



City of Homer

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Office of the City Clerk

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Memorandum Supplemental Packet

TO: MAYOR CASTNER AND HOMER CITY COUNCIL
FROM: MELISSA JACOBSEN, MMC, CITY CLERK
DATE: DECEMBER 13, 2021
SUBJECT: SUPPLEMENTAL PACKET SPECIAL MEETING @ 4:00 P.M.

December 13, 2021 Appellant Preliminary Matters	Page 2
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• Email – November 8 th BOA meeting scheduled Re: CUP 20-15	
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August 4, 2021 Planning Commission Minutes	Page 37

BEFORE THE HOMER BOARD OF ADJUSTMENT

FRANK GRISWOLD,

Appellant,

v.

HOMER PLANNING COMMISSION,

MELODY LIVINGSTON DBA

WILD HONEY BISTRO, MATT EARLY,

Appellees.

RE: CUP 20-15

PRELIMINARY MATTERS

1. In a distinct but nonetheless similar proceeding regarding Zoning Permit 1020-782 that took place on August 2, 2021, I questioned why the City Council sitting as a Board of Adjustment was not being represented by a (JDO) City Attorney who, in accordance with the duties prescribed under HCC 2.16.010, "shall act as legal advisor to and be attorney and counsel for the Council and shall be solely responsible to the City Council." Mayor Castner stated as follows: "Well, city attorney would be the attorney in fact of -- all the way through the proceeding so I think they start and they stop as long as the proceedings are in process and the Board of Appeals is -- has a separate attorney for the -- for our appeal process. So I think I understand what you're saying, the wafting of that interest but

as far as the Chinese curtain that has to be set up, I think that the City is on solid ground." A Chinese Wall ethical barrier usually only needs to be set up when attorneys from the same law firm are representing different parties in a case. That does not appear to be the situation now or previously when attorney Scott Brant-Erichsen provided legal counsel to the Board. Attorney Erichsen has indicated that he may only be providing procedural advice to the Board. However, there is no requirement that an attorney totally unaffiliated with the City Attorneys' law firm only provide procedural advice to the Board. This begs the following questions: Is attorney Brant-Erichsen in some manner affiliated with or beholdng to the law firm of Jermain, Dunnagan, & Owens (JDO)? Does he, or did he while practicing law in Anchorage, have some working or personal relationship with Attorney Michael Gatti or Attorney Max Holmquist or any other person affiliated with JDO? Of all of the attorneys licensed to practice law in the state of Alaska, why and how was attorney Brant-Erichsen chosen to represent the Board? What role, if any, did the Board play in hiring attorney Brant-Erichsen? Did anyone affiliated with JDO recommend that attorney Brant-Erichsen be hired to represent the Board? What Chinese Wall/Chinese curtain or other ethical barrier has been set up regarding this matter and, if none, why did Mayor Castner

state or imply that a Chinese curtain was in place previously?
Is attorney Brant-Erichsen's current role limited to providing procedural advice to the Board or can he advise the Board regarding non-procedural matters as well?

2. The Board has failed to act on my Motion for Sanctions and Default Judgement dated April 8, 2021.

3. Memorandum 21-202 cites the following motion made on September 20, 2021: **"Lord/Aderhold moved that while the Board of Adjustment 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 etc." Now, the Board is adjudicating matters which it has already determined are moot before taking or considering contrary evidence. As a quasi-judicial body, the Board is required to be impartial. It is also required to make its decision based solely on the record. HCC 21.93.510(a). No allegations of changed circumstances meriting dismissal were remanded to the Commission by the Board so the Commission had no authority to take evidence regarding the withdrawal of the application for CUP 20-15 or make any recommendation to the Board regarding dismissal of this appeal. The Board's September 20, 2021 motion clearly demonstrates that the Board pre-judged the matters now before it and improperly influenced the

Commission's determinations and recommendation to the Board. Pursuant to HCC 21.93.700(e), a hearing officer must now be appointed to conduct a rescheduled hearing within 60 days.

4. Because the Board has already made up its collective mind that this appeal is moot and should therefore be dismissed, it apparently sees no point in taking anything more than token evidence to the contrary. 15 minutes is clearly insufficient time for me to comprehensively address the complex issues involved and rebut opposing arguments.

DATED: December 13, 2021

By: s/Frank Griswold/
Frank Griswold

From: [Frank Griswold](#)
To: [Melissa Jacobsen](#)
Subject: Re: November 8th BOA meeting scheduled Re: CUP 20-15
Date: Monday, November 8, 2021 9:58:25 AM

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Ms. Jacobsen,

I just returned from a hunting trip and will not have time to adequately prepare for tonight's BOA meeting or submit written materials. Why was I not given at least 15 days written notice of this meeting as required under HCC 21.93.100(b)? Were neighboring property owners notified as set forth in HCC 21.94.100(b) and HCC 21.94.030?

Frank Griswold

On Oct 27, 2021, at 9:32 AM, Melissa Jacobsen <MJacobsen@ci.homer.ak.us> wrote:

Good morning,

At the October 20th Planning Commission meeting the Commission unanimously adopted the following motion:

HIGHLAND/BENTZ MOVED THAT THE PLANNING COMMISSION DENIES TAKING UP THE MOTION FOR RECONSIDERATION AND THE MOTION FOR LEAVE TO SUPPLEMENT POINTS ON APPEAL OF CUP 20-15 SUBMITTED BY APPELLANT GRISWOLD AND THAT THE PLANNING COMMISSION RECOMMENDS THE BOARD OF ADJUSTMENT DISMISS THE APPEAL OF CUP 20-15 DUE TO THE FACT THAT THE APPLICANT HAS WITHDRAWN THEIR CONDITIONAL USE PERMIT APPLICATION AND THEREFORE THE PERMIT NO LONGER EXISTS.

A special meeting of the Homer City Council to convene as the Board of Adjustment has been scheduled for November 8th at 4pm to take up this recommendation.

Agenda and Packet materials will be posted no later than Thursday, November 4th and the deadline to provide material to be included in the packet is Wednesday, November 3rd at 11am. Any items received after the packet deadline and prior to 11am on Monday, November 8th will be included in the supplemental packet, after that time they'll be provided as laydown items.

Thank you,
Melissa

Melissa Jacobsen, MMC
City Clerk
City of Homer, Alaska
907-235-3130

City of Homer City Clerk's Office

PUBLIC RECORDS LAW DISCLOSURE: Most e-mails from or to [this](#) address will be available for public inspection under Alaska public records law.

From: [Frank Griswold](#)
To: [Melissa Jacobsen](#)
Cc: [Renee Krause](#)
Subject: November 8, 2021 BOA Meeting
Date: Monday, November 8, 2021 12:40:43 PM

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Please provide to the Board of Adjustment all of the documents included in the Supplemental Packet provided to the Planning Commission on October 20, 2021 including the email from Asia Freeman, my Reply to City's Response to Motion for Reconsideration, and my two emails. Please also provide the Board with the Commission minutes wherein the Commissioners stated that they lacked credentials and knowledge of the law and therefore thought this matter should be decided later by an administrative law judge.



City of Homer

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Planning

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Memorandum Supplemental Packet

TO: HOMER PLANNING COMMISSION
FROM: TRAVIS BROWN, PLANNING TECHNICIAN
DATE: October 20, 2021
SUBJECT: SUPPLEMENTAL PACKET

PUBLIC HEARINGS

- A. Staff Report 21-64, Remand from the Board of Adjustment of Conditional Use Permit 20-15 at 106 W. Bunnell Ave.

Email Comment from Asia Freeman, dated Oct. 19, 2021 **p. 2**

NEW BUSINESS

- A. Staff Report 21-63, Motion to Dismiss and Motion for Leave to Supplement Points on Appeal of CUP 20-15 Submitted by Frank Griswold

Appellant's Reply to the City of Homer's Response to Motion for Reconsideration, Leave to Supplement Points on Appeal, and Proposed Revised Order, dated Oct. 19, 2021 **p. 4**

Email Comment from Frank Griswold to Homer Board of Adjustment, dated Oct. 20, 2021 **p. 13**

Email Comment from Frank Griswold to City Clerk, Melissa Jacobsen, MMC, dated Oct. 20, 2021 **p. 18**

From: [Asia Freeman](#)
To: [Department Clerk](#)
Subject: Comments for Planning Commission on CUP 20-15 for a building at 106 West Bunnell
Date: Tuesday, October 19, 2021 1:06:48 PM

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear members of the Planning Commission,

I am writing to you today to suggest that pursuant to the public hearing on October 20, you deny a request for a conditional use permit that would allow expansion of a portion of the building at 106 West Bunnell, Wild Honey, adjacent to Bunnell Street Arts Center.

