an accessory dwelling unit on a property with an existing principal single-family dwelling. The record reflects that this is precisely the purpose for which Applicants sought the Permit. The detailed application contained all required information for HCP to decide whether to grant the Permit. The Commission's decision upholding HCP's grant of the Permit is based on substantial evidence in the record. The Commission's procedures were fair in fact and appearance and complied with Due Process requirements. As demonstrated below Griswold's appeal is factually and legally meritless, requiring the BOA to uphold HCP's decision to grant the Permit and the Commission's decision on appeal.

The City's response to each of Griswold's "Allegations of Error" is provided below:[8]

1. HCP's Planning Technician was Authorized by HCC 21.90.020(b) to Grant the Permit

HCC 21.90.020(b) states:

> b. If appointed by the City Manager, the City Planner shall have all functions and may exercise all powers necessary to administer and enforce the zoning code. Assistants to the City Planner may exercise the administration and enforcement functions and powers of the City Planner under the City Planner's supervision.

[8] At this stage many of Griswold's arguments are conclusory and unclear, and the City reserves the right to address them more thoroughly in its reply brief. *See* HCC 21.90.530(b).

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This provision clearly authorizes any assistant under the supervision of the City Planner, including Planning Technician Travis Brown, to exercise the administrative function of issuing zoning permits under HCC 21.70. Griswold's assertion that Brown did not have this authority is incorrect.

There is no conflict between HCC 21.70.030(a) and HCC 21.90.020(b). HCC 21.70.030(a) requires the City Planner to review a zoning permit application to ensure compliance with applicable HCC provisions, check that the applicant has obtained all necessary permits, and to issue a permit if the application meets these requirements. HCC 21.90.020(b) allows the City Planner to delegate his authority to review zoning permit applications to an assistant under his supervision. This analysis comports with rules of statutory interpretation whereby municipal ordinances are to be interpreted "with a view towards reconciling conflict and producing a harmonious whole."[9] That is exactly what happened here. Accordingly, the Commission's finding that Brown was authorized to sign and issue the Permit was in accord with the express HCC authority described above.

2. The Technical Violation of HCC 21.70.010(b) is Not a Basis for Denying the Permit

HCC 21.70.010(b) states "[t]he zoning permit required by this section shall be obtained prior to the commencement of any activity for which the permit is required. Failure to do so is a violation." It was a technical violation for the Applicants to commence the permitted activity before obtaining a permit. However, HCP has the

[9] *Allen v. Alaska Oil and Gas Conservation Com'n*, 147 P.3d 664, 668 (Alaska 2006) (citation omitted).

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JERMAIN DUNNAGAN & OWENS
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ANCHORAGE, ALASKA 99503
(907) 563-8844
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discretionary enforcement authority to address such violations.[10] There is no requirement for HCP to prescribe any particular penalty (or any penalty at all) for a violation. In accord with its ordinary practice and the Homer Fee Schedule, HCP charged the Applicants an additional $100 fee due to this technical violation. [R. 17-18; 260] HCP determined that this fee, in light of the Applicants' diligent work to make a lawful improvement to the Property, was a satisfactory means of addressing the violation. This discretionary enforcement decision is not subject to review and the fact that a violation occurred does not invalidate the Permit.

The Commission did not "waive" HCC 21.70.010(b) when it held that the Applicants' technical violation of that provision is not grounds to reverse the issuance of the Permit. [R. 9-10] HCC 21.70.010(b) simply says that failure to obtain a zoning permit prior to commencing the permitted activity is a violation. Neither HCP nor the Commission "waived" this violation. To the contrary, HCP fined the Applicants $100 due to the violation. This is not a basis for invalidating the Permit.

3. No Conditional Use Permit is Required

HCC 21.18.020 states, in relevant part:

> The following uses are permitting outright in the Central Business District, except when such use requires a conditional use permit by reason of size, traffic volumes, or other reasons set forth in this chapter:
> …
> ii. One detached dwelling unit, excluding mobile homes, as an accessory building to a principal single-family dwelling on a lot.

[10] *See Yankee v. City and Borough of Juneau*, 407 P.3d 460, 464 (Alaska 2017) (discretionary enforcement decisions are not subject to review). *See also* HCC 21.90.020(c)(4).

