

Session 21-24 a Special Meeting of the Homer City Council sitting as Board of Adjustment was called to order on September 20, 2021 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.

PRESENT: COUNCILMEMBER ADERHOLD, DAVIS, HANSEN-CAVASOS, LORD, SMITH

ABSENT: COUNCILMEMBER VENUTI (Excused)

STAFF: CITY CLERK JACOBSEN
ATTORNEY BRANDT-ERICHSEN

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

LORD/ADERHOLD MOVED TO APPROVE THE AGENDA.

There was no discussion.

VOTE: YES: SMITH, ADERHOLD, DAVIS, LORD, HANSEN-CAVASOS

Motion carried.

NEW BUSINESS

- a. Memorandum 21-153 from City Clerk re: Motions filed by Appellant Frank Griswold Related to the Appeal of CUP 20-15 and Zoning Permit 1020-782

Mayor Castner opened the floor to comments from the parties. He proposed 10 minutes for each side to comment, that appellant Frank Griswold would comment first then Attorney Holmquist on behalf of the City.

Mr. Griswold, participating by telephone through Zoom, asked to raise a procedural matter regarding the Board of Adjustment not having representation as mandated by Homer City Code. Mayor Castner advised that Attorney Brandt-Erichsen was in attendance via Zoom.

Mr. Griswold raised the matter that neither the notice that was mailed nor the agenda has any provisions for comments until the end at audience comments and he thinks a lot of people may not have been aware they could comment and he was unable to prepare a statement.

Mayor Castner reiterated he's providing an opportunity to for the parties to speak. He added that motions for reconsideration typically come from within the body, that they've never had a third party request for reconsideration, and that isn't a procedure in Homer City Code (HCC) to allow it to take it up.

Mr. Griswold commented if the Mayor had read the email he sent he explained with specific examples how he has submitted motions for reconsideration in the past that were provided to the Board by the Clerk for review. He also argued that it didn't seem that the Mayor was aware of what the memorandum from the Clerk is about, and clarified it's about two motions for reconsideration and a motion for leave to supplement his points on appeal, because he wants to appeal the decision of the Planning Commission decision on remand to the Board of Adjustment. Mayor Castner attempted to give assurance that the Board would listen to his arguments and make a decision whether to consider the matters.

Mr. Griswold continued that the City Clerk's duties are ministerial and not adjudicatory and she can't reject timely filed motions to the Board of Adjustment, but should have forwarded them to the respective bodies to decide whether to take them up. He addressed the differences of the notice of appeal rights on the decisions that were issued and that a decision of the Planning Commission can't be appealed directly to the Superior Court. He appealed to the BOA, the BOA remanded to the Planning Commission, a remand decision isn't a final decision, and only final decisions can be appealed. The Planning Commission never took up the remand, they waited for a strategic withdrawal of the CUP so they wouldn't have to take it up, and they don't have the authority to dismiss the appeal. The BOA has never issued a final decision. If he filed it in Superior Court they would likely say he has not exhausted all his remedies and it should go to the BOA for final decision before the Court takes it up.

Attorney Holmquist explained there is no authority or procedure in City Code to hear a motion for reconsideration of a final written decision. The Alaska Supreme Court has held that administrative agencies such as the planning Commission or the BOA only possess the authority expressly granted to them under statute or code, so they have limited jurisdiction or they only possess the authority that's granted to them by implication, as necessarily incident to the exercise of powers that are actually granted. Homer City Code provides that the appeal of a final decision should be filed in the Superior Court. The Supreme Court has held that where there is no provision for reconsideration, an administrative statutes ordinances the administrative decision is final.

Mayor Castner noted Mr. Griswold made good points about what happened after the remand and that it leaves him in limbo. He asked what the City's position is regarding that.

Attorney Holmquist explained that in the motion to dismiss provided to the Planning Commission they outlined that neither the Commission nor the BOA have jurisdiction or authority to decide any issues raised in the appeal with the applicants withdrawal of their application because it invalidated the CUP, because there was no longer a permit to base an appeal on. Their argument is that it didn't matter whether the Planning Commission or BOA issued the final decision because neither had the authority to take any further action. Regardless whether the Planning Commission or the BOA takes action to dismiss the appeal the end result is the same either way. He reiterated the appeal must be dismissed because

there's no jurisdiction or authority to take any further action on it after the applicant withdrew their application. He added if at some future time the applicant determines she wants to refile for a CUP then she will need to go through all the steps of the CUP process again.

Mr. Griswold rebutted by pointing out Homer City Code has a catch-all that the BOA or hearing officer may proceed and administrative appeal in any lawful manner, not inconsistent with this title statutes and the Constitution, so considering a motion for reconsideration is allowed by 21.93.570. Because it's not inconsistent with statutes or the Constitution, it's clearly contemplated by the superior Court and the fact that it has been the policy of the city in the past under the same set of rules to at least take them up.

LORD/ADERHOLD MOVED THAT THE BOARD OF ADJUSTMENT TO ADJOURN TO EXECUTIVE SESSION TO DISCUSS THE APPELLANT FRANK GRISWOLD'S MOTION FOR RECONSIDERATION AND LEAVE TO SUPPLEMENT POINTS AND APPEAL TO ADDRESS PLANNING COMMISSION'S DISMISSAL OF APPEAL REGARDING THE APPEAL OF CUP 20-15 AND MOTION FOR RECONSIDERATION REGARDING THE APPEAL OF ZONING PERMIT 1020-782 AND HAVE ATTORNEY BRANDT-ERICHSON JOIN US IN EXECUTIVE SESSION.

There was no discussion.

VOTE: YES: ADERHOLD, HANSEN-CAVASOS, LORD, SMITH, DAVIS

Motion carried.

The Board of Adjustment went into executive session at 4:31 and Mayor Castner reconvened the meeting at 5:01 p.m.

LORD/ADERHOLD MOVED THAT WHILE THE BOARD OF ADJUSTMENTS BELIEVES IT IS A MOOT POINT DUE TO THE LACK OF AN ACTIVE PERMIT APPLICATION, THE BOARD OF ADJUSTMENT BELIEVES THAT THE APPEAL PROCEDURALLY SHOULD BE BEFORE THE PLANNING COMMISSION FOR APPELLANT FRANK GRISWOLD'S MOTION FOR RECONSIDERATION AND MOTION FOR LEAVE TO SUPPLEMENT POINTS ON APPEAL OF CUP 20-15 AND THE BOARD DIRECTS THE CLERK TO REFER THAT MOTION TO THE PLANNING COMMISSION FOR RECONSIDERATION.

There was no discussion.

VOTE: YES: HANSEN-CAVASOS, LORD, DAVIS, ADERHOLD, SMITH

Motion carried.

COMMENTS OF THE AUDIENCE

ADJOURNMENT NO LATER THAN 4:50 P.M.

Next Regular Meeting is Monday, September 27, 2021, at 6:00 p.m. A Worksession is scheduled for 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 and via Zoom webinar.

Melissa Jacobsen, MMC, City Clerk

Approved: _____