It has been a real privilege and responsibility for nearly thirty years to steward the historic Inlet Trading Post Building at 106 West Bunnell. This stately, former general mercantile store served the young town of Homer from the late thirties to the late eighties. It is home to Bunnell Street Arts Center, Old Town Bed and Breakfast (upstairs), The Fringe (downstairs) and Wild Honey (next door). About ten years ago, to incentivize long-term occupancy, I created a condominium in the building, dividing it into two units. Unit 1 is the larger portion, which houses the arts center, the Fringe and Old Town Bed and Breakfast. Unit 2 is currently owned by Melody Livingston. She created a thriving business there, Wild Honey Bistro.

Raised in Homer and passionate about the history and culture of this community, it is deeply important to me that we respect the lines and appearance of our historic buildings. The Inlet Trading Post, constructed in 1937, is the second oldest large commercial building still standing in Homer. It is the anchor of Old Town revitalization and a historic landmark. It is extremely rare for old wood buildings in Alaska to endure time, and the risk of fire and earthquakes. Moreover, the Inlet Trading Post has endured time with with increasing dignity over the years. I have invested a great deal of time and funds to preserve the original lines and health of this building. I deeply believe that this building should be preserved in all of its exterior roof lines, footprint and character.

Melody Livingston would like to tear down the original construction and consolidate her business under one roof, adding a second floor “prep kitchen” above. The footprint of the “prep kitchen is almost equal to the main kitchen below. I have watched the business grow and thrive, and because it functions within the limitations of multiple spaces that are not connected by interior halls or doors to the main kitchen it has always been a challenge to operate a restaurant there. You have a main room with a kitchen, separated from a dining room by an exterior deck and two doors. I can certainly appreciate why the current owner would like to renovate her space to create more connectivity and efficiency. In fact, I have discussed renovations of the space with three architects and four builders over the last thirty years. I am certain this can be done within the original footprint by rebuilding a more efficient interior design while maintaining the exterior lines of this precious landmark. There is plenty of poorly used storage space under the shed behind Wild Honey which could be made into a prep kitchen, meanwhile all of the interior front space including Wild Honey’s porch could be incorporated into interior seating.

Ultimately, expansion of Wild Honey will result in greater demands on the very limited parking and utility services of this old building. I do not think we can bear it. Just last year I

had to pay \$18,500 for 85% of the cost of reconstruction of a broken sewer line servicing both Units 1 and 2. Wild Honey's water/sewer meter reading demonstrated a toll of 28.5% yet she refused to pay any more. Wild Honey is thriving. Melody has been away from Alaska since May and her staff has asserted to me several times they are thriving. The other businesses here are all working at capacity. I think we are strained to support the current utilities and comfortable adjacency as is. I think its wonderful that the owner of Wild Honey has created a very successful restaurant within the historic footprint and rooflines of the original machine shop and while renovation may be justified, expansion is not.

Sincerely,

Asia Freeman
Inlet Trading Post LLC
106 West Bunnell, Suite A
Homer, Ak 99603
907.299.1482

ON REMAND BEFORE THE HOMER PLANNING COMMISSION

FRANK GRISWOLD,

Appellant,

v.

HOMER PLANNING COMMISSION,
MELODY LIVINGSTON DBA
WILD HONEY BISTRO, MATT EARLY,

Appellees.

_____/ RE: CUP 20-15

**APPELLANT'S REPLY TO CITY OF HOMER'S RESPONSE TO MOTION FOR
RECONSIDERATION, LEAVE TO SUPPLEMENT POINTS ON APPEAL, AND
PROPOSED REVISED ORDER**

On March 9, 2021, the Homer Board of Adjustment remanded this matter to the Commission under HCC 21.93.510(a) and (c) to address and decide three issues for which the Commission's findings of fact were deemed to be inadequate. HCC 21.93.560(c) states: "The lower administrative body shall promptly act on the case upon remand in accordance with the decision of the Board of Adjustment or hearing officer. A case on remand has priority on the agenda of the lower administrative body, except cases remanded under HCC 21.93.510(a) are not entitled to priority. The applicant or owner of the property in question may waive the priority given by this subsection." The issues remanded under HCC 21.93.510(a) are not entitled to priority on the

Appellant's Reply to City of Homer's Response to Motion for
Reconsideration etc./Page 1

Commission's agenda but they must nonetheless be promptly acted upon by the Commission. However, they clearly were not promptly acted on by the Commission. Because the applicants and/or property owners never waived priority, the issues remanded under HCC 21.93.510(c) **were** entitled to priority on the Commission's agenda but now, more than 7 months following the Board's remand, the Commission has still not considered or acted on the Board's Decision and Order. Instead, City Planner Rick Abboud, who claims to be a party to this appeal, has colluded with Melody Livingston and initiated multiple ex parte communications with the Commission to secure the dismissal of this appeal while she "regroups" before resubmitting her CUP application within a year or two.¹

A claim is moot if it has lost its character as a present, live controversy. *Kleven v. Yukon-Koyukuk School Dist.*, 853 P.2d 518, 523 (Alaska 1993) (citing *United States v. Geophysical Corp.*, 732 F.2d 693, 698 (9th Cir. 1984)). An action is not moot if respondent has "a concrete interest, however small, in the outcome." *Knox v. Serv. Emps. Int'l Union Local 1000*, 567 U.S. 298, 307-08 (9th Cir. 2012). The *Knox* court further stated: "The

¹ While it is not illegal for a party to communicate with another party, it is illegal for a party to engage in ex parte communication(s) with the Commission. HCC 21.93.710(a).

voluntary cessation of challenged conduct does not render a case moot because the conduct could be resumed as soon as the case is dismissed" (citing *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283). In 1995, the Alaska Supreme Court held as follows in *Kodiak Seafood Processors v. State*, 900 P.2d 1191:

"No scallop harvesting presently takes place in closed Alaska waters. Therefore, KSPA's claims seeking declaratory and injunctive relief are technically moot. Nevertheless, we may choose to address certain issues if they fall under the public interest exception to the mootness doctrine. The public interest exception requires the consideration of three main factors: (1) whether the disputed issues are capable of repetition, (2) whether the mootness doctrine, if applied, may cause review of the issues to be repeatedly circumvented, and (3) whether the issues presented are so important to the public interest as to justify overriding the mootness doctrine. *Peloza v. Freas*, 871 P.2d 687, 688 (Alaska 1994); *Brandon*, 865 P.2d at 92 n. 6. None of these factors is dispositive; each is an aspect of the question of whether the public interest dictates that a court review a moot issue. *Hayes*, 693 P.2d at 834. Ultimately, the determination of whether to review a moot question is left to the discretion of the court. *Id.*; *Brandon*, 865 P.2d at 92. n. 6.

Because the Permit has been revoked, the question of the Commissioner's authority to issue the Permit is also technically moot. Nonetheless, the issue presents a live controversy. KSPA argues that by allowing a private fisher to sell fish obtained during a research trip, the Commissioner exceeded his authority by allowing "commercial fishing" in closed waters. ADF&G argues that it has the authority to finance an exploratory fishing operation by allowing a private contractor to sell the catch. This issue falls within the public interest exception to the mootness doctrine. First, the issue is capable of repetition. The State has not disavowed this type of financial arrangement for future test-fisheries. Second, because research fishing may be of limited duration, it is likely that, as in this case, an individual permit would expire before the issue could be litigated. Third, the scope of the Commissioner's power is an

issue of public interest. Having determined that the commercial fishing issue satisfies the requirements of the public interest exception, and that the procurement issue does not, we turn to the merits of the trial court's decision."

Unlike the fishing permit at issue in the Kodiak Seafoods case, CUP 20-15 was not revoked, it was voluntarily and temporarily withdrawn by Ms. Livingston who indicated her intent to resubmit it, presumably under a different CUP designation (which is irrelevant) in a year or two. Accordingly, Ms. Livingston still has a huge interest in the outcome of this appeal. Because live controversies remain, this appeal is not moot, technically or otherwise. Even if this matter were technically moot, the public interest exception to the mootness doctrine would apply for the following reasons: 1. the disputed issues are capable of repetition; 2. if this appeal were to be dismissed as moot, review of the issues on appeal would be repeatedly circumvented; and 3. the issues presented in this appeal, including threshold constitutional issues, are so important to the public interest as to justify overriding the mootness doctrine.