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JERMAIN DUNNAGAN & OWENS
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3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
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By contrast, HCC 21.18.030 describes the uses for which a conditional use permit ("CUP") is required. Generally, a CUP is required where there is "[m]ore than one building containing a permitted principal use on a lot." HCC 21.18.030(j). Read together, the intent of these provisions is to create a general rule that a CUP is required for multiple buildings containing a permitted principal use on lot, but to carve out an exception where no CUP is required for a detached accessory dwelling unit on the same lot as a principal single-family dwelling.

The history of HCC 21.18.020(ii) clearly establishes that this was the City Council's intent. It was adopted in 2011 as part of Homer Ordinance 11-44(S). The ordinance states "[t]he Homer Advisory Planning Commission wishes to allow the placement of an accessory dwelling unit on a lot in the…Central Business zoning district[] without the burden of obtaining a conditional use permit if no other regulation requires such…."[11] The City Council's express intent in adopting HCC 21.18.020(ii) contradicts Griswold's argument that a CUP is required under these circumstances.

4. The Dwelling is a Detached Accessory Dwelling Unit Subject to HCC 21.18.020(ii)

HCP correctly determined that the Dwelling is a "detached dwelling unit…[that is] an accessory building"[12] to the existing single-family home on the Property. The zoning code defines "accessory building" as "an incidental and subordinate building customarily incidental to and located on the same lot occupied by the principal use or building, such

[11] Homer Ord. 11-44(S).
[12] HCC 21.18.020(ii).

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ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

as a detached garage incidental to a residential building."[13] "Dwelling" or "dwelling unit" is defined as "any building or portion thereof designed or arranged for residential occupancy by not more than one family and includes facilities for sleeping, cooking and sanitation."[14] At the appeal hearing, City Planner Abboud testified that the Dwelling was incidental and subordinate to the principal single-family home on the Property. [R. 262] The record reflects that it is a "Dwelling" as defined by the HCC. [R.259-260] Accordingly, the Commission's finding that the Dwelling is an accessory dwelling unit subject to HCC 21.18.020(ii) is correct.

Griswold's remaining points are also meritless. The assertion that the Commission "transformed" a permit for a single-family home to one for an accessory dwelling unit is contradicted by the evidence. Brown testified that HCP and the Applicants discussed an application for a permit for an accessory dwelling unit and that HCP assisted the Applicants with completing their application. [R. 259] City Planner Abboud confirmed that there were conversations with the Applicants about the fact that the Dwelling would be considered an accessory dwelling unit. [R. 260] The application was always for a zoning permit for an accessory dwelling unit. The Commission did not "transform" the nature of the request. Nothing in the zoning code prohibits HCP from advising a property owner about possible permitting options for a project. Griswold's complaints related to the proceedings for CUP 20-14 are outside the scope of this appeal, which relates specifically to the issuance of the Permit.

[13] HCC 21.03.040.
[14] *Id.*

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5. The Accessory Dwelling is Not a Nuisance Under HCC 21.18.080

Griswold's assertion that the Accessory Dwelling violates HCC 21.18.080 is meritless. HCC 21.18.080(c) provides:

> c. Commercial vehicles, trailers, shipping containers and other similar equipment used for transporting merchandise shall remain on the premises only as long as required for loading and unloading operations, and shall not be maintained on the premises for storage purposes unless screened from public view.

The Accessory Dwelling is a converted shipping container. [R. 25-26;] While it may have been used for transporting merchandise in the past, it is certainly not used for that purpose on the Property. Converted shipping containers have become a source for inexpensive housing. The Applicants converted it to an accessory dwelling with appliances, furniture, cooking facilities, sleeping areas, and utility connections. [R. 259] The Accessory Dwelling is not a nuisance under HCC 21.18.080(c) because (1) it was not used for transporting merchandise to the Property; (2) it was not used for storage purposes at the Property; and (3) it is a "dwelling" or "dwelling unit" under the Zoning Code because it is arranged for residential occupancy and includes facilities for sleeping, cooking, and sanitation.[15]

Even if the Accessory Dwelling could be considered a nuisance and in violation of HCC 21.18.080, that would not be a basis for invalidating the Permit. HCP has discretionary enforcement authority to address such violations.[16] The Alaska Supreme

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JERMAIN DUNNAGAN & OWENS
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ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

[15] *See* HCC 21.03.040.
[16] HCC 21.90.020(c)(4).

Court held that discretionary enforcement decisions are not subject to review.[17] Accordingly, HCP's exercise of its discretionary authority not to enforce the alleged violation of HCC 21.18.080 is not reviewable and is not a basis for invalidating the Permit.