The City of Homer's October 14, 2021 response to Appellate's Motion for Reconsideration falsely states as follows at page 4: "There is no authority or procedure in the Homer City

Appellant's Reply to City of Homer's Response to Motion for Reconsideration etc./Page 4

Code to hear a motion for reconsideration of a final written decision and Griswold has not cited to any such authority." The very first sentence of the Motion for Reconsideration states: "**Pursuant to HCC 21.93.310**, Appellant Frank Griswold hereby seeks reconsideration of the Commission's Order Granting Motion to Dismiss which was dated August 5, 2021 and distributed on August 6, 2021." HCC 21.93.310 states: "If no specific procedure is prescribed by the code, the Planning Commission may proceed in an administrative appeal in any lawful manner not inconsistent with this title, statutes, and the Constitution." The city's Motion to Dismiss Appeal, on the other hand, cites to no authority or provision of Homer City Code. No provision of HCC gives the Commission the authority to summarily dismiss an appeal on remand from the Board of Adjustment or consider new evidence not authorized within the Board's remand instructions. The city attorneys admit that the Commission did not have express authority in the code to dismiss the appeal but claim that it had "implied" authority to do so under HCC 21.93.310. However, HCC 21.93.310 does not apply because the Commission's dismissal of the appeal was contingent on its receipt of ex parte communications between Mr. Abboud and Ms. Livingston and

unauthorized consideration of that new evidence, both of which are unlawful and inconsistent with HCC Chapter 21.

At page 4 of the city's response it states: "HCC 21.93 clearly states that zoning appeal decisions are final and BOA decisions are appealable to the Superior Court" (citing HCC 21.93.110 in footnote 16). BOA final decisions are irrebuttably appealable to the superior court but the BOA has not issued a final decision and Planning Commission decisions are not appealable to the superior court. HCC 21.93 applies solely to Board of Adjustment proceedings and decisions, not to Planning Commission proceedings and decisions. In their Notice of Appeal Rights at page 5 of their proposed Revised Revised Order Granting Motion to Dismiss, the city attorneys deliberately and deceptively manipulate HCC 21.91.130 in order to give it a different meaning than intended. HCC 21.91.130(a) states: "An appeal from a final decision of the **Board of Adjustment** or a hearing officer may be taken directly to the Superior Court by a party who actively and substantively participated in the proceedings before the Board of Adjustment or hearing officer or by the City Manager or City Planner or any governmental official, agency, or unit." No provision of HCC allows anyone to appeal a final decision of the Planning Commission directly

to the superior court. HCC 21.93.550(a) provides that the Board of Adjustment may affirm or reverse the decision of the lower administrative body in whole or in part and that a decision affirming, reversing, or modifying the decision appealed from shall be in a form that finally disposes of the case on appeal, except where the case is remanded for further proceedings. Thus, only final decisions can be appealed to the superior court. Because the Commission's order dismissing the appeal was not a decision on the merits, it did not constitute a final decision. Even if the Commission's August 5, 2021 Order did constitute a final decision, it cannot be appealed to the superior court; it can only be appealed to the Board of Adjustment in accordance with HCC 21.93.500. Just because a zoning decision is "final" (meaning that it disposes of all issues) does not mean that it cannot be reconsidered. If this were the case, the Board of Adjustment would not have directed the Commission to take up the subject Motion for Reconsideration following the City Clerk's erroneous ruling that motions for reconsideration of agency final decisions cannot be taken up. Alaska Appellate Rule 602(a)(2) clearly indicates that administrative agencies have the discretion to reconsider their final decisions.

The Commission does not have the authority to rule on Appellant's Motion for Leave to Supplement Points on Appeal. As its header clearly indicates, that motion was submitted to the Board of Adjustment, not to the Commission. No formal appeal or points on appeal were submitted to the Commission so there are no points on appeal to supplement except for those submitted on appeal to the Board of Adjustment which now has the sole authority to grant the leave requested.

The August 4, 2021 Planning Commission minutes reveal that the Commission moved to dismiss this appeal due to the "lack of credentials on the part of the Planning Commission in addressing issues like this since they do not know the law" and because "it will be better to have these types of actions go before a hearing officer." These are not valid justifications for dismissing this appeal. Lacking credentials and being ignorant of the law does not justify granting all motions made by the city attorneys on behalf of the appellees and ignoring all motions made by the appellant. The Commission had the authority to be represented by erudite, impartial, independent legal counsel but voted not to exercise that option, choosing instead to blindly rubber-stamp the Motion to Dismiss and ensuing [Proposed] Order prepared by the highly partisan city attorneys.

Now these partisan attorneys are proposing that the Commission deny Appellant's Motion for Reconsideration but nonetheless revise its "final decision" to incorporate points raised in that Motion for Reconsideration. No provision of HCC allows the Commission to revise an order or final decision without first considering a motion for reconsideration. An ethical, impartial Commission, regardless of its lack of credentials and/or ignorance of the law, would grant Appellant's Motion for Reconsideration and, to the best of its ability, consider all of the issues raised therein while disregarding the illegal ex parte communications from Melody Livingston pertaining to her strategic temporary withdrawal of the application for CUP 20-15. The Commission does not require special credentials or knowledge of the law to comply with the straight-forward remand instructions of the Board of Adjustment.

Commissioner Franco Venuti declared a disqualifying financial conflict of interest with regard to the application for CUP 20-15 therefore should not have participated in the August 4, 2021 remand proceedings and should not participate in the current proceedings.

DATED: October 19, 2021
By: s/Frank Griswold/
Frank Griswold

Appellant's Reply to City of Homer's Response to Motion for Reconsideration etc./Page 9

Travis Brown

From: Frank Griswold <fsgriz@alaska.net>
Sent: Wednesday, October 20, 2021 1:26 PM
To: Department Planning
Cc: Melissa Jacobsen
Subject: Memorandum 21-153 (Please Provide to Commission for Tonight's Meeting)

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From: To:
Cc: Subject: Date:

Frank Griswold
Melissa Jacobsen
Renee Krause
Memorandum 21-153
Monday, September 20, 2021 11:06:37 AM

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Dear Homer Board of Adjustment, Re: Appeal of CUP 20-15

Memorandum 21-153 states: “The Planning Commission approved a Motion to Dismiss submitted by Attorney Holmquist on behalf of the City based on the finding that the applicant withdrew her conditional use permit application which voids Conditional Use Permit 20-15 and moots all pending issues in this appeal.” Mr. Holmquist’s Motion to Dismiss is notably void of any provision of Homer City Code that authorizes it because HCC includes no specific provision authorizing the filing of a motion to dismiss an administrative appeal, on remand or otherwise. The former version of HCC 21.93.310 stated: "If no specific procedure is prescribed by the code, the Planning Commission may proceed in an administrative appeal in any lawful manner not inconsistent with this title, statutes, and the Constitution” but Mr. Holmquist's Motion to Dismiss was manifestly inconsistent with HCC Title 21 and therefore not authorized by HCC 21.93.310. Mr. Holmquist’s Motion to Dismiss Appeal was out of order because the Commission had no authority to consider any matter not specifically remanded to it by the Board of Adjustment, consider new evidence, or receive or act on illegal ex parte communications from City Planner Rick Abboud (a party to the appeal) regarding property owner Melody Livingston’s temporary and strategic withdrawal of her application for CUP 20-15 to “regroup.” Nonetheless, the City Clerk’s Office forwarded it to the Planning Commission which eagerly rubber-stamped Mr. Holmquist’s Motion to Dismiss Appeal. Arbitrarily allowing Mr. Holmquist to submit his Motion to Dismiss Appeal but then refusing to “take up” my ensuing Motion for Reconsideration to the Commission and Motion to Supplement Points on Appeal to the Board of Adjustment, both legitimately filed pursuant to HCC 21.93.310 and

HCC 21.93.570 respectively, violates the equal protection clause of the Fourteenth Amendment to the US Constitution and violates my due process rights.