6. A Zoning Permit Appeal is not the Proper Venue to Address Driveway Permitting[18]

Griswold appeals the approval of a zoning permit by the City Planner under HCC 21.93.020(a). Prior to the issuance of a zoning permit, an applicant must obtain any other necessary permits under the Zoning Code (HCC Title 21).[19] HCC 11.08 regulates driveway permits and is not part of the Zoning Code. PWD processes and reviews driveway permit applications. HCP is not involved in driveway permitting. [R. 261] Rather, HCP reviews a zoning application to ensure that the proposed building and intended use comply with city code and that the applicants have obtained all permits required under federal, state, and local law.[20]

The Applicants submitted and HCP reviewed driveway permits for the Property. [R. 30-31; 261] These driveway permits remain in place and have not been invalidated by PWD. [R. 261] Griswold's complaint about the underlying validity of these existing permits is irrelevant to this appeal of a zoning permit issued under HCC 21.70. That

[17] *See Yankee*, 407 P.3d at 464.
[18] With regard to this issue, the Commission held that "the lot specified in ZP 1020-782 is not an abutting lot and therefore the driveway is not in violation of code." [R. 10] Griswold alleges in conclusory fashion that this finding was erroneous. However, this issue is irrelevant because HCC 21.70.030(a) only requires HCP to determine whether the Applicants had obtained a driveway permit as required by PWD. It is undisputed that they did. [R. 30-31]
[19] HCC 21.70.070.
[20] HCC 21.70.030(a).

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issue is within the sole discretion of PWD. Accordingly, this issue is not a basis to challenge the issuance of the Permit.

7. Griswold's Claim of Bias Against Commission Chair Smith is Unsupported by the Evidence in the Record

The record reflects two instances where Griswold asserted Commission Chair Scot Smith lacked partiality with regard to this appeal.[21] Neither has merit. In order to establish a lack of partiality under HCC 1.18, Griswold must show that Smith was incapable of acting in the public's best interest or that a reasonable person would conclude that Smith's ability to make a decision in the public's best interest was impaired.[22] There is a presumption that an administrative board acting in an adjudicative capacity is unbiased.[23]

Griswold first complained that during an unrelated hearing regarding CUP 20-14, after the Commission voted to deny the Applicants' request for a CUP for a mobile home, Smith said:

> "I think you can see we're trying to advocate for you, and balancing our lay down from Mr. Griswold with code and your desires was an interesting

[21] *See* HCC 1.18.048. Griswold claims that Smith "had a flagrantly disqualifying bias" with regard to this appeal. [R. 4] However, Homer City Code does not refer to "bias," but rather refers to "partiality." "Partiality" occurs when

"1. The ability of a member of the quasi-judicial body to make an impartial decision is actually impaired; or

2. The circumstances are such that reasonable persons would conclude the ability of the member to make an impartial decision is impaired and includes, but is not limited to, instances in which:

a. The member has a personal bias or prejudice for or against a party to the proceeding including a party's lawyer;

b. The member or an immediate family member is a party, material witness to the proceeding, or represents a party in the proceeding."

"Impartial" means "acting in a manner that the City official believes is in the public's best interest and not acting to benefit a financial or personal interest of the City official." HCC 1.18.020.

[22] *Id.*

[23] 4 Am. Law. Zoning § 38.14.

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process. So we'll trust that you get back with the City Planner and are able to move forward."

[R. 38; 175] Chair Smith noted that he does not carry any bias, that his comments at the CUP hearing were meant to recognize all the various parties to that application and their respective positions, and that he was not previously nor is he currently biased in favor of a party in Griswold's appeal. [R. 204-205] The Commission declined a motion to excuse Smith from hearing the appeal due to partiality. [R. 204-205]

Following the March 11, 2021 hearing, Griswold again moved to disqualify Commission Chair Scot Smith from participating in the appeal and permanently remove him from the Commission because Smith commented at an unrelated subsequent Commission hearing that he learned a lot in the appeal hearing, that some of the procedural issues presented a steep learning curve for him, and that he "giggled" after the hearing was over. [R. 267-268] On April 15, 2021, the Commission held a special hearing to address Griswold's allegation. [R. 280-281] The Commission considered a motion to disqualify Smith from further participation in the appeal, but the motion failed for lack of a second. [R. 281]

There is no evidence to support Griswold's allegation that Smith's ability to make a decision in the public's best interest was impaired due to partiality. Griswold has failed to overcome the presumption that Smith was unbiased.[24] Accordingly, his claims regarding partiality are meritless.

[24] Griswold's assertion regarding alleged ex-parte communication is waived because it is raised for the first time on appeal. *See West v. Alaska Mental Health Tr. Auth.*, 467 P.3d 1064, 1071-72 & n.36 (Alaska 2020) (citation omitted).

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3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
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8. The Commission's Hearing Procedure Complied with Due Process Requirements

The appeal hearing in this matter complied with all procedural due process requirements. Procedural due process under the Alaska Constitution "requires notice and opportunity for hearing appropriate to the nature of the case."[25] The hearing must be fair and have the appearance of fairness.[26] In administrative hearings, due process does not require adherence to the standards a court would follow, but rather that the administrative process afford an impartial decision-maker, notice and the opportunity to be heard, procedures consistent with the essentials of a fair trial, and a reviewable record.[27]

In this case, nearly two months before the appeal hearing the Commission issued its Procedural Order covering written briefing, the presentation of evidence, the order of the hearing, and rules related to evidence and privilege. [R. 168] The Procedural Order allowed Griswold and the City 30 minutes each to present testimony, other evidence, and oral argument. [R. 168] It allowed Griswold an additional 10 minutes to cross-examine the City's witnesses. [R. 168]

The Commission provided Griswold with a three hour and sixteen minute hearing for an appeal of an administrative zoning permit. The appeal process provided Griswold with the option to call witnesses but he failed to secure any witnesses to voluntarily testify in support of his appeal. [R. 257] Notwithstanding the Procedural Order, the Commission allowed Griswold to reserve time from his initial presentation to increase his

[25] *Copeland v. Ballard*, 210 P.3d 1197,1201 (Alaska 2009) (citations omitted).
[26] *Id.*
[27] *Keiner v. City of Anchorage*, 378 P.2d 406, 409-410 (Alaska 1963).

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time for cross-examining the City's witnesses to over 20 minutes. [R. 262] In short, the appeal was eminently fair, meeting and even exceeding all due process requirements for an administrative hearing under well-established Alaska law.

Griswold's assertion that he was denied the right to conduct direct examination of witnesses is false. The Commission provided Griswold 30 minutes to conduct direct examination. Instead, Griswold presented oral argument and cross-examined the City's witnesses. [R. 257-258; 262-264] The Procedural Order and the hearing itself provided ample opportunity for the presentation of evidence and development of a full record consisting of abundant substantial evidence to support the Permit approval. It was "a hearing appropriate to the nature of the case."[28] Griswold fails to explain how he was prejudiced by the procedure in this case for the simple reason that there is no evidence or argument to support his meritless claim.[29]

9. The Commission Complied with HCC 21.93.300(d)

HCC 21.93.300(d) says, in relevant part, "Any person may file a written brief or testimony in an appeal before the Commission." While the Procedural Order invited the parties to file written briefs, the Commission did not preclude non-parties from submitting written briefing or comments regarding the appeal. [R. 168] The Commission accepted the only written comments its received with regard to the appeal, from resident Michelle Borland. [R. 118] No evidence in the record suggests that the

[28] *Copeland*, 210 P.3d at 1201.

[29] *See Fairbanks Gold Mining, Inc. v. Fairbanks North Star Borough Assessor*, ___P.3d___, 2021 WL 2490169 *8 (Alaska 2021) (quoting *Nash*, 239 P.3d at 699) ("[a] violation of due process should be alleged with particularity and a showing of prejudice").

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ANCHORAGE, ALASKA 99503
(907) 563-8844
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Commission precluded any non-parties from submitting written briefing. Rather, the record reflects that the Commission complied with HCC 21.93.300(d).

10. The Commission Properly Identified the Parties to the Appeal

Before, during, and after the appeal hearing, the Commission and the City Clerk properly identified the parties to the appeal: Griswold is the Appellant and the City is the Appellee. [R. 7; 167; 251-252] Griswold is the Appellant because he appealed HCP's grant of the Permit and asked the Commission to reverse that decision.[30] The City is the Appellee because its decision to issue the Permit is being appealed.[31] Under HCC 21.93.100, the Applicants must be provided notice of the appeal and may participate if they choose to.[32] However, no HCC provision requires the Applicants to be formally designated as parties or to participate in the appeal.