On July 29, 2021, the Homer City Attorneys responded in relevant part as follows to my Motion to Continue the August 4, 2021 Commission Proceeding Regarding the City's Motion to Dismiss Appeal: "Out of an abundance of caution and to avoid a dispute on this issue, the City suggests that the Commission continue the hearing to provide public notice to neighboring property owners. Also, in light of numerous

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pleadings Mr. Griswold has filed related to the City's Motion to Dismiss Appeal, the Commission should consider setting a special hearing to solely address this matter." But no special hearing was scheduled and neighboring property owners were not notified. Following the Commission's decision, the Clerk's Office should have promptly submitted my timely filed Motion for Reconsideration to the Commission and my timely filed Motion to Supplement Points on Appeal to the Board of Adjustment. The Board and Commission could then have decided whether to consider, grant, or deny my motions. The parties were excluded from the discussions between Ms. Jacobsen and Mr. Brandt-Erichsen who was hired to advise the Board of Adjustment, not to unilaterally render decisions on the Board's behalf or provide biased procedural advice to the City Clerk. Neither Mr. Brandt-Erichsen, the Clerk's Office, nor the City Council has the authority to make adjudicatory decisions on behalf of the Commission or Board.

At paragraph four of her memorandum, Ms. Jacobsen states: "final decisions were issued regarding both matters" and at paragraph five she states: "an appeal from a final decision [deliberately omitting "of a hearing officer"] may be taken directly to the Superior Court by a party who actively and substantively participated in the proceedings before the hearing officer." She neglects to point out that the Board of Adjustment never issued a final decision regarding CUP 20-15 and that only final decisions of the Board of Adjustment or a hearing officer can be appealed directly to the superior court and that no hearing officer was involved, and that the Planning Commission's "final decision" was not a response to the Board of Adjustment's remand order but merely the granting of a motion to dismiss the appeal, and that even if the Commission's August 5, 2021 Order Granting Motion to Dismiss Appeal did constitute a final decision, it cannot be appealed directly to the superior court. The version of HCC 21.91.130(a) recently enacted via Ordinance 21-44(S) states: "An appeal from a final decision of a hearing officer may be taken directly to the Superior Court by a party who actively and substantively participated in the proceedings before the hearing officer or by the City Manager or City Planner or any governmental official, agency, or unit." The version of HCC 21.91.130(a) (misquoted in Ordinance 21-44(S)) in effect when I filed my appeal states as follows: "An appeal from a final decision of the Board of Adjustment or a hearing officer may be taken directly to the Superior Court by a party who actively and substantially participated in the proceedings before the Board of Adjustment or the hearing officer or by the City Manager or City Planner or any governmental official, agency, or unit." The City Council should not rely on

any paraphrased rendition of HCC that is manipulated and spun to give it a meaning other than what was actually intended. Just because the City Clerk and/or Planning Commission claim the Commission's remand determination constitutes a final decision does not make it so. The Commission issued its first, and arguably only, Final Decision on October 22, 2020 and that decision was appropriately appealed to the Board of Adjustment. The Notice of Appeal Rights attached to the Planning Commission's August 5,

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2021 Order Granting Motion to Dismiss Appeal deceptively states that "Pursuant to Homer City Code, Chapter 21.91.130, any party who actively and substantively participated in the proceedings before the Homer Board of Adjustment may appeal this [Planning Commission] decision to the Superior Court." In light of the fact that the Board of Adjustment and the Planning Commission are no longer involved in adjudicating zoning appeals, the code provisions that previously applied to Board and Commission appeal proceedings govern appeals still pending before them. In any event, neither version of HCC 21.91.130 provides that decisions of the Planning Commission may be appealed directly to the Superior Court or that a party who actively participated in proceedings before the Board of Adjustment can appeal an ensuing remand determination of the Planning Commission directly to the superior court. The Planning Commission never addressed the matters remanded to it by the Board of Adjustment on March 9, 2021 and should be sanctioned for not promptly responding to the Board's (non-final) Decision and Order, illegally accepting and considering new evidence, and engaging in ex parte communications. The Planning Commission's August 5, 2021 order/decision can only be directly appealed to the Board of Adjustment in accordance with HCC 21.93.500-550. After the Board of Adjustment issues a final decision, the Planning Commission's ultra vires dismissal of the appeal and other erroneous determinations can be appealed directly to the superior court.

At paragraph six of her memorandum, Ms. Jacobsen states: "Homer City Code provides no provisions for an appellant to submit motions to bring a matter back before the Board of Adjustment after a final decision has been issued. I have advised Mr. Griswold as such, but he disagrees." I disagreed because Ms. Jacobsen is patently wrong. HCC 21.93.310 and HCC 21.93.570 authorize an appellant to submit post-decision motions to the Planning Commission and Board of Adjustment. Alaska Rules of Appellate Procedure 602(a)(2) states: "An appeal may be taken to the superior court from an administrative agency within 30 days from the date the decision appealed from is mailed or otherwise distributed to the appellant. If a request for agency reconsideration is timely filed before the agency, the notice of appeal must be filed within 30 days after the date the agency's reconsideration decision is mailed or otherwise distributed to the appellant, or after the date the request for reconsideration is deemed denied under agency regulations whichever is earlier. The 30-day period for taking an appeal does not begin to run until the agency has issued a decision that clearly states that it is a final decision and that the claimant has thirty days to appeal. An appeal that is taken from a final decision that does not include such a statement is not a premature appeal." This appellate rule clearly contemplates motions for reconsideration of final agency decisions so it would clearly not be

out of order or inject procedural error into the proceedings if the Board or Commission addressed a motion for reconsideration.

No provision of HCC authorizes the City Clerk to reject a party's timely filed motion for reconsideration of an adjudicatory body's final decision so the City

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Clerk's unilateral rejection of a party's timely filed motion for reconsideration would inject procedural error into the proceedings and be grounds for remand or reversal. In the past, it has routinely been the practice of the Clerk's Office to promptly forward such motions to the appropriate adjudicatory body. On June 19, 2014, the Homer Board of Adjustment issued its Order Regarding Motion for Reconsideration of Board of Adjustment Decision regarding CUP 13-13 and on December 4, 2014, the Homer Board of Adjustment issued its Order Regarding Motion for Reconsideration Re: Standing to Appeal CUP 14-05. Neither of these orders was subsequently ruled to be procedurally flawed or otherwise out of order by the appellate courts.

Re: Appeal of Zoning Permit 1020-782

The City Clerk's duties are ministerial, not adjudicatory. Ms. Jacobsen had no sua sponte authority to reject my Motion for Reconsideration or initiate the addition of a Notice of Appeal Rights to the Board of Adjustment's initial Final Decision. Even as amended, final decision #2 still violates HCC 21.93.110(a) which requires that a final decision state "the names and number [of Board members] voting in favor of the decision, and the names and number voting in opposition to the decision." If the Board of Adjustment grants my Motion for Reconsideration it can legitimately amend its August 26, 2021 Final Decision to correct deficiencies and/or erroneous findings. The fact that final decision #2 was issued on September 7, 2021 soundly debunks the specious argument that a matter cannot be brought back before the Board after a final decision has been issued. Whether the Board and/or Commission have legal authority to convene to "take up" the subject motions is a question of law and it is not generally the role of the City Council or Mayor to dispense legal advice to the City Clerk. The Council could authorize funding to allow the Clerk's Office to seek impartial legal advice from an erudite attorney. Because City Attorneys Max Holmquist and Michael Gatti represent parties to the pending appeals they would not be impartial sources. It is inappropriate for Ms. Jacobsen to ask the Council to provide her with direction on process for noticing parties, noticing the public, opportunities for responses or briefing, and/or when to schedule the special meeting while simultaneously recommending to the Council that it make, and presumably pass, a motion that the Board of Adjustment declines to take up the motions for reconsideration. (FYI, I only filed one motion for reconsideration to the Board of Adjustment and it pertained to ZP 1020-782. I filed another motion to the Board to supplement my points on appeal re: CUP 20-15. My other motion for reconsideration pertained to the Planning Commission's order granting the city's motion to dismiss the appeal of CUP 20-15). One seeking direction from the Council is self-admittedly unqualified to recommend what that direction should be. Accordingly, no weight should be given to Ms. Jacobsen's baseless, self-serving recommendation. Memorandum 21-

153 should have been sent to the Board of Adjustment, not the City Council. The Council would be out of

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order making a motion that the Board of Adjustment declines to take up the subject motions because, unless and until it formally convenes as a Board of Adjustment, the Council and Mayor have no legal authority to rule on behalf of the Board of Adjustment, especially when proper notice has not been given to parties and neighboring property owners. Furthermore, Robert's Rules discourages making negative motions. Alternatively, Ms. Jacobsen could forgo seeking further direction and simply allow due process to run its course by forwarding the subject motions to the designated adjudicatory bodies to let them exercise their discretion to issue procedural notices and decide whether those motions should be reviewed, considered, granted, or denied.

Audi alteram partem,

Frank Griswold

Travis Brown

From: Melissa Jacobsen
Sent: Wednesday, October 20, 2021 3:03 PM
To: Travis Brown
Subject: FW: September 20, 2021 Special Meeting Minutes

[Please provide to the planning commission](#)

From: Frank Griswold <fsgriz@alaska.net>
Sent: Wednesday, October 20, 2021 1:14 PM
To: Melissa Jacobsen <MJacobsen@ci.homer.ak.us>
Cc: Renee Krause <RKrause@ci.homer.ak.us>
Subject: September 20, 2021 Special Meeting Minutes

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Ms. Jacobsen,

Footnote 1 at page 3 of the September 20, 2021 BOA minutes erroneously states as follows:

"The Motion for Reconsideration and Motion for Leave to Supplement Points on Appeal regarding CUP 20-15 were the only matters scheduled and addressed at this meeting. The reference to a Motion to reconsider regarding Zoning Permit 1020-782 was mistakenly added to a proposed motion provided by the Clerk in the working agenda provided to the Board. Zoning Permit 1020-782 is a separate matter that was not addressed at this hearing."

At the September 20, 2021 BOA meeting I addressed my Motion for Reconsideration re: Zoning Permit 1020-782 and after considering this matter in executive session the Board of Adjustment passed a motion to not take it up. Please correct the September 20, 2021 minutes accordingly and provide a copy of the email I sent to the BOA to the Commission for its consideration at tonight's meeting.

Frank

Session 21-22, a Regular Meeting of the Planning Commission was called to order by Chair Scott Smith at 6:31 p.m. on October 20, 2021 at Cowles Council Chambers in City Hall located at 491 E. Pioneer Avenue, Homer, Alaska, and via Zoom Webinar.

PRESENT: COMMISSIONERS BARNWELL, BENTZ, CONLEY, CHIAPPONE, HIGHLAND, SMITH, VENUTI

STAFF: CITY PLANNER ABBOUD
CITY CLERK JACOBSEN

APPROVAL OF THE AGENDA

BENTZ/VENUTI MOVED TO APPROVE THE AGENDA AS PRESENTED.

There was no discussion.

Chair Smith confirmed that the Commissioners received the supplemental packet and were prepared to act on Staff Report 21-62. The Commissioners concurred they received the materials and were prepared.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

PUBLIC COMMENTS ON ITEMS ALREADY ON THE AGENDA

RECONSIDERATION

CONSENT AGENDA

- A. Planning Commission Regular Meeting Minutes of September 15, 2021
- B. Decision and Findings for Conditional Use Permit 21-07 at 1554 Homer Spit Road
- C. Homer Lake Street Rehabilitation Right of Way Acquisition Preliminary Plat Time Extension Request

HIGHLAND/BENTZ MOVED TO APPROVE THE CONSENT AGENDA AS PRESENTED.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

PRESENTATIONS / VISITORS

REPORTS

A. Staff Report 21-61, City Planner's Report

City Planner Abboud reviewed his staff report that was included in the packet. He answered questions from the Commission regarding items in his report. He addressed the Safeway parking lot progress and that they're fulfilling the requirements of code with the expansion of their parking lot. They discussed the recent State determination to allow ATV's on roadways and City Clerk Jacobsen advised that Council had recently adopted code prohibiting ATV's on city streets. They also touched on Resolution 21-065 regarding non-motorized amenities on Kachemak Drive and the challenges for bicyclist and pedestrians, and the work of the Homeless Coalition.

Commissioner Bentz noted her surprise that strategic planning and the comprehensive plan on the horizon, it seems staff has a lot of different irons in the fire as far as plan development that are coalescing and could help them look at a longer term vision for the community and land. She referenced hazard planning, storm water and drainage planning, and transportation planning and shared that as a Commission they can think of the components of the plans together and that will help with the strategic planning process. Near term it will be interesting to see what policy recommendations the hazard planning team comes up with, that will help with long term planning and perhaps bring some specific code changes like setbacks, definitions, coastal bluff definitions, and so forth.

Chair Smith suggested having the Borough Transportation Planning Department present at a future worksession, similar to Platting Manager Huff's presentation tonight. City Planner Abboud said he'd try to work that in and shared that the strategic planning he referenced is more of developing a work plan for the office as they continue have more demand for services than hours so they need to prioritize things. He's interested in having transportation professionals help in considering what the future is likely to bring, and not get caught in the solution of today.

PUBLIC HEARINGS

A. Staff Report 21-64, Remand from the Board of Adjustment of Conditional Use Permit 20-15 at 106 W. Bunnell Ave.

Commissioner Venuti was excused from participating due to ruling of his conflict of interest regarding this matter, and was moved to a waiting room.

Commissioner Bentz reported a potential ex-parte communication in that she received a phone message from a concerned member of the public. Commissioner Bentz pointed out that the member of the public put her comments in writing and they're provided the supplemental packet, so she doesn't think she has any other information than the other Commissioners have, but wanted to bring this before the Commission to determine if she had bias in any way based on the phone message.

Chair Smith asked if Commissioner Bentz engaged in conversation with the member of the public. Commissioner Bentz responded she did not, it was a message left on her phone and once she realized what it was about she recognized it would be ex parte communication if she were to call the person back. The written comments are part of the record now in the supplemental packet and that's the substance of the comments in the message.

HIGHLAND/BARNWELL MOVED THAT COMMISSIONER BENTZ HAS EX-PARTE COMMUNICATION.

Commissioner Highland shared that due to the fact it was a message on a phone with no return phone call there is no ex-parte communication.

VOTE: NO: HIGHLAND, BARNWELL, CHIAPONNE, CONLEY, SMITH

Motion failed.

Chair Smith summarized the decision and order remanding CUP 20-15 to the Planning Commission, and then opened the public hearing.

Frank Griswold, city resident and appellant in the remanded matter, commented regarding Commissioner Bentz's disclosure of ex-parte and that it wasn't disclosed appropriately in accordance with Homer City Code. He commented that complex dispositive motions are under consideration tonight and should therefore be addressed in a special public hearing and not during a regular commission meeting where public comment is limited to three minutes. He noted on July 29, 2021 Attorney Holmquist agreed with him that the Commission should provide notice to neighboring property owners and set a special meeting to solely address his motion to dismiss the appeal, but the Commission did not do so. Instead they voted to dismiss the appeal, in hopes it would go to a hearing officer. He referenced notice requirements outlined in City Code and that proper notice was not given, and explained the two toll free numbers provided for the Zoom meeting were working but the meeting id and passcode did not work. Finally the City Planner is a party to the appeal and should not have written the staff report encouraging dismissal of the appeal and should not have engaged in ex-parte communication with Commission related to the applicant's temporary withdrawal of the CUP application. He cited *Kleven v. Yukon Koyukuk School District* related to a moot claim, and *Knox v. Service Employee International Union Local 1000* when an action is not moot and questioned what precedent the Commission wants to set. He also noted matters that are not allowable in Homer City Code related to appeals, and an appellate procedure rule of the Alaska Courts regarding filing a motion for reconsideration. He encouraged the Commission comply with the Board's instructions and if the Board sees fit to dismiss the appeal, so be it.

There were no further comments and the hearing was closed.

The Commission discussed how best to proceed with this matter. They acknowledged the points raised in the remand and the points raised by Mr. Griswold. One matter relates to tax code which is not their specialty, and they'd need to be advised on how to address that.

BENTZ/HIGHLAND MOVED THAT THE COMMISSION POSTPONE DELIBERATION WITH STAFF SUPPORT TO AT TIME TO BE DETERMINED.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

Commissioner Venuti was admitted back to the meeting.

PLAT CONSIDERATION

PENDING BUSINESS

A. Staff Report 21-62, Parking Requirements for One Bedroom Dwelling Units

City Planner Abboud reviewed his staff report that was included in the packet. There were no questions from the Commission.

BENTZ/VENUTI MOVED TO RECOMMEND ADOPTION OF THE DRAFT ORDINANCE AMENDING HOMER CITY CODE 21.55.090A1 AND FORWARD TO PUBLIC HEARING.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

NEW BUSINESS

A. Staff Report 21-63, Motion to Dismiss and Motion for Leave to Supplement Points on Appeal of CUP 20-15 Submitted by Frank Griswold

There was discussion regarding process and in attempt to determine the meaning of Leave to Supplement Points of appeal.