11. The City Properly Noticed the Appeal Hearing

HCC 21.93.100(b) discusses the notice required for an appeal hearing under the zoning code. It states:

> The appellant, the applicant for the action or determination that is the subject of the appeal, the owner of the property that is the subject of the action or determination, and all parties who have entered an appearance shall be provided not less than 15 days' written notice of the time and place of the appeal hearing. Neighboring property owners shall be notified as set forth in HCC 21.94.030.

[30] *See* Black's Law Dictionary (9th ed. 2009) (defining "Appellant" as "[a] party who appeals a lower court's decision, usu[ally] seeking reversal of that decision").
[31] *See* Black's Law Dictionary (9th ed. 2009) (defining "Appellee" as "[a] party against whom an appeal is taken and whose role it is to respond to that appeal, usu[ally] seeking affirmance of the lower court's decision"). The record occasionally refers to City Planner Abboud as the Appellee, but there is no legal distinction between a government official acting in his official capacity and the government itself. *See Vest v. Schafer*, 757 P.2d 588, 598-99 (Alaska 1988).
[32] *See* HCC 21.93.100(b).

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JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

HCC 21.94.030(a) states:

> Except as provided in subsection (b) of this section, a copy of the aforementioned newspaper notification or notice containing at least the same information shall be mailed to owners of record on the Borough Assessor's records of real property within a 300-foot periphery of the site that is the subject of the proposed action.

The City Clerk's public notice for the March 11, 2021 appeal hearing met the requirements of both provisions in that it gave notice of the time and place of the hearing and was mailed to all neighboring property owners within 300 feet of the Property. [R. 241-243] The City Clerk reasonably interpreted HCC 21.93.100(b) to govern the required contents of a public notice for an appeal hearing while HCC 21.94.030 governs the mailing requirement. This interpretation is supported by the fact that HCC 21.93.100(b) does not reference HCC 21.94.020, which discusses general requirements for the content of public notices, but rather only refers to HCC 21.94.030, which discusses the mailing requirement.

Even if HCC 21.93.100(b)'s reference to HCC 21.94.030 could be interpreted to require a public notice meeting all requirements of HCC 21.94.020, the initial public notice of this appeal sent to the same set of neighboring property owners substantially complied with those requirements. [R. 124-125] This cures any alleged deficiency in the public notice of the March 11, 2021 hearing. Accordingly, Griswold's assertion regarding the public notice of appeal hearing is meritless.

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JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

12. The City's Counsel Represented the City in Accord with its Ethical Responsibilities

Griswold's assertions regarding the City's counsel are both frivolous and irrelevant to the outcome of this appeal. The City's counsel filed an Entry of Appearance indicating that it represented the City in this appeal. [R. 198] The City's counsel explained at a hearing in this matter that it was representing the City and not the Commission. [R. 247] At the appeal hearing, multiple commissioners noted that it was very clear that the City Attorney was representing the City in this appeal. [R. 251-252] The Commission's written decision also indicates that the City Attorney was representing the City. [R. 7] It is difficult to imagine what other steps Griswold believes the City's counsel should have taken to identify its client in this appeal.

Griswold fails to explain why he believes the City Attorney's representation of the City in this appeal conflicted with its duties under HCC 2.16.010(e). HCC 2.16.010(a) expressly authorizes the City Attorney to represent any department head within the City administration. The City Attorney's representation of the City with respect to HCP's issuance of the Permit was entirely appropriate.

The City Attorney's representation of the City in this appeal is irrelevant to any substantive issue in this appeal and cannot be a basis for reversing the Commission's decision.

CONCLUSION

HCP's grant of the Permit was in accord with the Homer Zoning Code and appropriate in all respects. The Accessory Dwelling is expressly allowed under HCC

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
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FAX (907) 563-7322

21.18.020(ii). The detailed application contained all information required for HCP to decide whether to grant the Permit. The Commission's decision upholding HCP's grant of the Permit is supported by substantial evidence in the record and the Commission's procedures were appropriate and complied with Due Process requirements. Griswold's appeal is meritless. Accordingly, the BOA should uphold HCP's decision to grant the Permit and the Commission's decision on appeal.

DATED this 1st day of July, 2021, at Anchorage, Alaska.

JERMAIN DUNNAGAN & OWENS, P.C.
Attorneys for Appellee
City of Homer

By: s/*Michael R. Gatti*/
Michael R. Gatti
Alaska Bar No. 8306033
Max D. Holmquist
Alaska Bar No. 0911057

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
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