HIGHLAND/BENTZ MOVED THAT THE PLANNING COMMISSION DENIES TAKING UP THE MOTION FOR RECONSIDERATION AND THE MOTION FOR LEAVE TO SUPPLEMENT POINTS ON APPEAL OF CUP 20-15 SUBMITTED BY APPELLANT GRISWOLD AND THAT THE PLANNING COMMISSION RECOMMENDS THE BOARD OF ADJUSTMENT DISMISS THE APPEAL OF CUP 20-15 DUE TO THE FACT THAT THE APPLICANT HAS WITHDRAWN THEIR CONDITIONAL USE PERMIT APPLICATION AND THEREFORE THE PERMIT NO LONGER EXISTS.

Commissioner Highland referenced the information on page 79 of the packet which notes that HCC 21.93 does not authorize a party to supplement or modify points on appeal, and that the motion is moot because the appeal was dismissed. She questioned if the Commission isn't supposed to act on this, then why was it in their packet. She personally agrees with the

conclusion noted on page 80 of the packet, and feels the Board of Adjustment should dismiss the appeal.

Commission Chiaponne asked for clarification on the motion from the Board of Adjustment. City Clerk Jacobsen explained if she understood the discussion at the last Board of Adjustment meeting, one of the arguments was that the Planning Commission didn't have the authority to dismiss the appeal and that the Board of Adjustment would be the body that would make that decision. She explained when the Board of Adjustment came out of their executive session on September 20th, they adopted the motion that while the Board of Adjustment 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 back to the Planning Commission for consideration.

Commissioner Bentz commented the motion on the floor as it stands would be in alignment with the Board of Adjustment vote and also in alignment with the City's proposed order to deny taking up these motions. She's in agreement with the motion on the floor.

Commissioner Highland referenced packet page 33 under staff recommendations and noted its reference to HCC 21.93 does not contain a procedure for reconsideration of a final decision in a zoning appeal, or for allowing an appellant to supplement their points on appeal. HCC 21.93.110 states that zoning appeal decisions are final decisions. Since the code doesn't have a procedure she feels that's a strong argument.

VOTE: YES: BARNWELL, SMITH, CONLEY, CHIAPONNE, BENTZ, HIGHLAND

Motion carried.

INFORMATIONAL MATERIALS

- A. City Manager's Report for September 27 & October 11, 2021 City Council Meetings
- B. Kenai Peninsula Borough Notice of Decisions
- C. Planning Commission Calendar

COMMENTS OF THE AUDIENCE

COMMENTS OF THE CITY STAFF

City Clerk Jacobsen said it was nice to be with you all tonight, thank you for a good meeting.

COMMENTS OF THE COMMISSION

Commissioner Highland said it was an interesting meeting.

Commissioner Chiaponne thanked the group for their help tonight.

Commissioner Conley apologized for his technical difficulties and thanked everyone for a good meeting.

Commissioner Venuti said he enjoyed the worksession tonight. He's glad Ms. Keiser was able to join and get her input. He thanked staff for doing a great job.

Chair Smith enjoyed the meeting the thought it would be a little more involved than it was. He's looking forward to their future worksessions. He thinks what the City Planner has mapped out is outstanding.

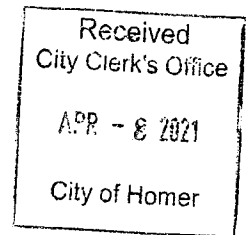
There were no other comments.

ADJOURN

There being no further business before the Commission, the meeting was adjourned at 8:18 p.m. The next Regular Meeting is Wednesday, November 3, 2021 at 6:30 p.m. A worksession is scheduled for 5:30 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: _____



ON APPEAL BEFORE THE HOMER BOARD OF ADJUSTMENT

FRANK GRISWOLD,

Appellant,

v.

HOMER PLANNING COMMISSION,
MELODY LIVINGSTON DBA
WILD HONEY BISTRO, MATT EARLY,

Appellees.

_____/ RE: CUP 20-15

MOTION FOR SANCTIONS AND DEFAULT JUDGMENT

During the March 17, 2021 regular meeting of the Homer Planning Commission, Commissioners Barnwell, Venuti, Smith, Petska-Rubalcava, and Highland received ex parte communications from City Planner Rick Abboud regarding the pending appeal of CUP 20-15. Mr. Abboud is a party to that appeal and was therefore not exempt from engaging in those ex parte communications under HCC 21.93.710(b)(2). HCC 21.93.710(d) mandates that a member of the Commission who receives an ex parte communication at any time shall, at the first opportunity after the communication, place on the record of the pending matter a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the member received an ex parte communication. HCC 21.93.710(f) states that it is a violation, subject to penalties and other enforcement remedies under this title, for any person to knowingly have ex parte communications with a Commissioner in violation of HCC 21.93.710(a). Neither I nor any other parties to the pending appeal of CUP 20-15 were given notice that any matter pertaining to this appeal would be

discussed at the March 17, 2021 Commission meeting or given an opportunity to participate in that discussion. Not only is Mr. Abboud in violation of HCC 21.93.710(a), but so too would be the five Commissioners who received his illegal ex parte communication if they knowingly fail to place it on the record at their first opportunity thereafter. HCC 21.93.710(d); HCC 21.93.710(f)(3). Pursuant to HCC 21.93.710(e), I hereby request that the Commission impose appropriate sanctions against Mr. Abboud including default judgment.

DATED: April 8, 2021.

By: s/Frank Griswold/
Frank Griswold

ON REMAND BEFORE THE HOMER PLANNING COMMISSION

FRANK GRISWOLD,

Appellant,

v.

HOMER PLANNING COMMISSION,

MELODY LIVINGSTON DBA

WILD HONEY BISTRO, MATT EARLY,

Appellees.

RE: CUP 20-15

MOTION TO STRIKE NEW EVIDENCE

Email correspondence between City Planner Rick Abboud and subject property owner Melody Livingston was recently submitted in support of the city's Motion to Dismiss Appeal. In accordance with HCC 21.93.560(b), Appellant Frank Griswold hereby requests that this new evidence be stricken from the record. HCC 21.93.560(b) states: "A decision remanding a case **shall describe any issue upon which further evidence should be taken**, and shall set forth any further directions the Board or hearing officer deems appropriate for the guidance of the lower administrative body." The Board of Adjustment's January 9, 2021 Decision and Order Remanding to the Planning Commission says nothing about Ms. Livingston's temporary withdrawal of her application for CUP 20-15 or any other issue pertaining to the potential dismissal of this appeal. The appeal record for this matter is closed

except for the taking of evidence pertaining to the ownership of the subject property and potential Commissioner disqualifying financial conflicts of interest/partiality related thereto. No evidence received under HCC 21.93.510(c) shall be considered for purposes other than determining disqualification. HCC 21.93.510(c). The closed appeal record does not include Ms. Livingston's recent correspondence with Mr. Abboud and the Commission does not have the authority to consider allegations of new evidence sua sponte. Accordingly, the recent email correspondence between Ms. Livingston and Mr. Abboud and any other newly submitted evidence not directly related to the ownership of the subject property should be stricken from the record.

DATED: July 26, 2021

By: s/Frank Griswold/

Session 21-17, a Regular Meeting of the Planning Commission was called to order by Chair Scott Smith at 6:33 p.m. on August 4, 2021 at Cowles Council Chambers in City Hall located at 491 E. Pioneer Avenue, Homer, Alaska, via Zoom Webinar. There is one vacancy on the Commission.

PRESENT: COMMISSIONERS BARNWELL, VENUTI, SMITH, CONLEY, HIGHLAND, CHIAPPONE

STAFF: CITY PLANNER ABBODD
DEPUTY CITY CLERK KRAUSE

The Commission met prior to the regular meeting at 5:30 p.m. for a worksession. On their agenda was discussion on the 2022-2027 Capital Improvement Plan and Homer City Code 21.57 Large Retail and Wholesale Stores.

APPROVAL OF THE AGENDA

Chair Smith read the agenda changes and supplemental items into the record and requested a motion.

HIGHLAND/VENUTI MOVED TO APPROVE THE AGENDA WITH THE CHANGES AND SUPPLEMENTAL ITEMS

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

PUBLIC COMMENTS ON ITEMS ALREADY ON THE AGENDA

RECONSIDERATION

CONSENT AGENDA

- A. Planning Commission Regular Meeting Minutes of June 16, 2021
- B. Decisions and Findings for Conditional Use Permit 21-06 at 1308 Lakeshore Dr

Chair Smith read the Consent Agenda into the record and requested a motion of approval.

HIGHLAND/VENUTI MOVED TO APPROVE THE CONSENT AGENDA AS PRESENTED.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

PRESENTATIONS / VISITORS

Aaron Fleenor, Yard Manager, Northern Enterprises Boat Yard made a presentation to the Commission on the recent improvements to their facility and the proposed plan to increase their footprint with the purchase of available property.

Mr. Fleenor responded to questions from the Commission on the following:

- Traffic crossing concerns regarding Kachemak Drive
- Long term prediction of increased need for large vessel haul out facilities
- Increase in large boats coming to Homer over the last 13 years
- Influx of boats from northern communities in Alaska
- Kodiak has the infrastructure but is limited in space and difficulties in getting supplies
- Seward does not have the infrastructure
- Homer does have tidal issues
- Large economic driver for the community
- Community concerns over wetland use and moose habitat
- Current land holdings have some dedication to wetlands and there is currently 35 acres dedicated to moose habitat along Kachemak Drive
- Moose and wildlife are still able to access Northern Enterprises property
- Estimated number of vessels that will increase use of their services
- Diversity of Marine Trades available in Homer
- Permitting is currently in place by the Corps of Engineers allowing Northern Enterprises to dredge materials from the specific area but they do not, by practice, remove the dredge materials. They just push them to the sides to provide additional depth needed when bringing vessels out of the water for services.

The Commission expressed their appreciation for the presentation.

REPORTS

A. Staff Report 21-48, City Planner's Report

Chair Smith introduced the item and deferred to City Planner Abboud.

City Planner Abboud spoke to his written staff report, highlighting the following:

- Tsunami response on Wednesday, July 21, 2021
- Siren control and volume

City Planner Abboud facilitated discussion on the scheduling of a future agenda item on use of connexes as structures in Homer City Limits and getting public input on the use of those structures and meeting in person in the Council Chambers and or via teleconference.

B. Public Works Campus Task Force Report

Chair Smith introduced the item and asked for Commissioner Barnwell to provide his report. He additionally noted the minutes provided in the Supplemental Packet of the July 14th and 28th regular meetings.

Commissioner Barnwell reported on the Task Force progress refining their final report to City Council. He responded to questions of the Commission on use of a phased approach, availability of commercial real estate, inclusion in the Capital Improvement Plan.

PUBLIC HEARINGS

PLAT CONSIDERATION

A. Staff Report 21-41, James Waddell Homestead 2021 Replat Preliminary Plat

Chair Smith introduced the item by reading of the title and invited City Planner Abboud to provide his report.

City Planner provided a summary of Staff Report 21-41 for the Commission.

There was no applicant present.

Chair Smith opened the public comment period and having no members of the public requesting to comment closed the public comment period.

VENUTI/HIGHLAND MOVED TO ADOPT STAFF REPORT 21-41 AND RECOMMEND APPROVAL OF THE JAMES WADDELL HOMESTEAD 2021 REPLAT PRELIMINARY PLAT TO VACATE A LOT LINE.

There was a brief comment on this action being clear and straight forward.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

B. Staff Report 21-44, Barnett's South Slope, Evans Addition, Preliminary Plat

Chair Smith introduced the item by reading of the title and invited City Planner Abboud to provide his report to the Commission.

City Planner Abboud provided a summary of Staff Report 21-44.

Tom Latimer, representing the applicant reported that he was available for questions.

Chair Smith opened the public comment period and having no members of the public requesting to comment closed the public comment period.

HIGHLAND/VENUTI MOVED TO ADOPT STAFF REPORT 21-44 AND RECOMMEND APPROVAL OF THE BARNETT'S SOUTH SLOPE EVANS ADDITION PRELIMINARY PLAT TO REMOVE A LOT LINE BETWEEN TWO LOTS WITH THE FOLLOWING COMMENTS:

1. INCLUDE A PLAT NOTE STATING "PROPERTY OWNER SHOULD CONTACT ARMY CORPS OF ENGINEERS PRIOR TO ANY ON-SITE DEVELOPMENT OR CONSTRUCTION ACTIVITY TO OBTAIN THE MOST CURRENT WETLAND DESIGNATION (IF ANY) PROPERTY OWNERS ARE RESPONSIBLE FOR OBTAINING ALL REQUIRED LOCAL STATE AND FEDERAL PERMITS.
2. COMMISSION TO CONCUR WITH MAINTAINING EAST TASMANIA COURT AS A 50 FOOT RIGHT OF WAY WITH THE INCLUSION OF PLAT NOTE AND DEPICTION DESIGNATING THE ADJACENT 15 FOOT UTILITY EASEMENT AS A UTILITY AND SLOPE EASEMENT.
3. CORRECT THE STREET NAME TO EAST TASMANIA COURT.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

Chair Smith called for a recess at 7:45 pm. The meeting was called back to order at 7:50 p.m.

PENDING BUSINESS

- A. Staff Report 21-43, Marijuana Onsite Consumption Endorsement

Chair Smith introduced the item by reading of the title.

City Planner Abboud provided a summary and explanation of why this item was back before the Commission noting that they could not take further action or recommendations. He noted that the Commission could provide, and what City Council was requesting, was further clarification on the reasons for not supporting on site consumption regulation.

Commissioner Barnwell and Highland commented that in further consideration of the subject if they could change or vote again on the issue they would vote it down.

Chair Smith provided clarification on why he could not support allowing onsite consumption was the location in the Central Business District in the middle of an area that is highly frequented by families and children and with the wind blowing the odor would be in his opinion advertisement for the product.

City Planner Abboud responded that if any smell was detected outside the location the business would be shut down in accordance with state regulations.

NEW BUSINESS

- A. Motion to Dismiss Appeal by Frank Griswold of the Planning Commission Decision on Conditional Use Permit 20-15 for the reconstruction of a restaurant building at 106 W. Bunnell Avenue, Homer, Alaska

Chair Smith introduced the item by reading of the title and noted that this matter was before the Planning Commission at their June 6, 2021¹ regular meeting and it was discovered after the fact that the parties had not received notice of the motion to dismiss. As a result, the action from the June 6th² meeting is void. Notice was distributed to the parties on July 6, 2021 and they were given the opportunity to respond. This matter is back before the Commission tonight for action.

Deputy City Clerk Krause responded to Chair Smith's request for clarification on the ordinance amending city code to remove matters like this from the Commission. She explained that it was introduced and still needed to go through the public hearing and second reading before becoming effective, further stating she believed that was scheduled for the upcoming Council meeting.

Chair Smith requested a motion and second.

VENUTI/HIGHLAND MOVED TO POSTPONE ACTION ON THE MOTION TO DISMISS UNTIL CITY COUNCIL RESOLVED ACTION ON THE ISSUE.

Commissioner Venuti recommended the postponement to allow City Council time to address the code changes.

Commissioner Highland requested some input from Deputy City Clerk Krause on whether they could postpone the action before them.

Deputy City Clerk Krause explained that City Council approving the ordinance would not change the action before the Commission tonight however there was information in the supplemental packet regarding a request for a continuation. This matter is in the hands of the Commission and in my opinion you should not postpone it to await the outcome of Council action.

Commissioner Venuti stated that he would like to amend his motion.

Deputy City Clerk Krause recommended voting on the motion on the floor.

Chair Smith called for any additional discussion hearing none he requested the Clerk to take a roll call vote.

VOTE. NO. CONLEY, BARNWELL, VENUTI, SMITH, CHIAPPONE, HIGHLAND.

Motion failed.

Chair Smith requested Commissioner Venuti to restate his motion but before he did he recognized Commissioner Highland.

¹ Incorrect date provided of June 6, 2021 correct date of meeting should reflect June 2, 2021

² See note 1 above

HIGHLAND/VENUTI MOVED TO DISMISS THE APPEAL BY FRANK GRISWOLD OF THE PLANNING COMMISSION DECISION ON CONDITIONAL USE PERMIT 20-15 FOR THE RECONSTRUCTION OF A RESTAURANT BUILDING AT 106 WEST BUNNELL AVENUE, HOMER, ALASKA.

There was a brief commentary on the lack of credentials on the part of the Planning Commission in addressing issues like this since they do not know the law and while Mr. Griswold brings forward interesting points it will be better to have these types of actions go before a hearing officer.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

B. Memorandum Re: Planning Commission Declaration of Vacancy

Chair Smith introduced the item by reading of the title. He then requested input from the Clerk.

Deputy City Clerk Krause responded that in accordance with the Commission bylaws since she had exceeded the allowed absences.

HIGHLAND/VENUTI MOVED TO DECLARE THE SEAT OF SYVERINE BENTZ VACANT IN ACCORDANCE WITH THE BYLAWS.

Discussion ensued on the ability for Ms. Bentz to reapply for her seat and encouragement from all members of the Commission and the Mayor. Further points made on being cognizant of how important attendance is to this commission and how inflexible the rules are in comparison to the other commissions and board.

Deputy City Clerk Krause responded that she does have attendance sheet but with the meetings being conducted via Zoom she lost track in keeping accurate accounting of absences and it was Commissioner Bentz herself who brought that issue to the Clerk's attention in response to Commissioner's questions.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

C. Staff Report 21-46, Election of Officers

Chair Smith introduced the item by reading of the title and opened the floor for nominations of Chair.

Commissioner Highland nominated Commissioner Smith for the Office of Chair.

Commissioner Barnwell seconded.

There were no further nominations.

Commissioner Smith was unanimously voted in as Chair.

Chair Smith then opened the floor for nominations of Vice Chair.

Commissioner Venuti nominated Commissioner Highland for Vice Chair.

Commissioner Barnwell seconded.

Chair Smith called for additional nominations for Vice Chair.

Commissioner Smith nominated Commissioner Conley.

Commissioner Conley declined the nomination citing the lack of time on the commission.

Commissioner Barnwell nominated Commissioner Venuti.

Commissioner Venuti declined the nomination citing that he has served as both Chair and Vice Chair and believes that every sitting Commissioner should be given the opportunity to serve as Chair or Vice Chair during their term as a commissioner.

Commissioner Highland was voted in as Vice Chair unanimously.

D. Staff Report 21-45, Parking Code

Chair Smith introduced the item by reading of the title and invited City Planner Abboud to provide his report.

City Planner Abboud reported that the number of parking spaces is higher than the standards used in other communities. Especially for multi-family dwellings and small detached units like cabins. If the efficiency units are in one building only one spot is required but if there are several small cabins on one lot each is required to have two parking spaces. They would like to amend City Code to adjust the requirement to one space for small 500 square foot cabins or efficiencies.

Chair Smith inquired about how or where visitors would park and how would that be configured.

City Planner Abboud responded that staff could work on that and bring it back before the commission. He further acknowledged that there was no parking on city streets, possibly working on off-site parking, the likelihood of someone not having a vehicle, especially living in the center of town.

HIGHLAND/VENUTI MOVE TO ADOPT STAFF REPORT 21-45 AND AMEND HOMER CITY CODE 21.55.090 (1) TO ALLOW TWO PARKING SPACES PER DWELLING UNIT OR ONE PARKIN SPACE PER EFFICIENCY OR ONE BEDROOM UNIT WHEN MORE THAN ONE DWELLING UNIT IS LOCATED ON A PARCEL

Discussion on parking for visitors if there is no dedicated parking on site; this applies only to efficiency/studio units. Evaluation of a formula where a maximum is established and then additional spaces are required; if project is in the center of town the likelihood that the occupant would have a car or have many visitors is unlikely but to require parking that will not be used is a waste of real estate.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

E. Staff Report 21-42, Large Retail and Wholesale Stores

Chair Smith introduced the item by reading of the title.

City Planner Abboud reviewed discussion points from the worksession and then proceeded to continue reviewing proposed changes to Title 21.57.

Chair Smith commented that it was a good visioning exercise and suggested a worksession for the Commission to discuss with staff the proposed amendments.

Chair Smith and City Planner Abboud facilitated additional discussion on the following:

- How these amendments would work with the Community Design Manual
- Does it need to be duplicated in city code
- Original city code was developed to combat change and change happened anyway.
- It is important to grow the City inside out as it is beginning to be difficult to develop commercial projects. As an example, the new grocery store being developed out East End Road, thus there is no benefit to the city.
- The city needs to temper its code and zoning requirements for large retail developments.
- Homer has grown immensely over the last twenty years.

City Planner Abboud will work on these considerations and present the amendments for a future meeting.

F. Memorandum Re: City of Homer Draft 2022-27 Capital Improvement Plan (CIP)

Chair Smith introduced the item by reading of the title. He noted the information provided by Ms. Carroll at the worksession.

City Planner Abboud reviewed the process briefly for the Commission and requested each Commissioner submit their top two projects.

The Commissioners then provided their top two projects from the draft Capital Improvement Plan for City Planner Abboud to list.

City Planner Abboud reviewed the projects selected and noted that the Main Street Sidewalk Project is the top priority but there is a not consensus on the second project. He noted the top three projects selected:

- Barge Mooring and Large Vessel Haul out Repair Facility
- New Large Vessel Harbor; and
- the New Public Works Facility

Chair Smith suggested that he submit all three projects and leave the final selections to City Council.

City Planner Abboud stated that Commissioner Chiappone needs to select a second project to support.

Commissioner Chiappone selected the Barge Mooring and Large Vessel Haul-out Repair Facility.

City Planner Abboud reported that the Commission selections were the Main Street Sidewalk Project North of Pioneer Avenue and the Barge Mooring and Large Vessel Haul Out Repair Facility. He will forward these recommendations to Ms. Carroll.

INFORMATIONAL MATERIALS

- A. City Manager Reports for June 28 & July 26, 2021 City Council Meetings
- B. Planning Commission Calendar
- C. Kenai Peninsula Borough Notice of Decision

Chair Smith noted the informational items in the packet and there were no comments on the material provided.

COMMENTS OF THE AUDIENCE

Syverine Bentz, congratulated Deputy City Planner Engebretsen on 19 years with the Planning Department. She thanked the Commissioners for following the process and believed that the Commission should revisit the bylaws regarding absences. They should be operating consistently with the other Commissions and Council and considering virtual attendance options in the future. She appreciates all the hard work and for the long meeting tonight.

Chair Smith thanked Ms. Bentz for staying throughout the meeting and encouraged her to re-apply for her seat on the Commission.

COMMENTS OF THE CITY STAFF

Deputy City Clerk Krause thanked the Commissioners for getting through such a long agenda in a timely fashion and that it was a good meeting. She further noted that the Clerk's Office was drafting some amendments to City Code regarding telephonic/electronic meetings and attendance and hoping to have it reading for introduction to Council soon. They also noted conflicts in city code with what was stated in the bylaws. Ms. Krause announced the candidacy filing period is currently open until 4:30 p.m. on August 16th if anyone was interested.

COMMENTS OF THE COMMISSION

Commissioner Highland commented on the long meeting and that Commissioner Chiappone was able to experience that for his first meeting.

Commissioner Venuti welcomed Commissioner Chiappone and noted that his first meeting lasted until 11:00 p.m. and all he could think of, was what did he get himself into, so he got off easy. He then stated that he hopes Ms. Bentz rejoins the Commission as she was a very important part of the Commission. He did want to bring to the Commission's and the City Planner's attention that a couple of years ago they approved a CUP to permit more cottages and he noticed that they are starting to build more just below the Chamber of Commerce so Homer is growing again. It was a good meeting and always a pleasure working with everyone.

Commissioner Conley commented on it being nice to see everyone and hoped everyone was having a good summer so far. He thanked the Chair for getting them out at a fairly early hour.

Commissioner Barnwell welcomed Commissioner Chiappone and echoed the sentiments on Ms. Bentz rejoining the Commission.

Commissioner Chiappone thanked everyone for the warm welcome and stated that it has been eye opening and excited about being on the Commission. He thought that the city was more complex than he realized and he has lived on the south peninsula off and on for over 20 years but only been in the City, downtown metropolitan area for the last 6 or 7 years. This has really been eye opening. It never could imagine the huge undertaking it is to keep it going.

Chair Smith echoed the sentiments of encouragement to Ms. Bentz and welcoming Commissioner Chiappone to the Commission. He commented on the interesting topics and expressed his appreciation for the work of the Planning Staff and requested the City Planner to forward their thanks to his staff on behalf of the Commission. He then expressed his opinion that Deputy City Clerk Krause was amazing in her ability to keep them in line and on task. He was very appreciative of all the efforts of staff.

ADJOURN

There being no further business before the Commission, the meeting was adjourned at 9:35 p.m. Next Regular Meeting is Wednesday, August 18, 2021 at 6:30 p.m. A worksession is scheduled for 5:30 p.m. All meetings scheduled to be held virtually by Zoom Webinar from the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.



RENEE KRAUSE, MMC, DEPUTY CITY CLERK II

Approved: August 18, 2021